



## **Sonrisas Dental Health**

### **Board of Directors Closed Session**

**August 18, 2022  
6:30 PM**

The Board will host a Virtual Closed Session using Zoom  
Members of the public wishing to offer public comment at the start of the meeting may do so by joining the meeting with the link or phone number below

**Join Zoom Meeting**

**<https://us02web.zoom.us/j/83395689668>**

**Meeting ID: 833 9568 9668**

**One tap mobile**

**+16699009128,,83395689668# US (San Jose)**

**Dial by your location**

**+1 669 444 9171 US**

**+1 669 900 9128 US (San Jose)**

### **AGENDA**

1. CALL TO ORDER AND ROLL CALL – Vice Chair Galligan
2. PUBLIC COMMENTS – Vice Chair Galligan
3. CLOSED SESSION – Vice Chair Galligan
  - a. Pursuant to Government Code Section 54957: CEO Annual Performance and Salary Review with chief negotiator, Board Member Steve Stielstra.
4. REPORT OUT – Vice Chair Galligan
  - a. Any recommended actions will be reported out at the Regular Board Meeting immediately following this session
5. ADJOURN TO OPEN SESSION





**Board Meeting  
August 18, 2022  
7 PM**

**Teleconference Via Zoom**

<https://us02web.zoom.us/j/83395689668>

Meeting ID: 833 9568 9668

Dial by your location

+1 669 444 9171 US

**AGENDA**

TABS

1. 7:00-7:05 CALL TO ORDER AND ROLL CALL – Vice Chair Galligan A
2. 7:05-7:10 MISSION MOMENT – CEO Fecher
3. 7:10-7:15 PUBLIC COMMENTS
4. 7:15-7:20 REPORT OUT FROM CLOSED SESSION ON AUGUST 18<sup>TH</sup> – Vice Chair Galligan
5. 7:20-7:25 APPROVAL OF JUNE and JULY 20<sup>TH</sup> SPECIAL MEETING BOARD MINUTES – Vice Chair Galligan B
6. 7:25-8:05 NEW BUSINESS
  - A. CEO Annual Performance Review and Proposed Salary Adjustment ACTION REQUESTED – Director Stielstra
  - B. FY22 Financial Year End Review ACTION Requested– CFO Fama
  - C. Board Resolutions for Heritage Commerce Bank Account ACTION REQUESTED – CEO Fecher C
  - D. Partnership Update – CEO Fecher
    - a. Sequoia Healthcare District
    - b. Puente del Sur
    - c. SMMC FQHC
  - E. Board Resolution to Continue Virtual Meetings ACTION Requested – Vice Chair Galligan
7. 8:05 – 8:15 OLD BUSINESS
  - A. Cooking for a Cause September 2022 Event Details – Development Committee
  - B. Strategic Plan Update – CEO Fecher
8. 8:15-8:20 REPORTS
  - A. CEO Report – CEO Fecher D
  - B. CFO Report – CFO Fama E
    - a. May and June 2022 Profit and Loss, Balance Sheet, and Dashboards
  - C. Fundraising Report – Maura LeBaron-Hsieh F
  - D. Outreach Report– Dr. Bonnie Jue
  - E. Board Nomination Committee – Director Young
9. 8:20-8:25 SUGGESTED AGENDA ITEMS FOR NEXT MEETING – Vice Chair Galligan
10. ADJOURN

**B**



**Board Meeting  
June 16, 2022  
6:30 PM**

**MINUTES**

1. **CALL TO ORDER AND ROLL CALL** – **Chair Taverner** called the meeting to order at **6:32 pm**.
  - **Present:** Chair Nigel Taverner, Vice Chair Helen Galligan, Secretary Clyde Hinshelwood, Board Members: Larry Cappel, Larissa Cutler, Dennis Kneoppel, Rick Navarro, Steve Stielstra, Sheryl Young
  - **Also Present:** CEO Tracey Fecher, CFO Cheryl Fama, Community Engagement Director Bonnie Jue, Director of Development Maura LeBaron-Hsieh
  
2. **MISSION MOMENT** – **CEO Fecher** shared that COVID has taken a toll on the clinic. In addition to patient cancellations, many staff members have had to stay home due to symptoms and/or caring for their children with COVID, which in June resulted in a loss of three to four weeks of patient appointments. Other healthy staff members have stepped up to support when there were staff absences. Sonrisas staff are very committed to treating as many patients as possible.
  
3. **PUBLIC COMMENTS** – No public in attendance.
  
4. **APPROVAL OF MAY BOARD MINUTES**
  - **Vice Chair Galligan** moved to approve the minutes for May 19, 2022. The motion was seconded by **Secretary Hinshelwood** and approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Clyde Hinshelwood, Dennis Kneoppel, Steve Stielstra, Sheryl Young**. Abstain: **Larry Cappel, Larissa Cutler, Rick Navarro**.
  
5. **NEW BUSINESS**
  - **FY23 Capital and Operating Budget ACTION Requested** – **CEO Fecher** shared that Sonrisas is on track to exceed its FY22 financial targets. The budget was developed with input from the Leadership Team and a theme of the FY23 Operating Budget is investment in the Strategic Plan. The Capital Budget will cover new dental equipment needed due to the higher appointment volume as well as replacing aged dental equipment when needed.
    - Once defined, additional capital projects, such as having a new phone system and outreach data collection, will be presented to the Board for approval.
    - The vision for FY23 is geared mainly towards the growth of Sonrisas and preparing for the future.
    - To answer a board member’s question about cash reserves and the Capital Budget, as of June 8, 2022, the cash position is \$1.7M. The Sonrisas Cash Reserves Policy calls for \$1M.
    - The budget includes the expansion of the FQHC contract to Coastside, beginning in October. The team is using the first quarter to prepare for implementation while establishing the referral process.

- The rise in inflation has been impacting supply expenses. If the rise continues, the budget includes an eight percent increase over the next year in dental supplies and an additional five percent in admin. There is a chance the effect of inflation could cause us to miss the budgeted net income.
    - A board member questioned how inflation will affect the business. **CEO Fecher** responded if there is additional capacity, the schedule can be filled up with FQHC patients and farmworkers, since FQHC patients are always in need of appointments and farmworkers provide our highest per visit income.
  - For FY22, Sonrisas is projecting 350 less patients visits than budgeted. There will not be any additional providers planned in FY23, but if another dental assistant were hired, San Mateo's hygienists would be able to see eight rather than seven patients per day.
    - Sonrisas has been looking for dental assistants and continues to have difficulty hiring for that position.
  - In FY22, there were 28 FTEs, including the Center Director and Billing Specialist before they left the organization. With the Billing Specialist position outsourced and the role of Center Director replaced by the Practice Manager position, the team chose to open positions for a Dental Assistant and a Development Associate. The budget also allows for an Outreach Care Coordinator position. The budgeted FTE for FY23 is 29.
  - Outreach goals are higher in FY23. There will be an increase in school screenings from 1,200 to 2,000 and, assuming we get a grant from Delta Dental, senior screenings will increase from 13 to 100. If we are denied the grant, the search for other funding opportunities will continue.
    - **Chair Taverner** asked **Dr. Jue** if the budget will be enough, in terms of increasing Outreach FTE from 1.5 to 2.3. Dr. Jue responded that she worked closely with CEO Fecher to calculate hours of contribution from staff and volunteers. As of now, that number is just right, leaving room for growth once Sonrisas receives more funding for the department.
  - With the increase in fundraising grants, \$202,000 of \$330,000 is already secured; \$85,000 will be used for building out an operatory. In addition, a new grant from The Woodlawn Foundation, ranging from \$50K-\$100K, is anticipated.
  - **CEO Fecher** shared that, with the currently planned capital expenses, the budget has a \$31,000 positive cash flow, with a net negative income of \$50,000. If there is bandwidth, beneficial projects will be presented to the Board throughout the year.
- **Director Cappel** moved to approve the FY 23 Capital and Operating Budget. The motion was seconded by **Director Young** and approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Clyde Hinshelwood, Larry Cappel, Larissa Cutler, Dennis Kneoppel, Rick Navarro, Steve Stielstra, Sheryl Young.**

#### 6. Strategic Plan Approval ACTION Requested –

- **Board Member Stielstra** asked how the work will be monitored using Mission Met: the website includes tools to track each teams' progress towards their goals.
- **Chair Taverner** and **CEO Fecher** will provide quarterly updates to the Board.
- **Vice Chair Galligan** moved to approve the Strategic Plan. The motion was seconded by **Director Navarro** and was approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Clyde Hinshelwood, Larry Cappel, Larissa Cutler, Dennis Kneoppel, Rick Navarro, Steve Stielstra, Sheryl Young.**

7. **Employee FY22 Retention Bonus ACTION Requested** – As suggested by the Leadership Team, **CEO Fecher** shared that FY22 was a strong year financially helped by a \$131,000 check from the IRS as ERC credits was received. Without our staff, Sonrisas would not be able to deliver our mission. Recognizing the importance of teamwork and to match dental office culture, the management team felt that giving bonuses to employees based on the amount of time worked in FY22 would be more than justified for the Sonrisas team. For such bonuses, **CEO Fecher** recommended a pool of \$40,000 or \$60,000 distributed equally to full-time employees, who worked the whole year, then prorated for part-time employees and those who joined during the year. For example, an employee who works 0.6 FTE will be given sixty percent of the amount and a full-time employee, who joined six months ago, will receive half the amount.
- If the pool was approved for \$40K, 1 FTE will receive a bonus of \$1840, whereas if \$60K was approved, the bonus will be \$2760.
  - **Director Kneoppel** questioned whether there were any concerns on if the current salaries are competitive or where they should be adjusted. **CEO Fecher** replied that our outsourced HR conducts a salary survey in multiple locations every May and it was determined that our pay rates are right in the middle. Because of the recent trend of jumping jobs to escalate their salaries, the budget has provision for increases to market rate before considering the percentage for merit pool increase.
  - **Director Cappel** concluded the proposed \$60K is half the ERP credits received and giving bonuses will end up saving money in the long run as this is an efficient way of distributing money during a financially good year.
    - **Director Navarro** added giving bonuses is not unreasonable, as they can be adjusted to reflect future economic occurrences, resulting in long-term flexibility.
    - **Director Stielstra** affirmed the structure of the bonus since it is based on staff members' presence during FY22, rather than overall performance.
  - **Chair Taverner** asked what the expected surplus, at the end of the year, would be.
    - **CEO Fecher** responded the surplus would be \$380K, with a cash flow of \$293K (see slide 11).
  - **Director Cappel** moved to approve the Employee Retention Bonus from a pool of \$60,000. The motion was seconded by **Director Navarro** and approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Clyde Hinshelwood, Larry Cappel, Larissa Cutler, Dennis Kneoppel, Rick Navarro, Steve Stielstra, Sheryl Young.**
8. **Board Resolution to Continue Virtual Meetings ACTION Requested**
- **Director Navarro** proposed that the August 18<sup>th</sup> board meeting take place virtually. The motion was seconded by **Vice Chair Galligan** and approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Clyde Hinshelwood, Larry Cappel, Larissa Cutler, Dennis Kneoppel, Rick Navarro, Steve Stielstra, Sheryl Young.**
9. **OLD BUSINESS**
- **Cooking for a Cause September 2022 Update** – With the aid of The Arora Collective, the Development Committee confirmed good progress in terms of having the event landing page on Sonrisas' website live, finalizing artwork, emailing the donor database contact list "Save the Date" links and the onset of personal invitation lists in the following week.
    - The Board was asked to finalize their personal guest list, help procure auction items and decide on how they will fill their table, if sponsoring or hosting a table.
    - Supervisor Don Horsley has agreed to be Sonrisas' honoree, requesting that no money be spent creating a plaque in his honor or a bouquet of flowers, but instead, be used towards providing more screenings for kids.

- **Stanford Graduate School of Business Nonprofit Executive Program Report** – **CEO Fecher** thanked the Board for the opportunity to participate in this program, and shared her experience of staying on campus, immersed in a learning environment with 63 other nonprofit organization leaders from across the world. She now has 63 people she can reach out to for advice and sharing of experiences. Each professor during the week had relevant information that could be applied to Sonrisas. She liked the pre-mortems and confirmation that the power of stories is a crux to nonprofit businesses (22 times more likely to be remembered than data). **CEO Fecher** stressed the importance of providing a library of impactful stories, since they are as pivotal as gathering data.
- **FQHC Contract Update** – Nothing to Report

#### 10. REPORTS

- **CEO Report** – No questions or comments
- **CFO Report** – No questions or comments
- **Fundraising Report** – No questions or comments
- **Outreach Report** – No questions or comments
- **Board Nomination Committee** – No questions or comments
- **Board Member Young** stated that the reports are great; the reason why there are no comments or questions is because they are so informative. She congratulates Tracey and the staff and thanks them.

#### 11. SUGGESTED AGENDA ITEMS FOR NEXT MEETING

- Progress on Cooking for a Cause including Event details
- Strategic Plan Update
- Progress on Partnerships (Sequoia, Puente, FQHC expansion etc)

#### 12. ADJOURN – The meeting was adjourned at **7:44 pm**.



## Special Board Meeting

July 20th, 2022

12:00 PM

### MINUTES

1. **CALL TO ORDER AND ROLL CALL** – **CEO Tracey Fecher** called the meeting to order at **12:01 pm**.
  - **Present:** Chair Nigel Taverner, Vice Chair Helen Galligan, Board Members: Larry Cappel, Larissa Cutler, Rick Navarro, Steve Stielstra
  - **Also Present:** CEO Tracey Fecher, CFO Cheryl Fama, Administrative Assistant Veronica Le
  - **Absent:** Secretary Clyde Hinshelwood, Dennis Kneepfel, Sheryl Young
  
2. **PUBLIC COMMENTS** – No public in attendance.
  
3. **San Mateo Medical Center FQHC Contract Renewal – ACTION REQUESTED**
  - Our current 3-year contract with San Mateo County for \$290 per visit, expires on August 31<sup>st</sup>. The county proposed a 3-year contract with no rate increase, which our team pushed back on. **Chair Taverner, CEO Fecher** and **CFO Fama** counter-offered the county a 1-year contract with no rate increase to give us time to discuss a future increase. Dave McGrew, CFO of SMMC, came back with a proposal for a 3-year contract with a 6.9% increase effective September 1<sup>st</sup> and a 2.5% increase per year moving forward, with a provision for an annual rate review. The FQHC annual increase for organizations like SMMC averages between 2-3% each year from the federal government.
  - After comparing the proposed contract with the prior contract, **CEO Fecher** saw that they were similar and concluded a legal review was not needed, since the prior contract was reviewed by a legal team. She also reviewed the current insurance levels to confirm we are compliant in that regard.
  - From a clinical standpoint, Dr. Torrey had thoughts about an attachment in the contract about additional duties performed by hygienists and dental assistants. Should any issues come up, they will be handled as needed.
  - **Director Navarro** asked if SMMC’s FQHC payment is the same as ours. After CEO Fecher shared that it is not, he wondered why the annual increases in the new contract do not match their increases.
    - **CEO Fecher** pointed out that the contract has a provision for an annual discussion about the rate so, if SMMC receives a 3% increase next year, we will be advocating for 3% as well.

- **Chair Taverner** asked if the \$1M were spent before the contract ends, will there be potential to extend the amount. **CEO Fecher** responded that there were two amendments in the last three years, one being an increase of the cap. If we achieve the visit volume as planned, \$1M will last a year and a half before requiring an expansion of the contract total.
- **CFO Fama** was curious if Sonrisas could achieve more FQHC visits and if this could potentially be an issue. **CEO Fecher** replied that by October, after training staff and finalizing technical items, Coastside will be accepting patients which will increase the total number of FQHC visits.

4. **APPROVAL OF SAN MATEO MEDICAL CENTER FQHC CONTRACT RENEWAL**

- **Director Cappel** moved to approve the Renewal of San Mateo Medical Center FQHC Contract. The motion was seconded by **Director Navarro** and approved by roll call. Ayes: **Nigel Taverner, Helen Galligan, Larry Cappel, Larissa Cutler, Rick Navarro, Steve Stielstra.**

5. **ADJOURN** – Meeting was adjourned at **12:10 pm.**





**DATE:** August 12, 2022

**TO:** SDH Board of Directors

**FROM:** Tracey Fecher, CEO

**RE: Board Resolutions for New Bank Account**

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Based on a recommendation from the Peninsula Healthcare District, Sonrisas is moving our checking account and CDs from Boston Private to Heritage Bank of Commerce. There are three resolutions the board must make to enable the opening of the checking account. Those resolutions are attached here and include:

1. Cash Management Services Resolution and corresponding Cash Management Services Agreement.
2. Deposit Account Corporation Resolution and corresponding Deposit Account Agreement and Disclosure.
3. Facsimile/Electronic Signature Agreement and Corporate Resolution

During the meeting three resolutions will be made by the board and certified by the board secretary, Clyde Hinshelwood, after the meeting. The resolutions are in the body of the corresponding documents and will be provided during the board meeting in presentation format.

Please reach out to me before the board meeting if you have any questions about the change of our bank and/or the resolutions.

**HERITAGE**  
BANK OF COMMERCE

**Cash Management Services Resolutions**

for

Sonrisas Dental Health Inc

("Company")

I/we, the undersigned ("Undersigned"), hereby certify to Heritage Bank of Commerce ("Bank") that the undersigned am/are the individual owner of the sole proprietorship, or the secretary or assistant secretary of the corporation, or all the general partners, or all the members (if management is by members), or all the managers (if management is by the managers), or all the representatives of the governing body of the Company, and designated keeper of the records and minutes of the Company;

WHEREAS, the following is a true and correct copy of Company Resolutions duly adopted by the Board of Directors (if a corporation), the partners (if a partnership), members/managers (if a limited liability company), proprietor (if a sole proprietorship) or other governing authority of the Company at a meeting held on the 18 day of August, 2022, at which a quorum was present and acting throughout, or adopted by the written consent of a majority of those entitled or required to act to bind the Company, and that such Company Resolutions are in full force and effect and have not been amended, modified or repealed;

WHEREAS, the Company has reviewed and approved the Heritage Bank of Commerce Cash Management Services Agreement and Disclosure, together with the Enrollment Form and any supporting documents, corresponding exhibits, schedules or attachments to the same (collectively, the "Agreement"), to be entered into by and between the Company and Heritage Bank of Commerce ("Bank");

WHEREAS, defined terms herein will have the meaning provided in the Agreement, unless otherwise defined in these Resolutions; and

WHEREAS, the Company has determined that it is in the best interests of the Company to enter into the Agreement in connection with the services contemplated under the Agreement ("Cash Management Services") and subject to the terms and conditions of the Agreement, as amended from time to time.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Company finds that it is in the best interest of the Company to enter into the Agreement, as amended from time to time.
2. The Company appoints all Authorized Users (as identified in the Enrollment Form) as agents of the Company for purposes of access to or use of the Cash Management Services and to initiate Communications to Heritage Bank of Commerce in the name of Company, all such acts and deeds to be the acts and deeds of Company;
3. The Company understands and accepts the additional risks associated with the Company designating an Administrator Level User ("Supervisor") with the authority to enable an Authorized User (and including any Additional Supervisor(s)) to utilize the Cash Management Services, even though the Authorized User may not be an authorized signer on the Company's accounts. Such risks include, without limitation, the theft or misappropriation of the Company's funds or other losses;
4. The Company understands and accepts the additional risk resulting from the Company's acceptance of the Agreement, including but not limited to the fact that Heritage Bank of Commerce will not control or restrict any transaction effected by any of the Authorized Users;
5. The Company authorizes and appoints each of the officers of the Company and any authorized signer on the deposit accounts of the Company, acting individually or together, to execute and deliver the Agreement. Any one or more of the foregoing persons are authorized to negotiate and accept terms and conditions of the Agreement, including current or future amendments or supplements to the Agreement, and to enter into such other agreements, supplements and amendments as they individually or jointly determine to be appropriate, including amendments or supplements;

6. To the extent these Resolutions are inconsistent with prior resolutions of the Company with respect to the authority granted herein, these Resolutions will supersede the prior resolutions; and
7. The authority given above will continue, and the Bank may rely on the actions of any person referred to above, until such time as the Bank is given formal written notice of the revocation of such authority and the Bank has an opportunity to respond to the same. All acts and deeds taken by any person referred to above shall be deemed the act and deed of the Company for all purposes relating to the Agreement and to all services described in the Agreement or provided by the Bank to the Company under the Agreement.

The Undersigned hereby certifies under penalty of perjury under the laws of the state of California that the forgoing resolutions were duly and legally adopted by the governing body of the Company and that said Resolutions have not been revoked and are currently in full force and effect:

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

/x/ \_\_\_\_\_

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

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

DATE: \_\_\_\_\_

/x/ \_\_\_\_\_

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

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

DATE: \_\_\_\_\_

/x/ \_\_\_\_\_

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

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

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**FOR FINANCIAL INSTITUTION USE ONLY**

Acknowledged and received on \_\_\_\_\_ (date) by \_\_\_\_\_ (initials)      This resolution is superseded by resolution dated \_\_\_\_\_

Comments:



**Cash Management Services  
Enrollment Form**

**Security Procedure Selection:**

**Bank requires the use of:**

- **Login ID / Password:** an individual Logon ID and Password to access Heritage Direct Business Online Banking
- **Out of Band Authentication:** Client may be required to use the Bank's Out of Band Authentication process.
- **Dual Control:** Client will be required to utilize dual security when initiating Wire Transfer or ACH Requests. Dual Security will require one Authorized User to sign into Direct Business Online Banking and via Direct Business Online Banking initiate a Request, and a second Authorized User to sign in and verify and release the Request submitted by the Authorized User who initiated the Request.

**Client may select additional Security Procedures listed on Exhibit A (additional fees may apply), or opt out of additional Security Procedures immediately below**

\_\_\_\_ (initial) OPT OUT OF ADDITIONAL SECURITY PROCEDURES

By opting out, the "default" procedure will be to rely solely on the individual Logon ID, Password, Out of Band Authentication (when applicable), & Dual Security (Wire Transfers and ACH Requests only) and will be deemed to be Client's "selected" Security Procedure. By initialing to opt out of additional Security Procedures, Client also acknowledges having received and reviewed the additional Security Procedure options provided in Exhibit A.

**Authorized Execution of this Enrollment Form and CMS Agreement**

Bank may request any person signing below on behalf of Client to provide evidence to the Bank of that person's authority to execute this Enrollment Form on behalf of the Client. Anyone signing on behalf of a Client does so in his, her or its capacity as: (a) a general partner of the Client, if the Client is a partnership; (b) a member or manager of the Client, if the Client is a limited liability company managed by its members or by managers, as appropriate; (c) a duly authorized officer or agent of the Client, if the Client is a corporation; or (d) a duly authorized agent of Client, if the Client is other than the foregoing. This Enrollment Form, and therefore the CMS Agreement also, is entered into by and between Heritage Bank of Commerce and the Client as of the date of acceptance by the Bank.

Except to the extent provided otherwise in this Enrollment, this Enrollment will apply to Client's current and future accounts and changes to this Enrollment, including dollar limits, may be made by Heritage Bank of Commerce by providing notice to Client in writing or electronically. Heritage Bank of Commerce will not be required to obtain Client's signature to affect future changes to this Enrollment.

**Each person signing this Enrollment Form personally and in their individual capacity:** (a) represents and warrants that (i) he, she or it has the authority to enter into, execute and deliver this Enrollment Form and the CMS Agreement on behalf of the Client, and (ii) when executed and delivered, the Enrollment Form and the CMS Agreement will be valid and binding on Client, enforceable against Client in accordance with their terms; and (b) agrees to indemnify, defend and hold Bank harmless from any costs, harm, damage or other loss (including reasonable attorney's fees and costs) incurred by Bank due to or arising in connection with any breach of these representations and warranties or any challenge to them.

**FOR CLIENT:**

\_\_\_\_\_  
Signature of Authorized Signer  
(As designated on the Resolutions page)

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**FOR BANK:**

\_\_\_\_\_  
Signature of Authorized Signer  
(Accepted for Heritage Bank of Commerce)

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(For Bank Use Only)

Entered By: \_\_\_\_\_ Date: \_\_\_\_\_ Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit A**  
**Additional Security Procedures Selection**  
**Wire Services**

Bank requires the use of an individual Company ID, Logon ID and Password to access the Heritage Direct Business Online Banking. Client will be required to utilize dual security when initiating Wire Transfer Requests. Dual Security will require one Authorized User to sign into Heritage Direct Business Online Banking and via Direct Business Online Banking initiate a Request, and a second Authorized User to sign in and verify and release the Request submitted by the Authorized User who initiated the Request. Client may still select at least one of the following additional security options (if no selection is indicated, the "default" procedure will be to rely solely on the individual Company ID, Logon ID, and Password, Out of Band Authentication (when applicable), & Dual Security (Wire Transfers) and will be deemed to be Client's "selected" Security Procedure):

\_\_\_\_\_ (Initial) **Call Back to Authorized Representative with Code Word (Available for Wire): \$15.00 per call back**

Upon receipt of a Wire Transfer initiated by an Authorized User, Bank will contact an Authorized Representative as designated on this Enrollment to verify the authenticity of the transaction request. The Authorized Representative may or may not be the Authorized User who originated the transaction request. Bank is only required to make one attempt to contact an Authorized Representative, and if there is more than one Authorized Representative designated then Bank reserves the right in its sole discretion to determine which Authorized Representative to contact. If the Authorized Representative is not available or cannot verify correct Code Word associated with the Authorized Representative, as well as the total dollar amount of the transaction requested, Bank will not process the transaction. **If this option is chosen please list the authorized representatives below and have each representative fill out an Authorized Representative Designation form for purposes of verifying Client communications pursuant to applicable Security Procedure options above, (Each an "Authorized Representative")**

\_\_\_\_\_ (Initial) **Call Back to Authorized Representative with Code Word Variation (Available for Wire): \$15.00 per call back**

Upon receipt of a Request, Bank will first contact an Authorized Representative as designated on this Enrollment to verify the authenticity of the Request. The Authorized Representative must be an individual other than the Authorized User who originated the Request. Bank is only required to make one attempt to contact an Authorized Representative, and if there is more than one Authorized Representative designated then Bank reserves the right in its sole discretion to determine which Authorized Representative to contact. However, if Bank cannot contact an Authorized Representative to confirm the authenticity of a Request, then Bank will attempt to obtain such confirmation by contacting the Authorized User who purportedly initiated the Request. If both the Authorized Representative and Authorized User that purportedly initiated the Request are not available or cannot provide Bank with their respective Code Words, then Bank will not process the Request.

1) Name: _____	Phone #: _____
2) Name: _____	Phone #: _____
3) Name: _____	Phone #: _____

# HERITAGE

## BANK OF COMMERCE

### CASH MANAGEMENT SERVICES AGREEMENT AND DISCLOSURE

This Cash Management Services Agreement and Disclosure (“Agreement”) is entered into by and between Heritage Bank of Commerce (the “Bank”) and the customer (the “Client”) named in the Heritage Bank of Commerce Cash Management Services Enrollment Form (“Enrollment Form”). By signing the Enrollment Form, effective as of the date on the Enrollment Form, Client agrees to the terms and conditions of this Agreement. This Agreement establishes the terms and conditions for electronic access to Client’s accounts using Bank’s electronic banking system Heritage Direct Online Banking and certain “Services” (as defined below). In addition to the details provided in this Agreement, the Services are more specifically described in the following, as updated from time to time (collectively, “Supporting Documents”): (i) the addendums to the Agreement, including any schedules, and exhibits to the same; (ii) the Enrollment Form; and (iii) user guides, user manuals, set-up forms and other user materials, including online terms and information.

#### **PART A – PROVISIONS APPLICABLE TO ALL CLIENTS AND SERVICES**

##### 1. Definitions.

- 1.1. “Accounts” means Client’s deposit and loan accounts at the Bank that may be accessible through Heritage Direct Online Banking.
- 1.2. “ACH Origination Agent” means the person who is designated in a separate “ACH Origination Agent Agreement” to engage in ACH Services on behalf of Client and approved by Bank to be an ACH Origination Agent.
- 1.3. “Agreement” includes any addendums, exhibits, schedules, or other documentation attached hereto.
- 1.4. “Applicable Laws and Regulations” means: (a) all state, federal or foreign laws, rules or regulations applicable to Client, to the business activities of Client or to Client’s use of a Service (including requirements for Client to maintain records regarding Client’s business or employees or to withhold taxes or other deductions); (b) the rules issued by NACHA which govern funds transfers initiated via the ACH system; and (c) other operating rules of systems used to provide Services to Client.
- 1.5. “Authorized User” means the following persons: (a) any person authorized at law or by Client to act on Client’s behalf, whether such authorization is actual or imputed; (b) each Administrator, each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by an Administrator that can be used to access Heritage Direct Online Banking or another Service, and any person who obtains access to Heritage Direct Online Banking or a Service by or through an Administrator or other Authorized User; (c) persons whose Communications are attributable to Client under Sections 6. and 7. of Part A; and (d) Client’s employees, officers, designees, agents or other persons authorized by Client to use a Service or to access Heritage Direct Online Banking.
- 1.6. “Bank” includes Heritage Bank of Commerce and any of its designated processors for Services (as applicable).
- 1.7. Bank’s “Business Days” are Monday through Friday, excluding federal holidays.
- 1.8. “Check” means a draft, payable on demand and drawn on or payable through or at an office of a financial institution (including, without limitation, Bank), whether or not negotiable, that is handled for forward collection, including an image of a Check or a “Substitute Check” (as defined below) or traveler’s check, and does not include a non-cash item payable in a medium other than United States dollars.
- 1.9. “Client” includes the account holder named in the Enrollment Form and anyone else authorized by that account holder to exercise control over the account holder’s funds through the Services.
- 1.10. “Client Check” means a Check drawn on a deposit Account of Client held at Bank where Client is the maker (or “drawer”) of the negotiable instrument.
- 1.11. “Communication” means a message or instruction received by Bank in the name of Client. Communications include, without limitation, Payment Orders and other messages and instructions (e.g., an instruction to initiate an ACH transfer to an Account) that are not Payment Orders. It includes all requests by Client for a Service, such as requests to initiate transactions via Heritage Direct Online Banking such as transfers between Accounts) or transactions on another Service, and requests to amend, cancel or otherwise affect a Service.
- 1.12. “Electronic funds transfers” means a transfer to or from Client’s Accounts using Heritage Direct Online Banking
- 1.13. “Entry” (also referred to in this Agreement as “ACH Entry”) has the meaning provided in the NACHA Operating Rules and Guidelines (“NACHA Rules”), as may be amended from time. “Entry” includes “Credit Entries” and “Debit Entries” (as those terms are defined in the NACHA Rules) when the context so requires, and will also mean the data received from Client from which Bank prepares Entries. It includes a request for an Entry and any amendment or cancellation request, unless otherwise specified.
- 1.14. “Payment Order” has the meaning given at 11103(a) (1) of the California Commercial Code. It includes an instruction or request to Bank to transfer funds or to initiate an ACH transfer from an Account or a wire transfer request.
- 1.15. “Security Procedures” means the logon IDs, passwords, out of band authentication, dual control, and any other tool or method that may be offered or required by Bank as part of the Services to verify the authenticity of any Communication received by Bank in the name of Client. The Security Procedures are further described in Part A, Section 6. below. Some Services also present to Client via the Enrollment Form, or otherwise, the option to choose supplemental security methods that (with the other Security Procedures) may be used to verify the authenticity of Communications, and if chosen by Client such supplemental security methods form part of the Security Procedures.
- 1.16. “Services” means Heritage Direct Online Banking and the various services that are accessible through Heritage Direct Online Banking as provided pursuant to this Agreement.

- 1.17. "Substitute Check" means a paper reproduction of the original Check that: (a) contains an image of the front and back of the original Check; (b) bears a MICR line containing all the information on the MICR line of the original Check (except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks); (c) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and (d) is suitable for processing in the same manner as the original Check.
- 1.18. "Administrator Level User" and "Administrator" mean the person authorized by Client (whether or not designated in the Enrollment Form) to: (a) enable access to a Service (including by each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service; (b) establish levels of authority for each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service; or (c) administer any Service application.

The singular includes the plural. References to "person" include natural and non-natural persons (e.g., corporations, limited liability companies, partnerships, trusts and other non-natural legal entities). The term "or" is used to mean "and/or" or is used in the disjunctive, as the context may require. The term "include" means "including but not limited to" and that examples given or references made are illustrative but are not comprehensive. All references to time (for example, "5:00 p.m.") refer to local time of Bank, unless otherwise specified. Definitions for other terms are provided throughout in this Agreement.

2. Enrollment. Client must complete and return an Enrollment Form to Bank for Bank's approval. By completing the Enrollment form, Client requests access to and use of Heritage Direct Online Banking, and also designates at least one Administrator Level User. Bank may approve or deny Client's request(s), and may discontinue or limit Client's use of Heritage Direct Online Banking or one or more other Services at any time. This Agreement is not consummated unless and until Bank reviews and approves Client's application to use the Services, as set out in the Enrollment Form. A list of the Services that Client may request to use are provided below in Section 3. of Part A. If Client is approved by Bank to use Heritage Direct Online Banking or other specified Services, Bank will communicate such approval to Client, in writing or otherwise. Access to Client's Accounts through Heritage Direct Online Banking by each Authorized User that is set up as a user of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by the Administrator that can be used to access Heritage Direct Online Banking or another Service will be designated by Client's Administrator Level User(s).
3. Services. Client may be able to use Heritage Direct Online Banking to access the Services listed below and described more fully in Part B of this Agreement and the Enrollment Form, subject to Bank's approval. To enroll in the Services described below Client must complete the Enrollment Form, which is subject to Bank's approval.
- 3.1. Participate in General Services described below in Section 1. of Part B;
  - 3.2. Participate in the Bill Pay Service described below in Section 2. of Part B;
  - 3.3. Participate in the Wire Transfer Service described below in Section 3. of Part B;
  - 3.4. Participate in the ACH Service described below in Section 4. of Part B;
  - 3.5. Participate in the Positive Pay / ACH Debit Block and Filtering Service described below in Section 5. of Part B;
  - 3.6. Participate in the Remote Deposit Capture Service described below in Section 6. of Part B;
  - 3.7. Participate in the Business Mobile Banking Service described below in Section 7. of Part B;
  - 3.8. Participate in the Lockbox Service as described below in Section 8. of Part B

A Service may appear on Client's Heritage Direct Online Banking profile, but may not be available for use by Client because Client has not been approved by Bank for that Service. Client agrees to only use those Services that are approved by Bank as communicated to Client pursuant to Section 2. of Part A.

4. Other Agreements. This Agreement and the Enrollment Form constitute the entire agreement between Client and Bank with respect to the subject matter hereof and there are no understandings or agreements relative hereto which are not fully expressed herein. The terms and conditions of the deposit agreements and any applicable loan agreements and other account agreements that apply to the deposit or loan Accounts accessed by Client using a Service (collectively "Other Agreements") continue to apply. Client acknowledges receipt of the Other Agreements, which may contain applicable fees, limitations on the number of transfers that Client may make or other restrictions which might impact the use of Client's Accounts and one or more Services. Where the terms of this Agreement differ from those of an Other Agreement, the terms of this Agreement shall supersede those of the Other Agreement to the extent of the inconsistency.
5. Access to Services; Equipment and Software.
- 5.1. To use the Services, Client must have access to Internet service and an e-mail address. Client is also responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. Client agrees to use equipment that is compatible with Bank's programs, systems and equipment, which Bank may change from time to time. Bank assume no responsibility for the defects or incompatibility of any computers or software that Client uses in connection with the Services, even if Bank has previously approved their use. **BANK MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO CLIENT.** Client agrees to notify Bank promptly if any software or equipment Bank provides to Client becomes defective. Bank's sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment.
  - 5.2. Client agrees that Bank is not responsible for any errors or failures from any malfunction outside of Bank's control, including power interruption, delay resulting from high volumes of internet traffic, breach of security (other than Services under Bank's control) or message or transfer interception in transit, or any virus or other computer problem related to the use of the Services. Client agrees to use the Services solely

for business purposes and not to use Heritage Direct Online Banking to transfer funds to or from any account established primarily for personal, family or household purposes.

- 5.3. Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding Bank's efforts to insure that the Services are secure, Client acknowledges that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. Bank cannot and does not warrant that all data transfers utilizing the Services will not be monitored or read by others.
- 5.4. Some Services may require Client to download software from Bank's website and in some cases, Bank may place software on Client's computer(s) as part of the Security Procedures. Client expressly acknowledges that any wireless access to the Services initiated by Client may not be secure and, in such cases, Client assumes the risk associated with unauthorized access to a Service and any information contained therein, resulting from such wireless connectivity. Additionally, Client agrees to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any Account information which Client may access or store on Client's computer(s), wireless access device, or other data storage systems. For security purposes, Client agrees to keep Client's browser and operating system up to date. Client agree to install and maintain appropriate firewall and anti-virus software on any equipment Client uses to access the Service, to protect Client's data when connected to the Internet. Except to the extent limited by applicable law, Client assumes sole responsibility for any and all loss, damage or injury arising with respect to any failure of Client's equipment, software not provided by Bank, the disruptions or unavailability of connectivity, viruses, spyware, malware, or worms affecting Client's equipment or software.

## 6. Security and Authentication.

- 6.1. *Temporary Credentials.* Bank will provide Client with temporary credentials (such as User ID, Password, etc.) needed to access Heritage Direct Online Banking and the other Services within one to two Business Days after Bank's approval of Client's use of Heritage Direct Online Banking. For security purposes, Client is required to change Client's temporary credentials upon Client initial login to Heritage Direct Online Banking and the new credentials will not be communicated to Bank.
- 6.2. *Authentication Tools and Security Procedures.* Client agrees and acknowledge that the Security Procedures are authentication tools used by Bank to verify Client's identity. Client agrees to consider the size, type and frequency of its Payment Orders and other Communications to determine if the Security Procedures are a commercially reasonable means to protect Client against loss or harm due to unauthorized Communications being received by Bank in Client's name. Client will consider the risks presented by the possibility of unauthorized access to the Services.
- a. As applicable, Client will review the various options for security procedures provided in the Enrollment Form and determine whether at least one of the options is a commercially reasonable method for verifying whether a Communication is authorized by Client. After balancing the burdens and benefits of the protection available for each option, Client agrees that it has selected the option that is appropriate for Client's needs. As part of the review of the options for security procedures provided in the Enrollment form, Client will consider the size, type and frequency of the Communications that Client will make or anticipates making, along with such other factors as Client may deem relevant or appropriate.
- b. For certain Services, as described in the Enrollment form, the Security Procedures may include an out of band authentication process ("Out of Band Authentication") and/or dual control authentication ("Dual Control"). Out of Band Authentication triggers the needs for a unique code during the time a transaction is requested. The unique code is provided to the Authorized User via a text message or telephone call made to the Authorized User's text or telephone number found in Bank's records, and the correct code must be inputted by the Authorized User via Heritage Direct Online Banking before proceeding with the transaction. Dual Control authentication requires a secondary Authorized User's authentication in order to proceed with the requested activity. Additionally, at any time and from time to time, with regard to all Services Bank may require Client to use additional authentication tools (e.g., dual control, codes or information shared only between Client and Bank, confirmation phone calls with or without a code word, software or algorithms, including programs that may be implanted into Client's computer or may use Client IP addresses). Any additional authentication tools that Client is required to use or chooses to use become part of the Security Procedures. Client further agrees that if Client does not use any additional authentication tool required by Bank, if and when they become available, then Client's access and use of the Services may be limited or Client may not be able to use the Services.
- c. Client will implement and frequently review all Security Procedures available in connection with Services. Client will immediately notify Bank after such a review if Client's use of Services would necessitate or be better served by a level of security that exceeds that offered by the then-existing Security Procedures. If Client fails to so notify Bank, Client acknowledges and agrees that the Security Procedures are appropriate for Client's needs and provide Client with a commercially reasonable degree of security against unauthorized use.
- d. Notwithstanding Bank's efforts to ensure that the Services are secure, Client acknowledges that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. Bank cannot and does not warrant that all data transfers utilizing the Services will not be monitored or read by others. Bank will not send, and strongly suggest that Client does not send, any confidential information unless using the electronic communication options accessible via the Services or Bank's secure e-mail system.
- 6.3. *Client is Responsible for Communications in Client's Name.* Client agrees that Bank will use the Security Procedures to verify the authenticity of any Communication received by Bank in the name of Client, including requests to amend or cancel a previous Communication. If Bank verifies the authenticity of a Communication using the Security Procedures, Bank may rely on and Client will be obligated on the Communication, whether or not the Communication was authorized by Client. Bank will not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication, including where Bank doubts its authenticity, contents, origination, or compliance with the Security Procedures. However, Bank will have no duty to discover, and will not be liable for, errors or omissions by Client. Bank reserves the right to issue new Security Procedures or to cancel or change any Security Procedures from time to time.

Client agrees that any Communication sent to Bank by any Authorized User, or approved or authorized by an Authorized User, is and will be deemed a Communication authorized by Client. If a Communication was authorized by Client or any Authorized User, Client will be obligated on the Communication even if Bank did not verify its authenticity using the Security Procedures and even if the security procedures would have prevented error. When an Authorized User is added or deleted by Client as an Authorized User of Services, Bank will treat that person as "authorized" if a transfer request or other Communication is received by Bank in accordance with the Security Procedures, without otherwise verifying the person's status with Client or investigating whether the person is in fact an Authorized User or is exercising authority granted by Client or is acting consistent with any limitations imposed by Client on that person. Client agrees that the Security Procedures are intended to verify authenticity and not to detect error.

- 6.4. *Client is Responsible for Confidentiality and Security.* Client agrees not to disclose the Security Procedures except to Authorized Users. Client will establish procedures to protect the confidentiality of all information relating to the Services, including the Security Procedures. Client will be solely responsible for the safekeeping of the Security Procedures and assumes all risk of their accidental or inadvertent disclosure to or use by an unauthorized person. In the event of a breach of the Security Procedure, Client agrees to assist Bank in determining the manner and source of the breach. Such assistance may include, but shall not be limited to, providing Bank or Bank's agent access to Client's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Client further agrees to provide to Bank any analysis of such equipment, device, or software or any report of such analysis performed by Client, Client's agents, law enforcement agencies, or any other third party. Failure of Client to assist Bank shall be an admission by Client that the breach of the Security Procedure was caused by a person who obtained access or information facilitating the breach of the Security Procedure from Client.

Bank requires Authorized Users to create new passwords at reasonably frequent periods, based on Client's assessment of the security requirements appropriate for Services utilized by Client; however, new passwords must be created at least every 120 days. Passwords should not be associated with any commonly known personal identification, such as social security numbers, address, date of birth or names of children, and should not be the same as the "Code Word" designated by Client's "Authorized Representative" in the Enrollment Form for certain Services (the terms "Code Word" and "Authorized Representative" are described in the Enrollment Form). Passwords should be memorized rather than written down. Upon a certain number of unsuccessful attempts to enter a password, the Authorized User's access to Heritage Direct Online Banking will be revoked and the Administrator Level User may be able to reset the password or the Authorized User can contact Bank to have the password reset or to obtain a new temporary password. If the Authorized User is an Administrator Level User, the Administrator Level User must contact Bank or another Administrator Level User to have the password reset or to obtain a new temporary password.

NOTE: Some browser software may store user names and security codes to facilitate the future use of a web site. For security reasons, Client agrees to disable this feature in Client's browser. For security reasons Bank may disable Client's security codes, for example if they are entered incorrectly several times. Passwords should not be easy to guess: for example, children's or pet's names, birth dates, addresses or other easily recognized identification. It is also recommended Client does not have Client's browser automatically remember passwords.

- 6.5. *Client is Responsible for Authorization Controls for Services.* Client is responsible for controlling access to the Services and for any limitations placed by Client on the Services that may be used by other persons. The fact that Bank is or may be made aware of, or could have discovered, any limitation on access to a Service does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that persons may utilize Heritage Direct Online Banking (including inquiries, transfers, bill payment and account verification) without regard to any restrictions otherwise applicable to an Account. For example, if a person directs transfers from a given Account, that person can initiate the transfers whether or not he has been authorized to do so according to the signature card applicable to the Account. If a person has signing authority over Account "A" but not over Account "B," but has access to Services, he or she could transfer funds from "B" to "A" and then withdraw funds from "A." Client agrees that any arrangements with Bank to require one or more authorized signatures for transactions involving Client's Accounts do not apply to Bank's limit or Bank's obligation to act upon transfer requests received by Bank through Heritage Direct Online Banking .
- 6.6. *In the Event of Suspected Unauthorized Access.* In the event Client suspects any part of Client's security credentials to access the Service have been or may have been compromised, immediately call Bank at (800) 796-4777.

7. Client is Responsible for Users of Services. Client must designate at least one Administrator Level User on the Enrollment Form. However, any person designated by Client as an Administrator, or given Administrator credentials by Client or by any Administrator, or otherwise allowed by Client to act as an Administrator, is an Administrator for purposes of this Agreement, even if that person is not listed by Client on an Enrollment Form. Client must immediately notify Bank by submitting a new, completed Enrollment Form to Bank if Client wants to terminate or change the Administrator Level User. Termination or changing an Administrator Level User is not effective until Bank has received the new Enrollment Form requesting to terminate or change an Administrator Level User and Bank has had a reasonable opportunity to process the request.

An Administrator has access to all Services that Bank has approved to be used by Client, and all functionalities of such Service. An Administrator is then responsible for designating other Authorized Users of Heritage Direct Online Banking and the other Services, if applicable. An Administrator will receive administrator credentials that will allow the Administrator to manage the Services that Client has been approved by Bank to access, as described below. Bank may provide Administrator credentials via e-mail to the address shown in the Enrollment Form for an Administrator or otherwise (including via telephone). Bank may provide Administrator credentials to any person, or change Administrator credentials upon the request of any person, who identifies him- or herself as the Administrator and correctly provides the "code word" or other information as may be requested by Bank.

The Administrator is responsible for assigning all Authorized Users with a User ID, password and any other Security Procedure that is necessary to access the Services or Heritage Direct Online Banking and establishing any limitations desired by Client for Authorized Users. Such limitations may include, but are not limited to, determining which Authorized Users have access to certain Services, determine which Account(s) an Authorized User can access via Heritage Direct Online Banking or certain other Services, and determining dollar limitation for each type of Service that an Authorized User can access. For certain Services, Client will also be required to complete an additional access authorization form corresponding to the Service. Client may enroll in additional Services not selected on the Enrollment Form by contacting Bank, subject to Bank's approval. The Administrator is also responsible for changing and maintaining the Administrator's Company ID, User ID and Password. Further, the Administrator Level User is responsible for the ability to do the following with regard to Authorized Users that are set up as users of Heritage Direct Online Banking and assigned credentials (such as Company ID, User ID and Password) by an Administrator that can be used to access Heritage Direct Online Banking or another Service: (i) add, change or delete such an

Authorized User; (ii) add, change or delete such an Authorized User's access to Account(s); and (iii) reset User IDs, passwords or certain Security Procedures for such an Authorized User.

Bank will not control or oversee Authorized Users, including any Administrator. Client agrees that all acts and deeds of any Authorized User are the acts and deeds of Client, and Client is bound by the same. Client also understands and accepts the additional risks associated with Client designating an Administrator with the authority to enable an Authorized User (including any Administrator) to utilize the Services even though the Authorized User may not be an authorized signer on the Accounts. Such risks include, without limitation, the theft or misappropriation of Client's funds or other losses. Client further agrees to assume all risks associated with providing User IDs, Passwords or other Security Procedures to Client's Administrator(s), any Authorized User, any person given such Security Procedures by either of them, or any other of Client's agents, representatives, employees or officers. Client also agrees to limit the issuance and disclosure of the Security Procedures to only those who have a specific need to use the Services. Client is responsible for ensuring that an Administrator establishes authorization parameters and/or limits for each person Client authorizes to use the Services on Client's behalf.

8. Insurance. If requested by Bank, Client agrees to obtain and maintain fidelity and error and omission insurance coverage in an amount reasonably satisfactory to Bank, to cover (at a minimum) losses due to action or inaction by Client's Administrator Level User, or any Authorized User (including unauthorized access by any employee or agent of Client's), and to name the Bank as an additional insured on such policy. Such insurance must be maintained for at least 60 days following the termination of this Agreement. Client will provide evidence reasonably satisfactory to the Bank of the existence of such insurance promptly upon request by Bank.
9. Fees and Charges. Client agrees to pay Bank's fees and charges for Client's use of Services ("Fees and Charges"), including any applicable early termination fees as they are set by Bank from time to time, which include without limitation those fees and charges set forth in Heritage Direct Online Banking schedule of fees ("Schedule of Fees") or fees and charges otherwise communicated to Client. Bank's current Schedule of Fees is available to Client upon request. The Fees and Charges may be changed from time to time and at any time by Bank. As required by law, Bank will provide Client with notice of any changes in the Fees and Charges, normally in advance of the effective date of the change. Client must also pay all attorneys' fees and other costs and expenses Bank may incur in collecting any Fees and Charges or other sums Client may owe to Bank in connection with a Service. Fees and Charges do not include, and Client will be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to the Services, and for any fees or charges provided for in any other agreement between Bank and Client with respect to any Account. If Bank is required to pay any such taxes, Client must reimburse Bank upon demand.  
  
Client agrees that the Fees and Charges may be deducted from any of the Accounts maintained by Client at Bank or any other account of Client, by billing Client, or by setting off against any amounts Bank owes Client without any obligation to give prior notice of the setting off to Client. Client agrees to pay any additional charges for Bank services that Client requests, which are not covered by this Agreement. Bank may use any Account of Client as a settlement account in connection with any debits or credits arising from Client's use of a Service. Client is also responsible for telephone, Internet service and any other third party fees Client incur in connection with Client's use of Heritage Direct Online Banking.
10. Cancellation or Amendments of Communications. Client may not amend or cancel a Communication after it has been received by Bank. If Bank receives a request to cancel or amend a Communication prior to execution by Bank, and Bank is able to verify the request through the Security Procedures, Bank may at its sole discretion use reasonable efforts to act on Client's request. If Bank does, Client will indemnify Bank in accordance with the Agreement for any losses Bank may suffer in connection with Bank's efforts. Bank has no liability if any attempted cancellation or amendment is not affected.
11. Hours of Use; Cut-off Hours. Heritage Direct Online Banking is available 24 hours a day, every day of the year. The availability of other Service may vary, as described in this Agreement or the Enrollment Form to this Agreement. However, Heritage Direct Online Banking or other Services may be temporarily unavailable from time to time while the Bank is updating its files or its equipment, or software is being serviced or is malfunctioning. Delays may result from action by Bank or by any third party service provider with whom the Bank has arranged to provide Heritage Direct Online Banking or a Service. Client understands that such unavailability may be with or without notice to Client, and that Bank is not responsible for any losses or inconvenience resulting from these temporary periods of unavailability.

Communications for a Service received or transactions scheduled or requested to be processed by Bank on a day that is not a Business Day or after the applicable cut-off time on a Business Day may be processed on the following Business Day. Cut-off times for certain Services are provided in the applicable Section of this Agreement or the Enrollment Form.

12. Rejecting or Refusing to Process Communications. Bank may at its sole discretion refuse to accept or otherwise execute, or delay execution of, any Communication (or any part of one) received by Bank in the name of Client, including any request to amend or cancel a previous Communication, whether for cause or without cause and whether or not authenticated, and will have no liability for such refusal.

Without limiting the foregoing, Bank may reject any Communication (or any part of one) if Client is at the time of receipt of the Communication in breach of any provision of this Agreement, or would with the passage of time be in breach, or any Communication which: (a) exceeds the collected and available funds on deposit in Client's designated Account(s), as required under Bank's funds availability policy or applicable Other Agreements; (b) is not authenticated to Bank's satisfaction or which Bank believes may not be authorized by Client; (c) contains incorrect, inconsistent, ambiguous, or missing information; (d) involves funds which are subject to a lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; or (e) is inconsistent with any term or condition of this Agreement.

Bank reserves the right, before processing a Communication, to require Client to provide: (a) available funds to Bank to cover any affected Account; (b) additional evidence reasonably satisfactory to Bank of the authenticity of the Communication; or (c) supplemental information regarding the sources or the uses of funds to be used or the parties involved in the Communication. If Client's Communication is an ACH Entry or a file containing multiple Entries, Bank may act as above as to the entire file or as to any individual Entry or Entries.

13. Sufficient Funds and Overdrafts. Client must have sufficient available funds in an Account to cover the amount of any transaction that would be charged to the Account or any Fees and Charges owed to Bank. Subject to limitations set out in this Agreement, Client can request payments up to the amount of available funds or available credit in the Account. Bank may hold (or "freeze") funds at any time after Client has initiated a transaction for any reason, including as a means of reducing risks that there will be insufficient funds for completing the transaction. If Bank does hold funds, Bank may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). Bank may allow overdrafts/overlimits or negative balances, but Bank also may discontinue the practice at any time with or without prior notice to Client. If Client does not have sufficient or available funds or credit, Client may be charged an overdraft or other fee (such as fees for returned checks or other electronic items), as

set forth in this Agreement and in the Other Agreements. Nothing in this Agreement, or any course of dealing between Client and Bank, shall be construed as Bank's commitment or obligation to lend Client money. Credits and debits to Client's Accounts will be made in accordance with Bank's standard funds availability and order of processing policies described in the Other Documents.

14. Limits on Transactions. Federal regulations limit the number of certain types of transfers from money market and savings accounts. Client is limited to six pre-authorized electronic fund transfers and telephone transfers (including transfers between Accounts via Heritage Direct Online Banking) per month for each money market or savings account. Each fund transfer or payment through Heritage Direct Online Banking from Client's savings or money market deposit account is counted as one of the transfers Client is permitted each month from that account. Demand deposit accounts are not subject to these transfer limitations. All transfers between Accounts or to third parties are subject to there being sufficient available funds to cover the amount of the transfer request in the affected Account. Bank may at Bank's option require pre-funding of any transfer or request before processing it. Client agrees to pay Bank in immediately available funds any amounts due to Bank as a result of Bank's processing any funds transfer or request or ACH entry for Client. If Bank allows transfers to be processed against insufficient funds, Bank is not obligated to continue that practice. Bank may from time to time impose lower limits on the amount of any funds transfers or requests or on any ACH credit or debit entries and their files, or require funding in advance of actual processing. Bank will communicate these limits to Client if they are imposed.
15. Inconsistencies. With regard to a Payment Order or any other request for a transfer of funds described in this Agreement, if the beneficiary of the transfer of funds is identified by both names and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a request for a transfer of funds by both name and identifying number, Bank and other financial institutions may rely on the identifying number even if the name and the identifying number are not consistent or identify different parties.
16. Provisional Credit. When Bank credits an Account for an incoming Payment Order, it is provisional until Bank receives final settlement for the Payment Order. If Bank does not receive final settlement, Bank must return the funds previously credited to the Account, and the person who sent the Payment Order will not be treated as having paid Client. Client agrees that Bank may refuse to permit the use of any amount credited for an incoming Payment Order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.
17. Receipt of Communications. The time of receipt of a Communication for purposes of the cut-off hours for the Services is determined as set forth in this Agreement. Communications sent by Client to Bank using Heritage Direct Online Banking or otherwise may be delayed in transmission. Bank will be deemed to have received a Communication only when the Communication is actually received by Bank and in a form and format acceptable to Bank and in accordance with the applicable Security Procedures. Where a particular Service requires that a Communication be provided in a specific form or format, Bank may but is not required to act on a Communication that varies from that form or format. Bank is not responsible for delays due to high Internet traffic.
18. Security Interest in Accounts; Reserve Account; Hold on Funds. Client grants Bank a security interest in all Accounts, accounts or other deposits (whether general or special) of Client's held at Bank, and in all funds in such Accounts, accounts or other deposits, to secure Client's obligations to Bank under this Agreement. This security interest will survive termination of this Agreement.

Bank may from time to time establish minimum amounts to be funded by Client as reserve amounts. Bank will endeavor to provide advance notice to Client of any reserve requirement or change in an existing reserve requirement, and Client will immediately fund the reserve amount with finally collected funds. Bank may withhold and use any amounts due to Client under this Agreement to fund or maintain any required reserve amounts, including in advance of notice to Client. Bank may at its option transfer reserve amounts from any Account to a Bank-controlled reserve account ("Reserve Account").

Unless otherwise prohibited by law, Bank may hold and restrict access to funds (including reserve amounts) on deposit in any Account (including any Reserve Account): (a) before termination of this Agreement; and (b) following termination of this Agreement for up to 90 days following the later of (i) termination of this Agreement, or (ii) expiration of any and all return or chargeback rights, or any other obligation Bank has or with the passage of time may have under any law, rule or regulation (including the Rules, Regulation CC, the federal Check Clearing for the 21st Century Act ("Check 21"), and any clearinghouse rules or rules of a funds transfer system) arising from any Communication or transaction (including ACH Entries, Checks, Substitute Checks, Checks processed using remote deposit and other items) processed by Bank under this Agreement for Client.

Client may be denied access to, use of, or ability to transfer or withdraw any funds in its Accounts when subjected by Bank to a hold or access restriction as set forth in this Section. This Section will survive the termination of this Agreement.

19. Waiver of Access Restrictions. Client's Accounts may be subject to access restrictions when Client conducts transactions in person or when Client uses systems other than with a Service. While access restrictions generally do not apply to Client's use of the Services, Bank may limit or deny Services to Client if there are access restrictions. Conversely, Bank may process Client's transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to Client's Accounts.
20. Processing for and by Others (including ACH Origination Agents). Client will not use the Services or any Accounts to process for third parties or any other person (a "Third Party") except after written notice to Bank and approval by Bank. If any such approval is given, except as may otherwise be specified in writing by Bank in such approval, Client represents and warrants that: (a) Client is duly authorized by each Third Party to act on that party's behalf for all purposes necessary under this Agreement, and the Third Party is bound by and responsible for all acts or omissions taken by Client; (b) Client has obtained from the Third Party agreement to terms and conditions substantially similar to those contained in this Agreement; (c) the security interest given in Accounts is legal, valid and binding on the Third Party (to the extent of any property rights the Third Party may have in the Accounts or funds in them); (d) the Third Party will cooperate with Bank in all ways reasonably requested by Bank, including the execution and delivery of such contracts and agreements between Bank and the Third Party as Bank may reasonably request; and (e) Client and the Third Party are in compliance with all Applicable Laws and Regulations as may apply to Client's processing for the Third Party. Client will from time to time provide to Bank evidence reasonably satisfactory to Bank of the accuracy of each of the foregoing if requested by Bank.

Client will not use any Third Party to access Heritage Direct Online Banking or Services on Client's behalf except after written notice to Bank and approval by Bank. Use of any Third Party (whether or not approved by Bank) constitutes appointment by Client of that Third Party (and any agents, delegates or assigns of the Third Party) as the agent of Client whose acts and deeds are the acts and deeds of Client. Any agent of Client submitting ACH Entry data to Bank on Client's behalf must be designated as an ACH Origination Agent in a separate ACH Origination Agent Agreement, subject to Bank's approval.

Client agrees that Client is bound by acts and omissions of the ACH Origination Agent with regards to the ACH Services described below in Section 4. of Part B.

Bank may (but is not required to) require that any Third Party, as a condition to use of a Service on Client's behalf: (a) provide evidence satisfactory to Bank that the Third Party is in compliance with all laws, rules and regulations applicable to the Third Party and its business activities; (b) enter into indemnity or other agreements acceptable to Bank; and (c) otherwise satisfy Bank that the use of the Service will not increase risk to Bank. Client appoints any Third Party used by Client for Services as the agent of Client, and all persons using Heritage Direct Online Banking at the Third Party as Authorized Users.

Client remains responsible for all Client's obligations under this Agreement, including Client's compliance with all Applicable Laws and Regulations. Malfeasance, error, omission, negligence, or fraud by the Third Party, or other controversy between Client and the Third Party (including Third Party action in breach of or in excess of that called for under any services agreement or arrangement between Client and the Third Party) shall not excuse Client from full and complete fulfillment of all obligations imposed on Client under this Agreement. Client shall be bound by all Communications from or use of Heritage Direct Online Banking Services by the Third Party that are done in the name of Client, whether or not authorized by Client, if the Communication is attributable to Client by operation of any law (including the laws of agency), or as a result of this Section, or if the Communication is attributable to Client under this Agreement. Bank shall have no duty to investigate or question any act or omission by a Third Party purporting to act on Client's behalf.

21. Credit Review. Client is subject to a satisfactory credit review by Bank from time to time at Bank's sole discretion and in accordance with Bank's established credit criteria. Client agrees, upon the Bank's request, to provide Bank with any credit-related information and such other information and assistance as Bank may require to perform a review.
22. Financial Information; Audit and Inspection.
  - 22.1. Bank may from time to time request information from Client in order to evaluate a continuation of the Services to be provided by Bank and/or adjustment of any limits set by this Agreement. Client agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. Client authorizes Bank to investigate or reinvestigate at any time any information provided by Client in connection with this Agreement or the Services and to request reports from credit bureaus and reporting agencies for such purpose. Client covenants and agrees that: (a) it will allow Bank to review and inspect during reasonable business hours, and Client will supply, all financial information, financial records, and documentation of Client regarding the Services (including Checks) that Bank may request; and (b) in the event of the commencement of any proceeding under any bankruptcy or insolvency laws by or against Client, Client will not oppose or object to any motion by Bank seeking relief from the automatic stay provisions of such laws. Bank reserves the right, with prior notice to Client, to enter upon Client's premises from time to time during regular business hours to verify that Client's operations and procedures are in compliance with the terms of the Agreement.
  - 22.2. In connection with any audit described herein, Client agrees to furnish Bank with any documentation or information as is reasonably necessary to establish Client's compliance with the terms of the Agreement. If it is determined by Bank that additional procedures or controls need to be implemented by Client, Client agrees to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.
  - 22.3. In connection with Bank's entry on the premises of Client for the purpose of conducting an on-site audit or inspection, or in connection with providing support to Client, Bank shall not be liable or responsible to Client or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Client's system, including any which allegedly delay, alter or corrupt the data of Client, whether related to the transmission of check images or other data to Bank or whether caused by the equipment, software, Bank Internet service providers, Internet browsers, or other parties providing communication services to or from Bank to Client.
23. Disclosure of Account Information and Transfers. Client agrees that information about Client's Accounts or the transfers Client make may be disclosed by Bank to others, both in connection with Bank's providing Services and for other business purposes. For example, Bank may disclose personal information to third parties in the following cases, and others:
  - 23.1. If Bank has entered into an agreement with another party to provide any of the Services;
  - 23.2. If it is necessary for completing transfers or otherwise carrying out Client's instructions;
  - 23.3. If it is necessary to verify the existence and condition of an Account for a third party;
  - 23.4. In order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information;
  - 23.5. In order to provide Client with information about products and services that Bank or an affiliate offers that Bank believe will be of interest to Client; or
  - 23.6. If Client otherwise gives Bank Client's specific permission.
24. Client's Duty to Notify Bank of Error. Except to the extent expressly prohibited by law or regulation, if Client fails to notify Bank within 30 days (or other time as applicable and prescribed otherwise in this Agreement, including in Section 3. of Part B) after Client receives notice (including, without limitation, notice by paper or electronic statement or otherwise), or through the exercise of reasonable review could have obtained knowledge, of an unauthorized or erroneous transfer or transaction, or that any loss, damage or harm to Client has occurred or with the passage of time may occur due to action or inaction by Bank in connection with any Communication by Client to Bank (a "Discrepancy"), then: (i) Client will be precluded from asserting any lack of authorization or any error against Bank; and (ii) Bank will not be liable for any other losses resulting from Client's failure to give such notice or for any loss of interest because of the Discrepancy. In any case, if notice of the Discrepancy is not received by Bank within 90 days after Client either has knowledge of it or through the exercise of reasonable review could have obtained knowledge of the Discrepancy, then Client will (unless prohibited by law) be precluded from asserting the Discrepancy against Bank. Notwithstanding the foregoing, Bank shall not be similarly limited should Bank discover discrepancies; whenever a discrepancy is discovered by Bank, Bank may debit or credit Client's Account, as the correction requires.
25. Representations and Warranties.
  - 25.1. Client represents and warrants to Bank, as of the date of this Agreement and again at the time any Service is used or performed, that: (a) Client is solvent and in good standing in the state of its organization; (b) Client has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Services used; (c) any consent or authorization of any governmental authority or third party

required to be obtained by it in connection with this Agreement or the Services used or performed by it has been obtained; (d) the Enrollment Form, which has been duly authorized and executed by Client, is accurate and complete and constitutes its legal, valid and binding obligation; (e) it is not the present intent of Client to seek protection under any bankruptcy laws; and (d) Client is in compliance as to all Applicable Laws and Regulations.

25.2. Bank makes no warranties, express or implied, with respect to Heritage Direct Online Banking or any other Service, including but not limited to, any warranty of merchantability, or fitness for a particular purpose, the existence of any latent or patent defects, viruses, or the accuracy or freedom from error, of the data or the programs used by or furnished to Client by Bank or any licensor of Bank. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided "as-is," without warranty of any kind. Without limiting the generality of the foregoing, Bank makes no representation or warranty, express or implied, against any infringement of any proprietary rights of any other party. Client assumes the entire risk as to the quality and performance of the Services and the suitability of the Services for Client.

26. Compliance with Applicable Laws and Regulations; Data Retention. Client shall comply with all Applicable Laws and Regulations with respect to Client's use of the Services, and to provide evidence reasonably satisfactory to Bank of the same if requested by Bank. Client agrees not to use the Services for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, Client agrees and acknowledge that the Services may not be used by Client in violation of the laws of the United States, including sanctions laws administered by the Office of Foreign Asset Controls. Client acknowledges and agrees that the software Client uses to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations ("Acts"). Client agrees and certifies that neither the software nor any direct product thereof is being or will be used by Client for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- 26.1. The terms or instructions appearing on a screen when using a Service;
- 26.2. The Other Agreements and Bank's rules, procedures and policies;
- 26.3. Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for ACH debits and credit entries initiated via the ACH Service and for bill payments facilitated through the ACH;
- 26.4. Applicable state and federal laws, rules and regulations; and
- 26.5. The rules of other funds transfer systems when used in connection with a Service.

Client will retain data on file adequate to permit remaking or reconstruction of all requested Services (including Payment Orders or other money transactions) for one year following the date of the execution of the request to which such data relate, and will provide the data to Bank upon Bank's request. Client agrees to determine promptly the accuracy of all records and information regarding a Service and to notify Bank immediately of any errors in such records or information. Nothing in this Agreement relieves Client of any obligation Client may have under the Applicable Laws and Regulations, and this Agreement is deemed modified to the extent necessary to allow or require Client to comply with the same. Client will implement and maintain procedures, including retention of legal or compliance services, to ensure that Client is able to comply with all current and future Applicable Laws and Regulations, including any changes to them. Bank is not obligated to provide information, updates or notice of or regarding the Applicable Laws and Regulations, even if Bank is aware of the same and of the potential for material impact on Client and Client's use of the Services, and Client's indemnification and other obligations to Bank are not relieved or reduced by Bank's not providing the same to Client. If Bank does provide information, updates or notices of or regarding the Applicable Laws and Regulations to Client, Bank is not responsible for the accuracy of the same and may discontinue doing so at any time.

27. Limitation on Bank's Liability. Bank is responsible only for performing the Services expressly provided for in this Agreement, and subject to the terms and conditions of this Agreement. Bank will not be liable for its action or inaction except to the extent the same constitutes gross negligence or willful misconduct by Bank. Bank will not be responsible for Client's action or inaction and none of Client's employees or agents will be considered agents of Bank. Except as set forth in this Agreement, Bank will not be liable or have any responsibility of any kind or any loss or damage thereby incurred by Client as a result, directly or indirectly, of any unauthorized person gaining access to, or otherwise making use of, the Services.

Without limiting the foregoing, each party agrees that damages as to any breach by Bank of any term of this Agreement are speculative and difficult to determine, and further agrees that Bank will in no event be liable to Client for an amount in excess of the lesser of \$50,000 or the actual damages suffered by Client. If Bank is responsible to Client for payment of interest under the provisions of this Agreement or under applicable law, the interest on the funds in error will be payable at a rate equal to the effective rate on the affected Account for the period involved or, if no specific Account is affected, at the federal funds rate of the Federal Reserve Bank of San Francisco. Client agrees to cooperate with Bank in any loss recovery efforts Bank undertakes to reduce any loss or liability that arises in connection with the Services. Client acknowledges that Service fees have been established in contemplation of: (A) these limitations on Bank's liability, (B) Client's agreement to timely notify Bank of any discrepancies or problems; and (C) Client's agreement to assist Bank in any loss recovery effort.

Bank will not be responsible for Client's acts or omissions, including without limitation, the amount, accuracy, timeliness of transmittal or due authorization of any Communication received from Client. Bank will not be responsible for acts or omissions of those whom Bank does not exercise control over, including the "ACH Operator" (as defined in Section 4. of Part B), any transmission or communications service provider or facility, any Federal Reserve Bank, intermediary or collecting bank, and any receiver or beneficiary of a transaction, or "RDFI" (as defined in Section 4. of Part B), including the improper return of an Entry by any RDFI or beneficiary or receiver of a transaction, and no such person will be deemed the Bank's agent.

In addition, Bank will be excused from any failure to transmit or from any delay in processing any transaction related to the Services (including executing a Payment Order, transmitting an ACH Entry, or processing any check or item) if to do so would result in Bank's having exceeded any limitation upon intraday net funds positions established pursuant to present or future Federal Reserve System guidelines, or in Bank's otherwise violating any provision of any present or future risk control program of the Federal Reserve System or any rule or regulation of any other U.S. federal or state or any foreign governmental regulatory authority.

**NO CONSEQUENTIAL DAMAGES. IN NO EVENT WILL BANK BE LIABLE FOR SPECIAL, GENERAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR SIMILAR DAMAGES, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.**

This Section will survive the termination of this Agreement, and also limits the liability of any agent, employee or affiliate of Bank.

28. **Indemnity.** Client agrees to defend, indemnify and hold Bank harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of: (a) any acts or omissions by Client or Client's employees or agents; (b) any claims against Bank from a third party resulting directly or indirectly under this Agreement where Bank has acted in accordance with Client's instructions and/or within the terms of this Agreement; and (c) any breach by Client or Client's employees or agents of any representation, warranty, covenant or agreement made pursuant to or in this Agreement. Nothing contained in this Agreement will be deemed to relieve Client of any liability, duty or obligation which may be imposed upon Client by any Applicable Laws or Regulations. This Section will survive the termination of this Agreement.
29. **Third Party Content.** Bank may receive, process, and make available to Client content that Bank receives from Client and others. In this regard, Bank is merely a passive conduit for such content, although Bank reserves the right to block or remove any content that Bank believes violates this Agreement. Bank assumes no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that Client or others provide to Bank, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. Bank will not have a duty to interpret or evaluate any content transmitted to Bank or through Bank's website or Services, except to the limited extent, if any, set forth in this Agreement. Bank will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content Bank receives from Client or third parties. Bank will not have a duty to notify Client about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on Bank's website, even if Bank has reason to know of its existence. Use of any content Client obtain from Bank's website is at Client's own risk.
30. **User Communication and Personalization Settings.** Bank's website and Services may permit Client to send or receive communications and to store content and personalized settings for various options. Bank is not responsible for any delay, deletion, alteration, mis-delivery or failure to deliver or store any such communications, content or settings.
31. **User Conduct.** Client agrees not to use the Service or the content or information in any way that would: (a) infringe any third party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) create liability for Bank or Bank's affiliates or service providers, or cause Bank to lose (in whole or in part) the services of any of Bank's service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.
32. **Electronic Statements.** Electronic statements offer Client a convenient way to view, save and print periodic statements. If Client elects to receive electronic statements, Bank may discontinue sending paper statements and make periodic statements available to Client in electronic form only. This includes, but is not limited to, ongoing terms currently provided on the back of Client's paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. Client agrees to review Client's electronic statements in a timely manner, just as Client would paper statements, and to promptly notify Bank of any errors, unauthorized activity or other problems, as provided in Bank's agreement with Client. Client will be deemed to receive electronic statements when they are made available to Client. Any time periods within which Client must notify Bank of any problems or errors reflected on Client's statement(s) will begin on the date Bank makes the electronic statement available to Client, regardless of when it is actually viewed by Client. If Client cannot access, print or view Client's electronic statements, Client must contact Bank immediately at (800) 796-4777 to make alternate arrangements. Client agrees to periodically logon and check on the delivery of new statements.
33. **Email.** While access to Bank through the secure email function of the Services is "on-line," messages sent to Bank through email are not reviewed by Bank personnel immediately after they are sent. If immediate attention is required, Client must contact Bank by telephone or in person. Client's email messages may be acted upon by Bank if received in a manner and in a time providing Bank a reasonable opportunity to act. Nevertheless, unless otherwise provided herein, email messages will not serve as a substitute for any requirement imposed on Client to provide Bank with "written" notice.

Email or messages sent by Bank to Client will be deemed received by Client when sent by Bank to Client at Client's email address as shown on Bank's records. Client agrees to notify Bank (using the Service or otherwise in form acceptable to Bank) whenever Client's email address changes. Client agrees that information or messages made available to Client via the Services will be deemed received by Client when first posted on Bank's website or made available to Client. Client agrees to access the Service from time to time, in no event less than monthly, to access this information or the messages. If Client fails to update or change an incorrect email address or other contact information, Client understands and agrees that any email shall nevertheless be deemed to have been provided to Client if the email was sent to the email or other contact Bank has on file for Client.

34. **Intellectual Property.** Client acknowledges and agrees that the software and content used by Bank in the operation of Bank's website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included on Bank's website and as part of the Services and Bank's name and product names and the website's URL (collectively the "Intellectual Property"), are owned by Bank and Bank's licensors. As such, Client will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

Client may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property, or (ii) use of, or access to, Bank's website, Services or Intellectual Property. Further, Client may not: (a) create derivative works of any portion or element of Bank's website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology Bank incorporates in Bank's website or the Services; (d) modify or erase any copyright or trademark notice Bank places at Bank's website; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of Bank's content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via Bank's website; (g) frame Bank's website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing Bank's name, trademark, URL, product name or Intellectual Property. Client agrees to comply with the terms of any license agreement Bank makes available to Client with any software.

## **PART B – PROVISIONS APPLICABLE TO SPECIFIC SERVICES**

## 1. General Heritage Direct Online Banking Services.

- 1.1. *View Balance Information and Transactions.* Account balance information (including loan Accounts) may include debits or credits that are provisional and subject to change. Balance and transaction information may not be current in some cases, and may reflect prior Business Day positions rather than current positions. Bank may at any time reduce the historical data available to Client through Heritage Direct Online Banking, modify the format of that data, or otherwise limit the Service. Bank's Account view and transaction history Service is not a disaster recovery or backup system and Client is responsible for implementing those functions outside of Heritage Direct Online Banking.
- 1.2. *Export Functions.* Heritage Direct Online Banking may allow Client to export Account data to financial software and other systems (including disaster recovery) used by Client. Bank is not responsible for successful export of Account data, for the accuracy of the data exported or for data corruption that may arise. Client is and Bank is not responsible for data integrity and information security of any Client systems, including those to which Account data is transferred by Client.
- 1.3. *View Client Checks.* Heritage Direct Online Banking may provide Client the ability to view Client Checks. Client (whether using Positive Pay or not) agrees to review Client Checks daily and to notify Bank immediately of any unauthorized, altered or otherwise suspect items.
- 1.4. *Account Transfers and Loan Payments.* Heritage Direct Online Banking may allow Client to transfer funds between its Accounts at Bank (including on-us loan payments). Transfers may be done on either a one-time or recurring basis. An Account transfer request or any other Communication from Client to Bank is deemed received by Bank only when it is actually received by Heritage Direct Online Banking in a form and format acceptable to Heritage Direct Online Banking. Client is responsible for ensuring that Client initiates any loan payment instruction in time for the payment to be received by Bank before its due date (without taking into account any grace period). Bank is not responsible for any damages, costs or fees Client may suffer if Client does not allow sufficient time between the date the payment is processed and the due date.
- 1.5. *Advances from Client's Commercial Line of Credit.* Heritage Direct Online Banking may allow, subject to Bank's prior approval, Client to draw on Client's commercial line of credit Accounts with Bank. Not all commercial line of credit accounts are eligible for this Service. Client may only use the advances to make a deposit to Client's checking or savings Account held with Bank. Client agrees that every draw from the available credit balance on Client's commercial line of credit via Heritage Direct Online Banking is subject to all terms and conditions of Client's applicable Other Agreement (e.g., Client's commercial line of credit agreement, promissory notes or related loan agreements); provided, however, that any applicable Other Agreement affecting the credit facility is superseded if necessary to allow Client's use of Heritage Direct Online Banking to draw on the facility as described in this paragraph.
- 1.6. *Stop Payments.* Heritage Direct Online Banking may allow Client to request stop payments on Client Checks. However, Bank's acceptance of a stop payment order will not constitute a representation that the Client Checks has not already been paid, or that Bank has a reasonable opportunity to act upon the stop payment order. Stop payment on a bill payment transaction must be placed through the Bill Payment Service. Additionally, Client may not stop payment on: (i) an official check, certified check, cashier's check, teller's check or bank draft issued by Bank; (ii) Client Checks governed by any separate agreement, such as a check guaranty agreement; or (iii) a Client Check after Bank has accepted or otherwise become accountable on the Client Check. Furthermore, Heritage Direct Online Banking may not be used to stop payment on any automatic entry, such as automatic monthly drafts or ACH Debit Entries or Credit Entries, or any Payment Order after execution by Bank, and Bank may ignore these types of stop payment requests.
  - a. *Verification that Client Check has not paid.* Prior to requesting a stop payment, Client should first verify that the Client Check has not already been posted to Client's Account. Client understands that Client, not Bank, is responsible for determining whether a Client Check has or has not been paid. Bank agrees to enter the stop payment order on its main computer system within a reasonable period of time after it receives the request; however, no stop payment instruction will be considered as received by Bank until the request has been received and approved by Bank. No stop payment order will be effective against a Client Check that was paid prior to the time Bank received and had a reasonable period of time to respond to the order. If the Client Check in question has already cleared or been paid prior to Bank's entry of the stop payment order, or if Bank did not have a reasonable opportunity to act upon the stop payment order, then Bank will not be liable for any loss incurred by Client arising from the event.

Client acknowledges that Heritage Direct Online Banking information available regarding the status of Client Checks may not include transactions (including cash payments) on Client Checks that occur on the same Business Day as the date on which Bank receives the stop payment order. Client acknowledges that a transaction search using either the Heritage Direct Online Banking Services or Bank's main computer may not necessarily reveal whether or not a Client Check has been paid until the banking day after the banking day on which Bank receives the stop payment order. Any loss suffered by Client due to its decision to issue a new or replacement Check, or to take any other action, based on information available through Heritage Direct Online Banking or Bank's main computer prior to the next Business Day after the Business Day on which the stop payment order was received by Bank, will be Client's responsibility and not Bank's responsibility.
  - b. *Requesting a stop payment.* To place a stop payment order, Client must provide the date, the amount, and the number of the Client Check, together with the name of the payee and such other information as may be required by Bank. If Client gives the Bank incorrect information or insufficient data, Bank will not be liable for its failure to stop payment on the Client Check.
  - c. *Stop payment term.* A stop payment order is effective for six months. After the expiration of the stop payment order, a Client Check may be paid even though the Check is stale dated or restrictions on the Check may have passed (e.g., the check states that it is not valid after 30 days). If Client would like the stop payment order to remain in effect after the six-month period, Client must renew it. Client may cancel stop payment orders by writing to Bank. Stop payment orders are automatically canceled when the Account on which the Client Check is drawn is closed or at the end of the six month term of the order (unless renewed).
  - d. *Warranties.* With respect to all stop payment orders, Client warrants and agrees (in addition to Client's agreement to the remainder of this Section 1.6 of Part B) to the following:
    - (i) To indemnify and hold Bank harmless from all liability, damage and expense incurred on an account for refusing payment of the Client Check.
    - (ii) To notify Bank in writing to release the stop payment order if and when the reason for the stop payment ceases to exist.

(iii) Despite proper completion and delivery of a stop payment order, Client will still be liable on the Client Check to any subsequent holder in due course. Should the Client Check described in the stop payment order for any reason be paid over the stop payment order, Bank may avail itself of remedies at law to recover the loss.

2. **Bill Payment.** Client may be able to make online bill payments from Client's Accounts to third parties using a bill payment system that is provided by a separate company ("Bill Payment Service"). The Bill Payment Service is subject to the terms and conditions set forth in the Heritage Direct Small Business Bill Pay Terms and Conditions. In order to initiate payments via the Bill Payment Service, Client must first complete the Heritage Direct Small Business Bill Pay Enrollment process and be approved to use the Service by CheckFree, the provider of the Service. Bank is not responsible for the Bill Pay Service and does not guarantee or warrant any of these services.
3. **Wire Transfer Service.** Heritage Direct Online Banking may allow Client to initiate funds transfers in accordance with this Section (the "Wire Transfer Service"). Client may submit funds transfer requests ("Requests") to Bank in accordance with the terms and conditions of this Section. A "Request" includes a Payment Order. Client is responsible for all Requests to the fullest extent provided by law and as set forth in this Section. Bank may choose the funds transfer mechanism (for example, FedWire, correspondent bank transfer, or internal transfer) to be used when acting upon Client's Request.
  - 3.1. **Transmission.** All Requests must be provided to Bank through the Heritage Direct Online Banking system, in the form and with the information required by the Heritage Direct Online Banking system.
  - 3.2. **Account Designation.** Client authorizes Bank to debit its designated account, or any other account maintained by Client at Bank, for any fees or other amounts due Bank in connection with the Services.
  - 3.3. **Accuracy.** Client assumes the sole responsibility for providing Bank with accurate transaction information in the form and format that Bank requires. Bank is not responsible for confirming such information, or for failing to detect and reject duplicate Requests. If Client provides Bank with a Request that is incorrect in any way, Client agrees that Bank may charge Client's accounts for the transaction whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client's transfer or payment instructions.
  - 3.4. **Security Procedures.** For the purpose of this Section 3. Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Wire Transfer Service as provided in the Enrollment Form to this Agreement or otherwise.
  - 3.5. **Foreign Currency Transactions.** If a Request is for a funds transfer in United States Dollars or in a currency other than United States Dollars to a foreign country, Bank may transfer the payment in the currency of the beneficiary bank's country at any exchange rate chosen by Bank. If for any reason the transfer is returned, Client agrees to accept the refund in United States dollars or in foreign currency, as received by Bank. If received in United States dollars, Client acknowledges and agrees that one or more sending banks may have engaged in currency conversions, and agrees to accept an amount of United States dollars after conversion from the foreign money whether based on the buying rate of the bank(s) converting the currency to United States dollars on the date of refund, or based on Bank's current conversion rate and less any charges and expenses incurred by Bank.

The exchange rates used for processing may be a rate selected by Bank or other intermediaries from a range of rates available in wholesale currency markets, which rate may vary from the rate the Bank or the other intermediaries themselves receive, or the government-mandated rate (if any) in effect. These rates may not be the lowest available to Client, or to Bank or other intermediaries.
  - 3.6. **Fees.** In addition to the Fees and Charges described in Section 9. of Part A that Bank may charge for the Wire Transfer Service and Requests, Client agrees and acknowledges that a Request in Client's name also constitutes Client's instruction to Bank, as well as to any intermediary bank used to process the Request, to obtain payment of Bank's and the intermediary bank's charges for services and expenses in connection with the execution of the Request by completing the funds transfer in an amount equal to the amount of the Request less the amount of Bank's and intermediary bank's fees and charges. The intermediary bank used to process the Request is specifically authorized by Client to impose such fees and charges. Client agrees that if any intermediary bank imposes its fees and charges in connection with executing a Request by reducing the amount of the Request by the amount of the fees, Bank will not be liable in any manner whatsoever for Client's damages. This non-liability is without regard to whether the intermediary bank was chosen by Bank.
  - 3.7. **Subject Rules and Regulations.** Client acknowledges that any Request executed by Bank will be subject to rules and regulations applicable to payment orders, including recordkeeping and information transmittal requirement under federal Bank Secrecy Act and its implementing regulations. Client acknowledges and agrees that Bank may capture and transmit information regarding a Request (for example, beneficiary's name, address other beneficiary identifies and beneficiary's account number) as part of the processing of a payment order. Client agrees to assist Bank in connection with any requirements imposed on Bank fulfilling Bank's obligations in this regard.
  - 3.8. **Notice of Returned Entries.** Bank will notify Client of a returned funds transfer made pursuant to a Request no later than the next business day after receipt. Bank is under no obligation to re-execute a Request. , In addition to any retention obligations of Client otherwise provided under the Agreement, Client will retain data on file adequate to permit reprocessing of Requests and amendments to or cancellations of a Request for 90 days following the execution date, and will provide such data to Bank upon request.
4. **ACH Service.** Heritage Direct Online Banking may allow Client to initiate ACH Entries (the "ACH Service") by means of the Automated Clearing House ("ACH") Network pursuant to the terms of this Section, the NACHA Rules and the rules of the local Automated Clearing House Association (collectively the "Rules"). Bank is willing to act as an Originating Depository Financial Institution or "ODFI" (as that term is defined in the NACHA Rules) with respect to such Entries. Accordingly, Client may submit ACH Entries to Bank in accordance with the terms and conditions of this Section. Client is responsible for all Entries to the fullest extent provided by law and as set forth in this Section.
  - 4.1. **The Rules.** A copy of the NACHA Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). Client agrees to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. Client agrees that information or advice received by Client from Bank as to the Rules or the operation of the Rules is not legal advice and is not a substitute for Client's obligation independently to understand and comply with the Rules.

- 4.2. *Processing Entries.* Subject to Bank's approval, Client may submit ACH Entries to Bank in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. The ACH Service will start on a date agreeable to Client and to Bank after all set up requirements have been completed.

Client will not submit individual or total monthly Entries in excess of the maximum limits established by Bank and reflected in the Enrollment Form to this Agreement, as amended from time to time, or otherwise communicated by Bank to Client. The parameters and variations of the limits shall be set at Bank's discretion, including but not limited to limits based on dollar amounts and/or types of "Standard Entry Class Code" (as that term is defined in the NACHA Rules). Client will not divide a transaction into more than one Entry in order to avoid these limitations. Bank may adjust these limitations from time to time by providing notice to Client. Bank's processing of Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision; Bank may cease processing Entries in a greater amount at any time without prior notice.

Client may not originate Entries using Standard Entry Class Codes other than those agreed upon or established by Bank without prior notice to and written approval by Bank. Bank may require Client to submit an application in form and content acceptable to Bank, and execution by Client of such supplemental schedules, agreements and other documents as Bank may require, as a condition precedent to Client's use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to Client's use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes, or if Client is engaging in cross-border (international) transactions. Bank may block unapproved use of a Standard Entry Class Code or an unapproved cross-border transaction.

Except as provided below for "On-Us Entries," Bank shall: (i) process Entries received from Client to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by Bank in its sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the Rules. Bank shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, one Business Day prior to the "Effective Entry Date" (as that term is defined in the NACHA Rules) shown in such Entries, provided: (a) such Entries are received by Bank's related cut-off time on a Business Day, (b) the Effective Entry Date is at least two Business Days after such Business Day for credit Entries, or at least one Business Day after such Business Day for debit Entries, and (c) the ACH Operator is open for business on such Business Day. If any of the requirements of this Section 4. of Part B are not met, Bank may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a Business Day and a day on which the ACH Operator is open for business.

- 4.3. *Security Procedures.* For the purpose of this Section 4. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the ACH Service as provided in the Enrollment Form to this Agreement or otherwise.

- 4.4. *On-Us Entries.* In the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), Bank 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 this Section 4. of Part B are met. If said requirements are not met, Bank may 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.

- 4.5. *Same-Day Credit Entries.* Subject to Bank's prior approval, the ACH Service permits Client to elect to have Client's ACH credit Entries originated on a "same-day" basis, for settlement on the same day as the Effective Entry Date. Eligible ACH credit Entries received on a business day by the applicable cutoff hour for same-day Entries, will be treated as a "same-day" ACH Entry. For this purpose "eligible ACH credit Entries" will mean ACH credit Entries: (i) received on a business day by the cutoff hour for same-day Entries, (ii) that are less than \$25,000, and (iii) that contain an effective Entry date for the same day as receipt, or a stale or invalid date. Effective September 15, 2017, eligible ACH debit Entries will also be eligible for same-day processing. To qualify as an "eligible ACH debit Entry," the Entry must meet the same criteria outlined above for eligible ACH credit Entries. Bank does not represent, warrant or otherwise guarantee that receiving depository financial institutions will post same-day ACH Entries by applicable deadlines. Bank may utilize same-day processing for any Entry that qualifies as an "eligible" same-day Entry even if Client did not intend the Entry to be processed using same-day processing. In such cases, Client is still responsible for all fees associated with same-day processing.

- 4.6. *Returned or Rejected Entries.* Bank shall notify Client by phone, facsimile or other electronic transmission, including email, of the receipt of a returned or rejected ACH Entry no later than one Business Day after the Business Day of receipt. Except for an Entry retransmitted by Client in accordance with the requirements of this Section 4. of Part B, Bank shall have no obligation to retransmit a returned Entry if Bank complied with the terms of this Section 4. of Part B with respect to the original Entry.

Bank may reject any Entry including, without limitation, an On-Us Entry: (i) which may be rejected under the Rules; (ii) if the total dollar amount of all Entries to be executed by and on behalf of Client on any one day exceeds the exposure limitations as specified by Bank (see Section 4.2 of Part B); (iii) that uses Standard Entry Class Codes not specifically and previously authorized by Bank for use by Client; or (iv) which contains an Effective Entry Date more than five days after the business day on which Bank receives the Entry. If Bank rejects an Entry under this Agreement or for any reason (including legal process or compulsion), Bank may reject or take any other action allowed for the Entry against an entire ACH file or files from Client.

- 4.7. *Prenotifications.* If Client chooses to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, it agrees not to initiate live dollar Entries until at least three (3) banking days have passed following the Settlement Date of the prenotification Entry. Prenotifications will be provided to Bank in the format provided in the Rules. If Client receives notice that a prenotification has been rejected or returned, Client will research the problem and make any necessary corrections before transmitting another Entry.

- 4.8. *Notifications of Change.* Bank shall notify Client of all Notifications Of Changes (NOC) received by Bank relating to Entries transmitted by Client by phone, facsimile or other electronic transmission, including email, no later than two Business Days after the Business Day of receipt. Client must make the changes specified in an NOC or corrected NOC: (a) within six Business Days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later; or (b) as otherwise required in the Rules, if the Rules specify a different time for correction.

4.9. *Prefunding; Payment.* Bank may designate Client as “ACH Prefunding,” and Bank may change Client’s designation to or from ACH Prefunding at any time, with or without cause and at Bank’s sole discretion. Bank will inform Client of its designation as an ACH Prefunding client, and of any change in the designation.

Client will pay Bank, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to Bank at such time as Bank may designate or, if not otherwise designated: (a) if Client is not an ACH Prefunding client, no later than the Effective Entry Date; and (b) if Client is an ACH Prefunding client, no later than the date of transmittal of the related Entry data to Bank or at such other time as Bank may have established for Client.

4.10. *Tax Payments.* Client may originate federal and state tax payments using Heritage Direct Online Banking (“Tax Payments”). To help facilitate Client’s origination of Tax Payments, Bank may provide Client a template that Client may utilize to originate federal and state tax payments using Heritage Direct Online Banking. However, given changes that may be made from time to time by the federal and state tax authorities with regard to making tax payments by ACH transactions, Bank does not at any time warrant that the template provided to Client for the origination of Tax Payments will work satisfactorily for purposes of originating federal and state tax payments, and it is the Client’s responsibility to frequently test and ensure the template works for Client’s purposes. For avoidance of any doubt, Bank is not responsible for any federal or state tax payments that are not made or untimely made to the federal and state tax authorities as a result of any problems with the template provided by Bank. Additionally, Client agrees that if the template is or at any time becomes insufficient for Client to timely originate Tax Payments, Client will immediately notify Bank and at that time Bank may in its sole discretion decide to update the template as needed or decide to no longer offer Client the option of originating Tax Payments. Upon Bank’s request, Client agrees to execute such additional enrollment forms and authorizations as Bank may request with respect to the origination of Tax Payments. Client authorizes Bank to release account and tax payment information to any taxing authority in processing Tax Payments and to confirm payments.

CLIENT MUST BE PRE-ENROLLED WITH THE FEDERAL AND/OR STATE TAXING AUTHORITIES PRIOR TO ORIGINATING TAX PAYMENTS. Client warrants that Client is enrolled in the Electronic Federal Tax Payment System (EFTPS) and has selected the ACH Credit option. Client also warrants that all special requirements of the EFTPS system have been met. Client also warrants that Client has completed appropriate enrollment requirements with each state taxing authority, as applicable.

Client is solely responsible for determining the amount of any taxes due and transmitting the correct payment information in accordance with the applicable requirements. Client must furnish Bank with complete and accurate tax payment information. Bank is not responsible for: (i) determining the correctness of any tax computation or payment; (ii) questioning the timing or amount of the payment; (iii) determining or questioning the correctness of any report or information submitted by Client (even if it appears incorrect on its face); or (iv) any penalty which may be imposed if Client instructs Bank to make a payment after Bank’s cut-off time or the date the tax payment is due.

Bank will notify Client orally, electronically or in writing if Bank is unable to process any Tax Payment, and will do so no later than the Business Day following the payment date. If Client fails to maintain sufficient collected and available funds in Client’s account, Bank may refuse to process the Tax Payment. If any payment is rejected, it will be Client’s responsibility to resubmit the payment instruction. If Client does not have sufficient or available funds, Client may be charged an insufficient funds fee and any other fees or charges applicable to the transaction.

Bank will charge Client’s Account for the amount of a Tax Payment when the payment is processed, or at Bank’s option on the corresponding Settlement Date.

Client assumes the risk of any failure to submit payment instructions to Bank in a timely and correct manner. Payments should be submitted at least two Business Days prior to the due date. Any interruption of Bank’s acceptance or processing of any Tax Payment, regardless of the reason, will not relieve Client of Client’s obligation to make a federal or state tax payment or report. Client is ultimately responsible for promptly making any such required tax payment or report. Client is responsible for promptly making required federal or state tax payments by another means in the event there is an interruption in Bank’s acceptance or processing of Tax Payments. Client agrees to be bound by the Rules, as amended from time to time, and all laws and regulations of the United States.

Client acknowledges that Bank’s employees are not authorized or permitted to give tax advice to Client. Client agrees not to seek or place any reliance upon tax advice from Bank or Bank’s employees. To cancel a request for a Tax Payment that Client has scheduled, Client must cancel online prior to Bank’s processing of the request. Payments cannot be cancelled after this time. Bank may, at Bank’s discretion, seek to assist Client in attempting to cancel or amend any payment but is not obligated to do so. If Bank does, Client will indemnify Bank in accordance with this Agreement for any losses Bank may suffer in connection with Bank’s efforts.

4.11. *Client Representations and Warranties.* In addition to the representations and warranties provided by Client under the Agreement, with respect to each and every Entry initiated by Client, Client represents and warrants to Bank and agrees that:

- a. Client shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire and other documents related to Entries for a period of six years. Without limiting the foregoing, each person as the Receiver of an Entry received by Bank from Client 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. Client will provide Bank with a copy of such authorization whenever requested to do so within five business days. Such authorization is operative at the time of transmittal or crediting/debiting by Bank as provided herein;
- b. Entries transmitted to Bank by Client are limited to those types of credit or debit Entries set forth in this Agreement;
- c. If the amount of a debit Entry to a Receiver’s account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, Client will, at least ten days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of Receiver’s right to receive such notice and Receiver 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;
- d. If any change is made by Client in the scheduled Effective Entry Date of one or more debit Entries, Client will, at least seven days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries;

- e. Client shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution (“RDFI”) (as that term is defined in the NACHA Rules) to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry;
- f. Client 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 RDFI shall be entitled to a refund from the Receiver of the amount credited and Client shall not be deemed to have paid the Receiver the amount of the Entry;
- g. Client will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to adult entertainment, gambling services, or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by Client;
- h. Client hereby makes the same representations and warranties to Bank with respect to Entries sent by Bank to an ACH Operator upon the authorization of Client as Bank is deemed to make under the Rules, and Bank shall have no responsibility with respect to matters so represented and warranted by Client; and
- i. Except as previously disclosed in writing by Client to Bank: (i) Client is not a “money-services business” (as defined at 31 CFR 103.11(uu) or successor regulation) and is not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry data is submitted by Client on behalf of, or as agent, service bureau or processor for another. By way of example, Client will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.
- j. Client agrees to indemnify Bank against any loss, liability or expense (including attorney’s fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

4.12. *Retention.* In addition to any retention obligations of Client otherwise provided under the Agreement and this Section 4. of Part B, Client agrees to retain and make readily available to Bank on request all information necessary to remake any files of Entries for ten banking days following the Settlement Date.

4.13. *Audit.* In addition to the audit commitments provided under the Agreement, if transactions Client conducts involve some use of the Internet, then Client agrees to conduct an internal security audit at least annually to ensure that the financial information obtained from Receivers is protected by security practices and procedures (“security audit”) that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; (iii) network security to ensure secure capture, storage, and distribution of financial information; and (iv) any other items identified in the NACHA Operating Guidelines of the Rules. Upon Bank’s request, Client agrees to have an external security audit conducted within sixty (60) days of the request. The external security audit will include the same items described in this paragraph for an internal security audit. Client agrees to provide Bank with a copy of each internal and external audit report, as applicable, in a format acceptable to Bank within (30) days from the completion of the audit.

Without limiting the foregoing, Client specifically agrees to establish data security policies, procedures and systems as required by the Rules. This requires Client to:

- a. Protect the confidentiality and integrity of Protected Information
- b. Protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and
- c. Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person

Such policies, procedures, and systems must include controls that comply with applicable regulatory guidance on access to all systems used by Client to initiate, process and store Entries. The Rules define Protected Information as the nonpublic personal information, including financial information, of a natural person used to create or contained within an Entry and any related Addendums record.

5. Positive Pay / ACH Debit Block and Filtering Service. Heritage Direct Online Banking may allow Client to use the positive pay service (“Positive Pay Service”) and/or the ACH filtering/blocking service (“ACH Debit Block and Filtering Service”), collectively the Positive Pay / ACH Debit Block and Filtering Service, described in this Section.

5.1. *Account Designation.* During Client’s enrollment in the Positive Pay / ACH Debit Block and Filtering Service Client will maintain Account(s) with Bank designated in the Enrollment Form or otherwise in writing, to which the Positive Pay / ACH Debit Block and Filtering Service will be made available (collectively the “Designated Account”). Except as specifically provided in this Section 5. of Part B, the Positive Pay / ACH Debit Block and Filtering Service do not cover the handling of the Designated Account or the processing of checks or electronic funds transfers against the Designated Account. As a result, the Designated Account will be subject to, and Client’s operation of the Designated Account will be in accordance with, the terms and provisions of Bank’s deposit account agreement governing the Designated Account, a copy of which Client acknowledges having received.

5.2. *Security Procedures.* For the purpose of this Section 5. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Positive Pay / ACH Debit Block and Filtering Service as provided in the Enrollment Form to this Agreement or otherwise.

5.3. *Positive Pay Service.*

- a. The Positive Pay Service provides certain account services through an automated check matching system. Client’s lists of Client Checks recently issued will be compared against the amounts and check numbers of the checks that actually clear against the specified Client account(s) listed on Enrollment Form and that are approved by Bank for the Positive Pay Service. Client agrees that Bank will only be obligated to match the check number and dollar amount from the Check Issue Data (defined below) and that Bank may in its sole discretion, but is not obligated to, match additional data provided in the Check Issue Data (“Additional Data”), including but not limited to payee name. Regardless of whether Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the Check Issue Data, Client further agrees that Bank will not be liable to Client and Client agrees to hold Bank harmless from loss or liability resulting from Bank’s action or inaction with respect to Additional Data. Bank’s determination to match Additional Data in any case will

not obligate Bank to continue to do so in other instances. Notwithstanding the foregoing, Bank and Client may agree to Bank's review of Additional Data, subject to additional terms, fees and conditions.

- b. Client must submit a file ("Check Issue Data") to Bank prior to the cut-off time provided in the Enrollment Form on the day of issuance of any checks against accounts that are subject to the Positive Pay Service. The Check Issue Data must be in the format and contain the information specified by Bank in the Supporting Documentation.
- c. The term "presented item(s)" shall mean checks that are presented for payment against the Designated Account through the normal check collection system. Presented items that do not match an item included in a Check Issue Data, pursuant to this Section, will be identified as Exception Items. Client must submit a "pay" or "return" decision for each Exception Item to Bank on the same Bank Business Day by the deadline specified in the Enrollment Form.
- d. Client grants Bank full authority to honor all checks that match the check numbers and amounts corresponding to the issue records maintained at Bank.
- e. Unless otherwise indicated in writing or email submitted by Client to Bank in the form and containing the information that Bank chooses to require in its sole discretion, the Bank's default is to "pay" any Exception Item for which Client has not submitted a return request on the same Business Day by the deadline specified in the Enrollment Form. Subject to Bank's approval, requests to change the default made on a Business Day before the applicable cut-off hour provided in the Enrollment will take effect the following Business Day, and such requests to change the default made on a non-Business Day or after the aforementioned time on a Business Day will take effect the second Business Day following the date of the request to change the default.
- f. In the event Bank pays an Exception Item as described above in Section 5.3.e of Part B, Client agrees that: (i) Bank will be deemed to have exercised ordinary care under the loss allocation provisions of California Commercial Code Sections 3406(b) and 4406(e); (ii) it will be rightful honor by Bank, and the item will be deemed properly payable; and (iii) Client waives any right Client may have to assert that the item was not properly payable under California Commercial Code Section 4401 or any applicable clearing house rule, or otherwise.
- g. If Client orders or prints checks from any check-printing vendor other than a Bank selected vendor, Client agrees to meet the Bank's MICR encoding specifications.
- h. The Positive Pay Service applies to checks that are presented for payment to Bank through normal interbank automated clearings. Client acknowledges that the Positive Pay Service does not cover checks which are (collectively "ineligible checks"): (i) presented over-the-counter, (ii) presented by mail for collection, (iii) misencoded or duplicate items, and (iv) items which Bank has already cashed, negotiated or paid or which Bank is already committed to honor or pay under applicable laws, regulations or the ACH Rules. Bank may, in its sole discretion, attempt to compare Check Issue Data or other data, as otherwise provided in this Section 5. of Part B, against ineligible checks, but Bank will not be liable for its failure or refusal to do so.
- i. Subject to funds being available pursuant to Bank's funds availability policy, Bank shall honor all checks which are marked as Exception Items and for which Client has not submitted a "return" decision, unless the default for paying items has been changed in accordance with paragraph e. above of this Section 5.3 of Part B.

#### 5.4. *ACH Debit Block and Filtering Service.*

- a. Client may use the ACH Debit Block and Filtering Service to review and confirm ACH debit and credit transactions that post to the specified Client accounts listed on Enrollment Form and approved by Bank for use with the ACH Debit Block and Filtering Service.
- b. Client shall establish (and update from time to time) through Heritage Direct Online Banking , or in a manner acceptable to Bank, its ACH policies which govern permissible transactions by originating company ID, Standard Entry Class Code, dollar range, and/or transaction code, as specified further in the Supporting Documentation. Alternatively, if Client chooses to block ACH Debit Entries versus filtering ACH Debit Entries for specified Accounts, all incoming ACH transactions (debit or credit) may be treated as exceptions and available for the Client's review.
- c. Client shall review exceptions it receives from Bank as communicated through Heritage Direct Online Banking, and determine if the exceptions will be treated as authorized or unauthorized ACH transactions. Note that upon receiving a communication from Bank to Client through Heritage Direct Online Banking, an email notification may be sent to Client's email address found in Bank's records alerting Client to the communication.
- d. Client shall make its exceptions decisions through Heritage Direct Online Banking on each Bank Business Day by the deadline specified in the Enrollment Form.
- e. Client acknowledges that the Services do not cover ACH debit or credit items which Bank has already paid or finalized or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Operating Rules.
- f. Bank shall compare incoming ACH debit and credit transactions against Client's established ACH policies and accept those transactions which are authorized under Client's ACH policies as established by Client in the System. Bank shall be entitled to rely exclusively on any blocking or filtering instructions provided to Bank by Client, and Bank shall not be required to review Entries to determine if the blocking or filtering instructions provided by Client are consistent with other information contained in an Entry, including the name of the "Originator" (as that term is defined in the NACHA Rules). Bank shall not be liable for action or inaction taken based on Client's information, even if Bank is aware of contrary or inconsistent information in an Entry. Client understands that any error in the Originator identification number will make the block or filter instructions ineffective. Bank will not be responsible for blocking or filtering Entries which contain different or varied Originator identification numbers, including from an Originator previously blocked or authorized but that has altered its identification number (whether to circumvent the block or for other reasons), notwithstanding the same or a similar Originator name is identified in the Entry or was otherwise known to Bank.
- g. Bank shall submit to Client as exceptions any ACH transactions which do not meet Client's ACH policies.

- h. Bank shall make reasonable efforts to make exceptions available to Client on each Bank Business Day by the deadline specified in the Enrollment Form.
  - i. Bank will return and will reflect in Client's account records as posted and returned any ACH exceptions Client does not choose to pay. Generally, unauthorized ACH debit transactions will be returned on the Bank Business Day following posting.
  - j. If Client's default decision is "Pay", and the Bank makes payment of an ACH Entry in accordance with Client's selection, Client agrees that the ACH transaction(s) in question will be posted to Client's Account as properly payable and authorized even if they are not entries that were authorized by Client. When processed in accordance with Client's default decision, Client waives any right Client may have to assert that a transaction or Entry was not properly authorized under the NACHA Rules, or otherwise. If Client's default decision is to "Return", and the Bank returns an ACH Entry as unauthorized in accordance with Client's selection, Client: (i) waives any rights Client may have to assert that the return of the Entry was wrongful under any Rule, or otherwise; and (ii) agrees that the Bank has exercised ordinary care.
  - k. Unless otherwise indicated in writing or email submitted by Client and agreed to by Bank in the form and containing the information that Bank chooses to require in its sole discretion, the Bank's default is to "pay" any item showing as an exception for which Client has not submitted a decision to return the item on the same Business Day by the deadline specified in the Enrollment Form. Subject to Bank's approval, requests to change the default made on a Business Day before 5:00 p.m. will take effect the following Business Day, and such requests to change the default made on a non-Business Day or after the aforementioned time on a Business Day will take effect the second Business Day following the date of the request to change the default.
- 5.5. *System Interruption or Failure.* In the event of system interruption or failure, either that of Client's or Bank's system, resulting in Bank's inability to receive or process Client's Check Issue Data or other communication, the Check Issue Data or other Client communication will be deemed as having not been sent by Client, even if Bank has possession of the Check Issue Data or other Client communication.
- 5.6. *Limitation on Liability.* In addition to any other limitation on liability described in the Agreement, Client agrees that if Bank pays or rejects for payment checks or items in accordance with this Section 5. of Part B, Client releases Bank and holds it harmless from any claim that the checks or items were not properly payable, or for wrongful dishonor, as applicable.
6. Remote Deposit Capture Service. Heritage Direct Online Banking may allow Client to remotely deposit Checks of its customers ("Remote Deposit Capture Service"). The Remote Deposit Capture Service allows for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Client to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the designated account of Client maintained at Bank. Client desires to use the Remote Deposit Capture Service to facilitate the services as identified in and subject to this Section. To the extent Client uses a Wireless Access Device to present Imaged Items to Bank for processing, the terms of the Mobile Banking Service (described in Section 7. Part B) will also apply. Bank reserves the right, with prior written notice to Client, to place, from time to time, limits on Client's right to use the Remote Deposit Capture Service.
- 6.1. *Definitions.* Unless otherwise defined below or in this Section 6. of Part B, terms in this Section 6. of Part B shall have the meaning provided in the Agreement.
- a. "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.
  - b. "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
  - c. "Imaged Item" means the digitized image of a Check that is created by Client and transmitted to Bank using the Remote Deposit Capture Service.
  - d. "Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or endorsed to Client, and includes Original Checks, Substitute Checks and Image Exchange Items.
  - e. "Non-cash Item" means an Item that would otherwise be an Item, 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 an Item 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 Paying Bank.
  - f. "Non-qualifying Item" means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, demand drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post-dated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds Client's transaction limitations as established by Bank from time to time.
  - g. "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
  - h. "Paying Bank" means the United States financial institution ordered in an Item to make payment to the payee(s) named on the Item.
  - i. "RDC Account" has the meaning provided below in Section 6.1 of Part B.
  - j. "Remote Deposit Capture Services" means the services described in this Section 6. of Part B, to be provided by Bank to Client to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items.
  - k. "Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
  - l. "UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of the Remote Deposit Capture Service.

- m. "United States Financial Institution" means (i) any person, 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.
- 6.2. *Primary Account Designation.* Client may use the Remote Deposit Capture Services to facilitate a deposit to any deposit account Client has with Bank (other than those with deposit restrictions, such as certificate of deposits). The account to which Client designates a deposit shall be referred to as the "RDC Account" for the purpose of this Agreement and the deposit transaction. Client authorizes Bank to debit the RDC Account (or any other account maintained by Client at Bank) for any fees or other amounts due Bank in connection with the Remote Deposit Capture Services. If the RDC Account is closed for any reason, Client's Remote Deposit Capture Services will be stopped along with any unprocessed Remote Deposit Capture Services transfers. To reinstate its Remote Deposit Capture Services, Client must designate a new RDC Account.
- 6.3. *Security Procedures.* For the purpose of this Section 6. of Part B, Security Procedures shall have the meaning provided in the Agreement and shall include but not be limited to any Security Procedures used to access Accounts via Heritage Direct Online Banking and to use the Remote Deposit Capture Service as provided in the Enrollment Form to this Agreement or otherwise.
- 6.4. *Client Rights.* Subject to the terms of this Section 6. of Part B, Bank hereby grants Client a non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with Client's own business operations in accordance with the Supporting Documents.
- 6.5. *Client Responsibilities.* In connection with the Remote Deposit Capture Services, Client shall comply with the following:
- a. Client shall maintain the RDC Account at Bank for the receipt of deposits of Items.
  - b. The electronic images of Checks will be transmitted by Client to Bank, or Bank's authorized processor, over the Internet through a secure web-based interface, in accordance with this Agreement.
  - c. Client's RDC Account will be provisionally credited upon Bank's acceptance of the Imaged Items for deposit which are received by Bank from Client through the Remote Deposit Capture Service.
  - d. Client will maintain the RDC Account for Client to receive credit and provide other specific information required by Bank related to the Remote Deposit Capture Service. As set forth in this Section 6. of Part B, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the deposit account agreement governing Client's accounts.
  - e. Client will create images of Checks at Client's location by use of scanning hardware and Software approved or provided by Bank. Client will enter all amounts and any other required information correctly and in accordance with the Supporting Documents.
  - f. Client will only submit Checks for processing to Bank that meet the definition of "Item" as provided in this Section 6. of Part B and will ensure that the Items scanned meet the then current ANSI X9 standards for image quality required by Regulation CC, or other standards established or required by Bank or applicable law, as amended from time to time. Client will not process any Non-qualifying Items. Bank's processing of any Non-qualifying Items shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
  - g. Client will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the deposit account agreement governing Client's accounts.
  - h. Client will not attempt to scan and transmit to Bank any third party checks.
  - i. Client will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in this Section 6. of Part B and in the Supporting Documents, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
  - j. Except to the extent otherwise expressly agreed by Bank, Client will provide, at its own expense, a broadband Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Remote Deposit Capture Service, all of which must satisfy any minimum requirements set forth in the Supporting Documents or as otherwise may be acceptable to Bank. Except to the extent otherwise provided in this Section 6. of Part B or the Supporting Documents, Client will provide, or obtain from another party selected by Client at Client's expense, support and maintenance of such Internet connection and all other computer hardware, software, and equipment required to use the Remote Deposit Capture Service, including without limitation troubleshooting Internet connectivity issues with Client's internet service provider (ISP).
  - k. Client will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to Bank.
  - l. Client will balance transactions transmitted from the previous Business Day and immediately notify Bank of any error or discrepancy discovered.
  - m. Unless Bank specifically agrees otherwise in writing, Client will not use the Service to deposit any Check or Checks that exceed the transaction limits established by Bank from time to time. Bank may communicate the transaction limits, including changes to the same, by written or electronic notice to Client.
  - n. Client will be responsible for verifying Bank's receipt of Client's transmission(s) by verifying that deposits have been posted to the RDC Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
  - o. Client will maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Section 6. of Part B.

- p. Client will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Service that is illegal or fraudulent.
- 6.6. *Equipment.* To the extent Bank provides equipment for Client's use of the Remote Deposit Capture Service, Client is responsible for the maintenance of the equipment and Bank may require Client's use of the same to be subject to separate terms. If any equipment is lost, stolen, or damaged in such a manner that Client cannot comply with the capture, transmission, processing, and other applicable procedures and requirements of this Section 6. of Part B, Client agrees to immediately inform Bank and Bank may then provide to Client new equipment or require Client to obtain and substitute new equipment that is acceptable as shown in the Supporting Documentation, before Client continues using the equipment and the Remote Deposit Capture Services. If Client's use or maintenance resulted in damage to any Bank-provided equipment, Client agrees to reimburse Bank on demand for Bank's costs to repair the equipment.
- Client shall be responsible for installing and implementing any changes and upgrades to the equipment as required by Bank, and to do so within 5 days of notice to Client of the same, including when provided to Client as part of an effort by Bank to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the equipment or the Remote Deposit Capture Services. Client will ensure that the equipment is clean and operating properly, and will inspect and verify the quality of images and ensure that the digitized images of Original Checks are legible for all posting and clearing purposes. Client will be solely responsible for verifying the compatibility of any equipment used with the Remote Deposit Capture Service. Client will comply with all capture, transmission, processing, and other applicable procedures and requirements of this Section 6. of Part B (including any Supporting Documentation), the equipment and the Remote Deposit Capture Services. Client will only use the equipment and Remote Deposit Capture Services for Client's own internal business purposes and in accordance with this Section 6. of Part B.
- 6.7. *Software.* At any time during the Client's enrollment in the Remote Deposit Capture Service, Bank may require in its sole discretion the use of Software in connection with the Remote Deposit Capture Services.
- a. To the extent Bank requires the use of Software in connection with the Remote Deposit Capture Service, Client will implement and use the Software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents to transmit output files to Bank.
  - b. Client acknowledges that (i) its license to any Software that may be required for the Remote Deposit Capture Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Client or otherwise provided to Client, (ii) Bank may provide certain "first level" support to Client with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Client with respect to the Software, and (iii) Client will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.
  - c. Client will use the Software solely for the purpose of transmitting Imaged Items and other information to Bank consistent with this Section and not for communications with any other party. Client will not allow access to the Software or the use of the Remote Deposit Capture Service by any person other than Client, and will only process Items arising from a transaction or obligation between Client and its direct payer. Without limiting the foregoing, Client agrees to implement and maintain separation of duties and dual control procedures at Client's location(s) to ensure compliance with the limitation on access commitments provided under this Section 6. of Part B.
  - d. Client will promptly return all copies of the Software and Supporting Documents, including materials related to the Supporting Documents, to Bank upon termination of the Remote Deposit Capture Service.
  - e. To ensure Client's retention obligations under this Section 6. of Part B, Client agrees to implement and maintain business continuity procedures, including but not limited to those needed to ensure proper backup of data and periodic testing of the same.
  - f. Bank may, from time to time, require and change the Software required for the Remote Deposit Capture Service. Client will be responsible to install and implement and changes to the Software within five (5) days following notice of such change.
- 6.8. *Retention and Destruction of Original Check.* Client will retain each Original Check in accordance with the Supporting Documents. If not directed otherwise by the Bank, Client will store Original Checks in a safe and secure environment for a minimum of 10 Business Days, but not exceeding 30 Business Days after such Item has been digitized and processed. Client shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks, and (ii) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. Client will promptly (but in any event within 5 Business Days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check) to Bank as requested to aid in the clearing and collection process, or to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary. Client will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to securely and permanently destroy Original Checks after Client's retention period has expired.
- 6.9. *Processing Times.*
- a. Imaged Items processed for deposit through the Remote Deposit Capture Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the RDC Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
  - b. Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Client. Client agrees to view the images of each scanned Item that is sent to Bank. If Item information received by Bank is not complete or cannot be processed by Bank for any reason, Bank may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to Client's RDC Account. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.

- c. If an Imaged Item is not accepted for deposit, Client may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Client submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Paying Bank and may instead require Client to have the maker reissue the Check.
- d. It is Client's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Agreement or as otherwise established by Bank. Client is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

6.10. *Returned Items.* Client understands and agrees that an Item that is not paid by a Paying Bank, or is otherwise returned for any reason, will in Bank's discretion be: (i) re-presented to the Paying Bank; or (ii) returned to Client and Client's RDC Account charged for the amount of the Item plus any associated fees as disclosed in Bank's applicable fee schedule, which may be changed from time to time in Bank's discretion. Client agrees that Items may be returned as Image Exchange Items, rather than Substitute Checks. Bank's right to charge the RDC Account of Client will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.

6.11. *Bank Rights and Responsibilities.*

- a. For all Imaged Items processed by Client pursuant to this Section 6. of Part B, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Supporting Documents and as otherwise established by the Bank from time to time.
- b. Unless otherwise agreed by Client and Bank, Bank will process any returned Items in accordance with applicable law and the account agreement governing the deposit account to which the deposit was made.
- c. Subject to the terms of this Section 6. of Part B, availability of credit from Items processed via the Remote Deposit Capture Service will be subject to the availability schedule of Bank, which may be amended from time to time.
- d. Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish transaction limitations and assign them to Client.
- e. Bank 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 Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In the event of any failure or delay, Client acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Remote Deposit Capture Services.
- f. In addition to any other rights Bank may have with regards to the accounts of Client, Bank may hold and use funds in any Client account following termination of this Section 6. of Part B for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Client recognizes that under the UCC, Regulation CC and the rules of any image exchange network Bank's representations and warranties as regards Image Exchange Items and Substitute Checks may expose Bank to claims for several years following processing of the Image Exchange Item or Substitute Check.

6.12. *Client Representations and Warranties.* Client makes the following representations and warranties with respect to each Item, including Non-qualifying Items, processed by Client pursuant to this Section 6. of Part B:

- a. The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time Client converted the Original Check to an Imaged Item;
- b. The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- c. Except as otherwise specifically disclosed in writing to Bank, Client is not now engaged, and will not during the time Client is enrolled in the Remote Deposit Capture Service engage, in any business that would result in Client being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations;
- d. All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network; and
- e. There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Client will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. Client agrees to indemnify and defend Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check.

6.13. *Bank's Liability.* In addition to any limitations in the Agreement, Bank will not be liable to Client for any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than the gross negligence or willful misconduct of Bank), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

## 7. Business Mobile Banking Service.

- 7.1. *Generally.* The Business Mobile Banking Service (“Mobile Banking”) provides wireless access to the Services. Some Services may not be accessible while using Client’s wireless access device (“Wireless Access Device”). Additional Mobile Banking Services may be added to or removed by Bank from time to time. Some Mobile Banking Services may not be available without special application to and approval by Bank, may be limited to specific types of accounts, and may require Client to agree to additional terms and conditions which may be presented online at the time the feature is activated. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Mobile Banking Service or disclosure of any confidential information or instructions by Client, or anyone acting on Client’s behalf.

**Client acknowledges that Client’s mobile service provider may charge for sending and receiving text messages on Client’s Wireless Access Device (defined below). Message and data rates may apply. The Mobile Banking Service is limited to accounts within the U.S. For help, text HELP to 99453 and to cancel text alerts, text STOP to 99453 at any time.**

- 7.2. *CLIENT’S CONSENT TO RECEIVE SMS TEXT AND EMAIL MESSAGING.* By accepting these terms Client expressly authorizes Heritage Bank of Commerce and its service providers to send SMS text messages and emails to Client regarding Client’s accounts and financial transactions, in connection with the Mobile Banking Services. Heritage Bank of Commerce may send these messages to any mobile phone or email address Bank has in its records for Client or Client’s accounts. Link to our Privacy Policy <https://heritagebankofcommerce.bank/Privacy-and-Security.aspx>
- 7.3. *Access.* To access and utilize the Mobile Banking Service Client will need a compatible Wireless Access Device that is connected to the Internet through Client’s mobile communications service provider. Bank reserves the right to change, add to, or terminate services with Bank’s third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Service by other licensors and third-parties.
- 7.4. *Privacy and User Information.* Client acknowledges that in connection with Client’s use of Mobile Banking, Heritage Bank of Commerce and its affiliates and service providers, including Fiserv, Inc. and its affiliates, may receive names, domain names, addresses, passwords, telephone and device numbers, the content of messages, data files and other data and information provided by Client or from other sources in connection with Mobile Banking or the Software (collectively “User Information”). Heritage Bank of Commerce and its affiliates and service providers will maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver Mobile Banking and as otherwise permitted by law, including compliance with court orders or lawful instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by Client. Heritage Bank of Commerce and its affiliates and service providers also reserve the right to monitor use of Mobile Banking and the Software for purposes of verifying compliance with the law, these terms and conditions and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.
- 7.5. *Software; Limited Use.* To the extent the Mobile Banking Service involves Bank’s having granted Client software license (“software”) usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Mobile Banking Service in connection with Client’s use in accordance with this Agreement. The Mobile Banking Service does not involve the sale of software. Nothing in this Agreement will entitle Client to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, Client agrees to immediately destroy all copies of any software which had been downloaded to Client’s Wireless Access Device or otherwise in Client’s possession and control as part of Client’s access and use of the Mobile Banking Service. Without limiting the generality of the foregoing, Client agrees not to: (a) make the Mobile Banking Service available or allow use of the Mobile Banking Service in a computer bureau service business, or on a timesharing basis, or (b) otherwise disclose or allow use of the Mobile Banking Service by or for the benefit of any third party. Client acknowledges that Client’s license to use any software that may be required for the Mobile Banking Service is directly from the software provider, pursuant to the license Agreement that appears when any such software is electronically accessed by Client or otherwise provided to Client. By enrolling in portions of the Mobile Banking Service relating to those software systems and programs, and by downloading and installing Mobile Banking software, Client will be evidencing Client’s acceptance of the terms and conditions of those licenses. Bank may also condition Client’s use of the Mobile Banking Service upon Client affirming such licenses by the use of “I Accept” or similar dialogue box acknowledgments, or by other affirmative or use-based acknowledgment and systems.
- 7.6. *Restrictions on Use.* Without limiting Client’s obligation to comply with Applicable Laws and Regulations, including Acts, as otherwise provided under the Agreement, Client agrees that Client will not use Mobile Banking or the Software to transmit or disseminate: (i) junk mail, spam, or unsolicited material to persons or entities that have not agreed to receive such material or to whom Client does not otherwise have a legal right to send such material; (ii) material that infringes or violates any third party’s intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its clients or subscribers; (iii) material or data, that is illegal, or material or data, as determined by Heritage Bank of Commerce (in its sole discretion), that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm the reputation Heritage Bank of Commerce or any third-party service provider involved in the provision of Mobile Banking; (iv) material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g. racist organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any wireless carrier or copies or parodies the products or services of any wireless carrier; (v) viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (vi) any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Heritage Bank of Commerce, any third-party service provider involved in providing Mobile Banking, or any other third party to liability; or (viii) any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of Fiserv or any third party. Client agrees that Client will not attempt to: (a) access any software or services for which Client’s use has not been authorized; or (b) use or attempt to use a third party’s account; or (c) interfere in any manner with the provision of Mobile Banking or the Software, the security of Mobile Banking or the Software, or other customers of Mobile Banking or the Software; or (d) otherwise abuse Mobile Banking or the Software.

- 7.7. *Security and Confidentiality.* Bank is not responsible for the security and confidentiality of information when Client: (i) use wireless connections to download Client's account information, in which case Client acknowledges such connection may permit other persons to access the information being downloaded, or (ii) allow other persons access to Client's Wireless Access Device. Client agrees that any account information that Client downloads is done at Client's own risk, and Client is solely responsible for any damage that might occur to the electronic device to which Client downloads any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device. CLIENT AGREES TO TERMINATE THE MOBILE BANKING SERVICE, OR DISABLE CLIENT'S REGISTERED WIRELESS ACCESS DEVICE FROM THE MOBILE BANKING SERVICE IMMEDIATELY IN THE EVENT CLIENT'S REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY CLIENT.
- 7.8. *Relationship to Third Party Agreements.* Client agrees that, when Client uses the Mobile Banking Service, Client remains subject to the terms and condition of Client's existing agreements with any unaffiliated service providers, including, but not limited to Client's mobile service provider. Client understands that those agreements may provide for fees, limitations and restrictions which might impact Client's use of the Mobile Banking Service (such as data usage or text messaging charges imposed on Client by Client's mobile service provider), and Client agrees to be solely responsible for all such fees, limitations and restrictions. Client also agrees that only Client's mobile service provider is responsible for its products and services. Accordingly, Client agrees to resolve any problems pertaining to Client's Wireless Access Device or mobile services with Client's provider directly.
- 7.9. *Mobile Deposits.* Together with Mobile Banking, the Remote Deposit Capture Service (described in Section 6. of Part B) enables Client to use an approved Software application together with a compatible Wireless Access Device to create electronic images of the front and back of Original Checks and transmit those images and other information to Bank for review and deposit processing.
8. Lockbox Service. The lock box service allows Client to direct its customers to send their checks payable to Client ("Checks") to a Post Office Box that is serviced by Bank ("Lockbox Service"). Bank (including Bank's Processors) will have unrestricted and exclusive access to the mail directed to the Lockbox. Client authorizes Bank to indorse Checks received at the Lockbox, and to deposit them into Client's account designated in the Supporting Documents ("Lockbox Account"). Bank will credit the Lockbox Account with funds no later than the next business day, subject to Bank's funds availability policy. Lockbox deposits credited to Client's Lockbox Account maintained with Bank will be reflected on Client's periodic statement issued by Bank with respect to the Lockbox Account pursuant to the agreement between Bank and Client.

Client acknowledges that this Agreement covers the Lockbox Service to be provided by Bank and, except as specifically provided in this Agreement, does not cover the handling of the Lockbox Account or the processing of Checks drawn on the Lockbox Account. As a result, Client's Lockbox Account will be subject to, and Bank's operation of the Lockbox Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Lockbox Account, a copy of which Client acknowledges having received.

- 8.1. *Commencement of Lockbox Service.* The Lockbox Service covered by this Agreement will start on the date separately agreed to by the Bank and the Client if all of the following events have occurred prior to such date:
- Bank has established a lockbox with the number and at the address specified by Bank to Client.
  - Client maintains one or more accounts in good standing with Bank.
  - Client has completed all Supporting Documents applicable to the Lockbox Service and such other information and documents in a time and manner as Bank requests to enable Bank to commence and operate the Lockbox for Client and to enable Bank to comply with Bank's other obligations under this Agreement.
  - Bank has completed all steps necessary to enable its Processor (as applicable) to service the Lockbox pursuant to this Agreement.
- 8.2. *Remittance Materials.* Unless otherwise identified in the Supporting Documents, papers accompanying each remittance, including copies of additional correspondence, together with all unprocessed or rejected items (collectively, "Remittance Materials") will be forwarded to the Client via USPS.
- 8.3. *Unacceptable Checks.* Unless otherwise requested by Client and agreed to by Bank, Bank will not deposit Checks falling into any of the following categories, or Checks which Bank has otherwise instructed Client not to deposit (collectively, "Unacceptable Checks"):
- Checks on which the name or designation of the payee is not Client's name or a reasonable variation (in Bank or Processor's opinion) of such name.
  - Checks which do not bear a drawer's signature.
  - Checks with alterations.

Notwithstanding the foregoing, Bank will only use reasonable efforts to identify Checks as Unacceptable Checks and prevent deposits. As a result, Bank will have no liability whatsoever, despite anything to the contrary in the Agreement, for deposit of Unacceptable Checks unless the deposit results directly from the willful misconduct of Bank's officers or employees. Client agrees to indemnify, defend and hold harmless Bank, the drawee bank (which may include Bank) and any intervening collecting bank against any claim resulting from Bank's having processed an Unacceptable Check.

- 8.4. *Checks to Be Deposited (also referred to as "Acceptable Checks").* Unless Client specifies otherwise in writing to Bank, checks which do not fall into one of the categories of Unacceptable Checks will be deposited in Client's Lockbox Account, subject to this Agreement. In addition:
- Checks missing a date will be deposited in Client's Lockbox Account after being dated by Bank as of the date the Check is collected from the Lockbox, unless they also fall into one of the categories of Unacceptable Checks, in which case they may not be deposited.
  - Checks will be deposited regardless of their date, including Checks which are postdated after the date they are collected from the Lockbox, and stale dated Checks (i.e., dated six months or more prior to the date they are collected from the Lockbox).
  - Checks with a discrepancy in amount may be deposited in Client's Lockbox Account after being processed in any manner deemed appropriate by Bank or Bank's Processor, which may include depositing the Check in the amount that corresponds to the written amount (rather than the

numerical amount) or the amount identified in the Remittance Materials. Bank reserves the right to forward as unprocessed Checks which Bank or Bank's Processor are unable to determine the amount of the Check.

- d. Bank may disregard restrictive notations, such as "Paid in Full," or "Void if over \$500," and such Checks will be processed as if the restrictive notations did not appear. Bank will have no liability whatsoever, despite anything to the contrary in the Agreement, for Bank's failure to comply with such restrictive notation.

Without limiting the foregoing, Client expressly acknowledges that the Lockbox Service is for Check processing only; Client's payer may not send cash (currency and/or coin), credit transaction authorizations, automated clearing house authorizations, returned merchandise, notices, communications or other materials to the Lockbox except with Bank's specific and prior written approval. Bank has no obligation to respond to billing disputes, and Client agrees not to advise its customers to contact Bank with respect to their payments or the Lockbox Service. Absent an express agreement with Bank providing otherwise, Client agrees to instruct Client's customers and other obligors not to send cash, credit transaction authorizations, or automated clearing house authorizations to the Lockbox. If cash is sent to the Lockbox with any Remittance Materials, the cash will be removed from the envelope containing the Remittance Materials and a credit advice for the amount of the cash will be placed in such envelope.

- 8.5. *Foreign Checks.* Checks drawn on a foreign bank or in a currency other than United States dollars ("foreign checks") may be automatically returned. In the event Bank agrees to deposit foreign checks, Bank or Processor may process the foreign checks through collection systems and at exchange rates chosen by Bank or Processor, and Bank may impose fees and charges for the service, which fees and charges Client agrees to pay. The currency conversion and collection process may take a long time (for example, eight weeks or more), depending on the foreign bank. Adjustments for returned foreign items or otherwise may result in a different currency exchange rate, and Client could lose or gain due to changes in the exchange rates. Bank's determination to take a foreign check for deposit on any occasion will not obligate Bank to do so in the future, unless expressly agreed by Bank otherwise.

- 8.6. *Lockbox Processing.* On each business day, Bank or a Processor will pick up at and transport from the Lockbox to the processing site or sites the Checks or any other mail addressed to the Lockbox. The following Lockbox Services will be performed by Bank or a Processor:

- a. Open the envelopes picked up from the Lockbox and remove the contents.
- b. Inspect all Checks received for acceptability based on this Agreement and the Supporting Documents.
- c. Prepare all Acceptable Checks and their associated paperwork for further processing.
- d. Prepare deposit tickets and process deposits daily.
- e. Prepare and mail to Client any Unacceptable Checks and Remittance Materials as described herein.

If Bank receives any mail containing Client's lockbox number at Bank's operations locations (instead of the Lockbox), Bank may in Bank's sole discretion handle the mail as if it had been received at the Lockbox.

Unless otherwise expressly agreed to in writing by Bank, Client agrees not to permit others to send Checks payable to third parties or demand drafts to the Lockbox. If Bank processes a Check payable to a third party, Client warrants to Bank and Processor(s) that Client has the proper authorization from such payee to have such Check indorsed for deposit, and deposited, into the Lockbox Account. Client agrees to indemnify Bank and Processor(s), along with their officers, employees, agents, representatives and Processors (individually and collectively, the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees, suffered or incurred by any of the Indemnified Parties as a result of, or in connection with, Bank's or any Processor(s) failure to have such authorization. The indemnification set forth in this Section shall be in addition to, and not in lieu of, indemnification and other rights of Bank under the Agreement.

- 8.7. *Returned Checks.* If any of the Checks (or image of the same) are returned unpaid for any reason, Bank may charge any one of Client's accounts for the amount of the returned Checks plus applicable handling fees, without regard to whether the institution on which the Checks were drawn effected a timely return before its midnight deadline. If any of the Checks are returned for indorsement missing, Bank may, but will not be obligated to, supply an indorsement (utilizing Bank's indorsement stamp) and the Checks may be represented to the depository bank.

- 8.8. *Processor(s).* Client authorizes Bank to use third parties ("Processors") (which, for purposes of the Lockbox Services may include other banks, financial institutions and third parties, and their subcontractors) to provide any one or more of the Lockbox Services to Client. Client authorizes Bank to act (such as opening accounts and providing instructions) as Client's agent and on Client's behalf with Processors as necessary or appropriate to do so. Wherever under this Agreement Client authorizes Bank to take action or inaction, such authorization shall also serve as authorization for a Processor to take such action or inaction. At Bank's option, Bank may use a commingled account at a Processor and process as agent for Client and for others through the commingled account, or Bank may establish a separate account for Client at a Processor and process as Client's agent through the separate account. Bank's responsibility for Processors and liability for action or inaction by a Processor is limited as set forth in the Agreement.

If Bank uses a correspondent financial institution to process payments, deposits to a Lockbox Account: (a) may be delayed by one banking day; (b) may be affected by local bank holidays; and (c) the availability may depend on the availability of the correspondent institution and any required third party service provider or funds transfer system.

- 8.9. *Card Transactions.* Client agrees that the Lockbox may not be used to process card payments, unless Bank has expressly agreed to such processing and Client has agreed to Bank's separate merchant card processing terms and conditions. If Bank and Client agree to the processing of card transactions through the Lockbox, Client will ensure that all card transactions/payments are legible and contain: (i) merchant's name and account number, (ii) the information embossed on the card presented by the cardholder, (iii) the date of the transaction, (iv) description of goods or services, (v) transaction authorization number, (vi) total sale amount, and cardholder signature. Any card transactions/payments missing the required information may be returned to the Client.

- 8.10. *Client Responsibilities.* Client's responsibilities under this Agreement include, but are not limited to each of the following:

- a. Client agrees to encode remittance documents to meet Bank or Processors requirements if Client requires electronic data capture of information on remittance documents.
  - b. Client agrees to duly complete the Supporting Documents and all special instructions, and provide the same to Bank before start of the Lockbox Services.
- 8.11. *Funds Availability.* Funds deposited in connection with this Agreement are subject to Bank's funds availability policy as disclosed in the Bank's policy. For the purpose of application of Bank's funds availability policy and Regulation CC, funds deposited to the Lockbox are considered deposited on the day on which the deposit is removed from the Lockbox and is available for processing by Bank.
  - 8.12. *Cutoff time.* At the Bank's discretion or that of Processor, a cutoff time may be established, and thereafter amended, for the Lockbox Service. The cutoff time assigned dictates when on a business day the last USPS mail is opened pursuant to this Agreement.
  - 8.13. *Imaging Service.* At Bank's discretion, Bank may approve Client for access to the Lockbox online image viewing system ("Imaging Service"), subject to Bank's applicable fee(s) for the service enhancement. Client acknowledges and agrees that Client's access to the Imaging Service will be subject to Client's compliance with the applicable access security protocols, as modified from time to time. Client agrees that the security protocols are a commercially reasonable means of protecting access to the information process through the Lockbox, as provided in this Agreement. Client agrees to maintain the security and controls over the security protocols to ensure protection from unauthorized access to Client's information through the Imaging Service. In no event will Bank have any liability whatsoever for errors resulting from or in connection with the Imaging Service provided hereunder. Client acknowledges and agrees that the image service will not be relied on as a replacement or backup for Client's independent record retention or reproduction obligations under this Agreement, or otherwise as may be required by applicable law. If the images or other forms of the information (e.g., via CD or DVD) are made available to Client, Client agrees to verify the contents when made available and request a replacement, if necessary, within 10 days of receipt.
  - 8.14. *Reports.* Lockbox reporting services may be available to Client for an additional cost. Bank reserves the right to require Client to agree to additional terms to activate lockbox reporting services.
  - 8.15. *Collections.* Unless otherwise agreed, while Client receives Lockbox Services, all funds held in the Lockbox Account shall be deemed to be Client's funds for all purposes, including adjustment, attachment, set-off, security interests, execution, garnishment and other forms of legal process. The crediting and collection of Checks will be handled under the same agreement as applied to other commercial deposits.
  - 8.16. *Reconciliation.* Except as otherwise specified herein and in the Supporting Documents, Bank will not reconcile the Checks, cash or other Remittances in the envelopes to invoices, to remittance statements, or to any other documents or papers in the envelopes elsewhere.
  - 8.17. *Protected Health Information.* Except with prior notice to and written approval by Bank, Client shall ensure that protected health information is not provided to Bank and that the provision of Lockbox Services does not result in Bank being deemed a "business associate" within the meaning of, or otherwise subject to, the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including related regulations issued pursuant thereto, or otherwise under medical privacy and securities laws, rules or regulations. Client shall provide to Bank such assistance as Bank may request should Bank's provision of the Lockbox Service subject Bank to any compliance obligations under HIPAA or otherwise under medical privacy and security laws, rules or regulations.
  - 8.18. *Statement; Notice of Discrepancy.* Client agrees to notify Bank no later than five (5) calendar days after Client receives or is provided access to an advice of deposit, or electronic image summary, if there is any error in such advice or summary. If Client fails so to do, then Client shall be precluded from asserting such error or failure, and the advice or statement shall be deemed to be accurate as to any claims by Client (but shall not preclude later adjustment by Bank).
  - 8.19. *Termination.* Bank may terminate, suspend or restrict some or all of Client's access to the Lockbox Services, with or without cause, at any time immediately upon notice to Client. Client has the right to terminate the Lockbox Service, with or without cause, upon sixty (60) days written notice provided to Bank. Should Client terminate this Agreement without prior notice, Client will owe Bank two (2) times the minimum monthly fees as reflected in Bank's then current Lockbox schedule. Upon termination of the Lockbox Service Bank will dispose of the mail addressed to the Lockbox according to written instructions provided by the Client for a period of three (3) months after the termination date, unless arranged otherwise between Client and Bank. Lockbox Service fees with respect to such disposition will be based on Bank's estimate and prepaid directly to Bank at the time of such termination by a check made payable to Bank.

### **PART C – MISCELLANEOUS TERMS AND CONDITIONS APPLICABLE TO ALL CLIENTS AND SERVICES**

1. **Change in Terms.** Bank may from time to time and at any time amend, modify, add or delete (collectively and individually a "change") the terms of this Agreement, or any of the Supporting Documents. A change may include a change to existing terms, a change that involves a new term or a change that involves conditions not otherwise contemplated by Client or Bank at the time this Agreement is entered. If notice of the change is required by law, Bank will notify Client in compliance with applicable law as described in Section 4. below of Part C. Client's continued use of any or all of Services following any change indicates Client's acceptance of the change in terms. Bank reserves the right to waive, reduce or reverse charges or fees in individual situations. Client acknowledges and agrees that changes to fees applicable to specific Accounts are governed by the applicable deposit agreements and disclosures.
2. **Termination.** Client agrees that termination by either Bank or Client does not terminate any of Client's obligations related to transactions initiated under this Agreement prior to termination and will not affect any of Bank's rights under this Agreement. Without limiting the foregoing, any termination will not affect any obligations of Client under this Agreement when such obligations arose prior to termination, or arose from or relate to a Communication or Client's use of a Service that occurred prior to termination, as described in those Sections surviving termination of this Agreement (see Section 14 of Part C).
  - 2.1. *Client's Right to Terminate.* Client may cancel Client's use of Heritage Direct Online Banking or one or more Services at any time by providing Bank with written notice (including via e-mail) or by closing all of the Account(s) accessible via Heritage Direct Online Banking or the other Service(s) to be terminated. Client's access to Heritage Direct Online Banking or one or more Services, as applicable, may be suspended within 3 Business Days of Bank's receipt of instructions to cancel Heritage Direct Online Banking or one of more Services from any person purporting to represent Client. Client will remain responsible for all transactions that occur prior to termination, whether termination by Client or by Bank, and for any fees and charges incurred prior to the date of cancellation.

- 2.2. *Bank's Right to Terminate, Suspend or Limit.* Client agrees that Bank can terminate, suspend or limit Client's access to Heritage Direct Online Banking or one or more Services at any time for any of the following reasons: (i) without prior notice, if Client has insufficient funds in any one of Client's Accounts or breaches any term of this Agreement (note that Heritage Direct Online Banking or one or more Services may be reinstated, in Bank's sole discretion, once sufficient funds are available to cover any fees, pending transfers, and debits); or (ii) at any time with or without advance notice, for cause (including the foregoing) or without cause and for any reason, in Bank's sole discretion.
- 2.3. *Software and Equipment.* Upon Bank's request, or within seven days after termination of a Service, Client will, at its own expense, promptly uninstall and remove all software provided for the Service from its computers and return to Bank all hardware and equipment provided by Bank for the Service, including scanner and any documentation in its possession or under its control, destroy all copies of the documentation that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Client will be responsible and liable to Bank for all lost, stolen or damaged equipment that was provided by Bank to Client in connection with the Services.
3. Periodic Statements. Client will get a monthly account statement. It will not be a separate statement for transactions made using Heritage Direct Online Banking. Transfers to and from Client's Accounts using Heritage Direct Online Banking will appear on the respective periodic statements for Client's Accounts. Client will not receive separate confirmation of transfers to or from Client's Accounts through Heritage Direct Online Banking, other than the transaction information provided to Client via Heritage Direct Online Banking as discussed above in Section 1.1 of Part B.
4. Notices between Bank and Client. Client can write to Bank at the following address: Heritage Bank of Commerce, Attention: Cash Management Services, 150 Almaden Blvd, San Jose, CA 95113. Bank may change the aforementioned address upon notice to Client. Any notice or other
5. Facsimile Signatures. Many customers use a facsimile or other mechanical signature, including a stamp, referred to in this Section as "facsimile signature", to authorize transactions, provide and authorize instructions and to endorse or otherwise complete other documents. If Client uses any form of facsimile signature in connection with any Account, Client agrees to deliver a sample to Bank before Client begins using the facsimile signature, and to execute and deliver agreements in a suitable form, if Bank so requires. If Client uses a facsimile signature for any of these purposes, Client is responsible for any Communications, transactions, instructions or endorsements that appear to Bank to bear a signature that resembles the signature of a person authorized to sign on Client's Account. When Client uses a facsimile signature in connection with any Account, Client agrees that Client shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and Client shall bear the entire risk for unauthorized use thereof, whether or not Client is negligent, except as may be required by law. Client agrees that Bank may rely on facsimile signatures that resemble the appropriate original or any signature specimen given to Bank and that appears to have been made through an authorized medium, regardless of how the facsimile signature came to be placed on the item. Bank may rely on facsimile signatures, even if they were placed on items without Client's knowledge or consent. Bank may pay items bearing facsimile signature, regardless of the persons to whom they are drawn or paid. A facsimile signature that resembles an authorized signer's signature or any facsimile signature specimen is not considered a forgery or an unauthorized signature, and such a facsimile or automated signature shall be effective as Client's signature or endorsement, without regard to color variation, whether or not Client has been negligent. Client further agrees to indemnify, defend, and hold Bank harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by Bank as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile signature or the device by which it is affixed. This means that Bank is not responsible for any misuse of a facsimile signature Bank believe Client authorized.
6. Electronic Records and Signatures. When any Payment Order or a Service generates items or transactions to be charged to Client's Account, Client agrees that Bank may charge the affected Account without requiring a signature on an item and without prior notice to Client. Any transactions resulting from Client's instructions which Bank receives in Client's name and under Client's credentials shall be deemed to have been "a writing" and authenticated by Client "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by Bank of transactions under Client's credentials shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by Bank or Bank's authorized agent in the normal course of business. Client agrees not to contest the authorization for, or validity or enforceability of, Bank's electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon Bank's written request, Client agrees to manually sign or place Client's signature on any paper original of any record or "signed" document which Bank provides to Client containing Client's purported signature.
7. Services For Non-Consumer Purposes. Client agrees to use Heritage Direct Online Banking and the other Services for non-consumer transactions only.
8. Governing Law. This Agreement is also subject to applicable federal laws and the laws of the State of California (except to the extent this Agreement can and does vary such rules or laws, and excluding California rules governing conflicts of law).
9. Arbitration. Bank and Client expressly agree that any legal proceeding, any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable) now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with this Agreement shall be resolved, except as otherwise limited or prohibited by law, by binding arbitration administered by the American Arbitration Association (AAA) in accordance with its arbitration rules for consumers and businesses, as applicable. The foregoing matters shall be referred to as a "Dispute." Any of the parties to this Agreement may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Dispute. Any such arbitration shall proceed in Santa Clara County, California, Alameda County, California, or San Benito County, California, and shall be governed by the substantive laws of the state of California. The decision of the arbitrator shall be final and binding upon all parties and judgment upon the award may be entered in any court having jurisdiction thereof by a party. Any arbitrator chosen to preside over the dispute must be a member of the California State Bar either actively engaged in the practice of law or a retired member of the California state or federal judiciary, and, unless otherwise agreed in writing, must have expertise in the process of deciding disputes in the deposit account and/or electronic banking services context. Any party who fails to submit to binding arbitration following a lawful demand of the opposing party shall bear all costs and expenses, including reasonable attorney fees, incurred by the opposing party in compelling arbitration. In Disputes involving indebtedness or other monetary obligations, each party agrees that the other party may proceed against all liable persons, jointly and severally or against one or more of them without impairing rights against other liable persons. No party shall be required to join the principal obligor or any other liable persons in any proceeding against a particular person. A party may release or settle with one or more liable persons as the party deems fit without releasing or impairing rights to proceed against any persons not so released. This Section shall survive any termination, amendment or expiration of any provision of this Agreement, unless otherwise expressly agreed in writing.

UNLESS SPECIFICALLY PROVIDED OTHERWISE UNDER LAW, THE PARTIES UNDERSTAND THAT THEY ARE WAIVING THEIR RIGHT TO BOTH A JURY TRIAL AND A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.

10. Collection. If Bank initiates collection proceedings against Client in an effort to recover any amounts owed, Client agrees to reimburse Bank for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.
11. Services Not Substitute for Legal, Tax, or Financial Advice or Planning. Client acknowledges that the Services, Heritage Bank of Commerce, its employees and service providers are not intended to provide legal, tax or financial advice or planning. The Services are merely a tool for use to assist Client's independent decision-making and have not been designed in contemplation of Client's specific needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, Client represents that Client will have obtained appropriate and independent legal and tax advice regarding the same, as Client deems appropriate.
12. Third Parties. Client acknowledges and agrees that Bank may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including Bank's affiliates. Bank further agrees that any such party is a third party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were Bank, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Bank's ability to provide certain Services may be dependent upon Bank's ability to obtain or provide access to third party networks. In the event any third party network is unavailable or Bank determines in Bank's sole discretion, that Bank cannot continue providing any third party network access, Bank may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, Bank will have no liability for the unavailability or delay of access.
13. Miscellaneous. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions. If any provision of this Agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. Any waiver (express or implied) by either party of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach. Client may not assign this Agreement. This Agreement is binding upon Client's heirs, successors and assigns. Any of Client's obligations pursuant to this Agreement that by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation or expiration of this Agreement. This Agreement shall be effective when Bank accept and agree to it, as evidenced by the signature of a Bank officer below. Client represent and warrant that this Agreement, once duly executed and delivered by both parties, will be a valid agreement enforceable against Client in accordance with its terms. Client agrees to cooperate with Bank in all manner reasonably requested by Bank, including providing Bank with information about Client and executing and delivering to Bank any documents reasonably requested by Bank to further the purposes of this Agreement.
14. Survival. Termination of this Agreement will not affect any obligations of an Client under this Agreement when such obligations arose prior to termination, or arose from or relate to a Communication or Client's use of a Service that occurred prior to termination, without limitation and including the Sections otherwise expressly identified herein as surviving termination, surviving sections will include the following Sections of this Agreement: (a) Sections 8., 9., 13., 16., 18., 22., 23., 24., 27., 28., and 29. of Part A; (b) Sections 3.7, 4.6, 4.12.j, 4.13, 5.6, 6.5.i, 6.6, 6.7.d, 6.8, 6.10, 6.11.f, 6.12.e, and 6.13 of Part B; (c) Sections 2.3, 9., and 10., of Part C; and (d) such other Sections of this Agreement as may be specifically noted as surviving termination.

# Schedule of Fees

# Cash Management

CLIENT AGREES TO PAY BANK THE FEES LISTED BELOW. WHERE APPLICABLE, FEES AND CHARGES MAY BE APPLIED TO ACCOUNT ANALYSIS.

## Heritage Direct Business Online Banking

Monthly Access Fee (waived for nonprofit clients) .....	5.00
Stop Payments / each .....	30.00
Bill Pay / monthly.....	10.00
Mobile Banking / monthly .....	no charge

## Wire Transfers Set Up

Set Up .....	no charge
Outgoing Domestic / each .....	25.00
Outgoing Foreign / each .....	35.00

## Remote Deposit\*

Set Up .....	75.00
Monthly	
0 - 50 items .....	35.00
50 - 150 items .....	49.00
151 - 250 items .....	99.00
251 - 500 items .....	129.00
501 - 750 items .....	179.00
751 - 1000 items .....	219.00
1001 + .....	custom quote

### \*Remote Deposit Scanner Options:

- CheXpress30 Scanner - Additional scanner \$13 per month
- TS-240 Autofeed Scanner - Additional scanner \$26 per month

## ACH Origination

Set Up .....	75.00
Monthly .....	50.00
Per File Transmission .....	15.00
Standard / per item .....	0.16
Same Day ACH / per item .....	0.50
Same Day ACH - Special Handling / per file .....	100.00
ACH - Return Item / each .....	12.00
ACH - Unauthorized Return / each .....	15.00
ACH - EDI / CTX Advices .....	no charge
ACH - Notice of Change (NOC) .....	no charge

## ACH Limited

Initial Set Up (includes one transaction) .....	50.00
Per Transaction - Standard / each .....	10.00
Per Transaction - Same Day ACH / each .....	10.50
ACH - Return Item / each .....	12.00
ACH - Unauthorized Return / each .....	15.00
ACH - EDI / CTX Advices .....	no charge
ACH - Notice of Change (NOC) .....	no charge

## Positive Pay/ACH Debit Block and Filtering

Set Up .....	50.00
Monthly .....	25.00

## Lockbox Services

### NONPROFIT

Set Up .....	50.00
Monthly.....	50.00
Standard Items Processed / each .....	0.50
Returned Item / each .....	5.00
Value Added Keying / per field .....	0.25
Documents Scanned / Correspondence / each .....	0.30
Courier / each .....	10.00
Custom Programming / per hour .....	250.00
P.O. Box Rental / monthly .....	50.00

### COMMERCIAL

Set Up .....	150.00
Monthly .....	150.00
Standard Items Processed / each.....	0.50
Returned Item / each .....	10.00
Value Added Keying / per field .....	0.25
Documents Scanned / Correspondence / each.....	0.30
Healthcare Document Imaging .....	0.10
File Sort .....	0.10
Courier .....	10.00
Custom Programming / per hour .....	250.00
P.O. Box Rental .....	150.00

## ZBA / Target Sweep

Master Account / monthly .....	25.00
Sub Account / monthly .....	10.00
Loan Account / monthly .....	100.00

## Armored Car Services .....

\*\*custom quote

## Courier Services

Set Up .....	25.00
Monthly.....	**custom quote

*\*\*This is a custom quote facilitated by Heritage Bank of Commerce for a service that is provided by a third party vendor.*

**HERITAGE**  
BANK OF COMMERCE  
[www.HeritageBankofCommerce.bank](http://www.HeritageBankofCommerce.bank)

Effective date of 01/01/22

If you have questions regarding the Schedule of Fees, please call

**800.796.4777**



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Equal Housing Lender • Member FDIC

Deposit Account - Corporation

SONRISAS DENTAL HEALTH INC ("Company") Resolutions

I/we, the undersigned ("Undersigned"), hereby certify to Heritage Bank of Commerce ("Bank") that the undersigned am/are the secretary of the corporation, and designated keeper of the records and minutes of the Company;

WHEREAS, the following is a true and correct copy of Company Resolutions duly adopted by the Board of Directors of the Company at a meeting held on the 18 day of August, 2020, at which a quorum was present and acting throughout, or adopted by the written consent of a majority of those entitled or required to act to bind the Company, and that such Company Resolutions are in full force and effect and have not been amended, modified or repealed;

WHEREAS, the Undersigned has/have reviewed and approved the Heritage Bank of Commerce Signature Card and Deposit Account Agreement and Disclosure (the "Agreement") to be entered into by and between the Company and Heritage Bank of Commerce;

WHEREAS, defined terms in this document shall have the meaning provided in the Agreement, unless otherwise provided herein; and

WHEREAS, the parties desire that the Agreement shall serve as the signature card for all accounts opened at Bank by Company, excepting such accounts as may be specifically designated in writing by Company as not subject to this Agreement;

WHEREAS, Company has determined that it is in the best interests of the Company to enter into the Agreement and subject to the terms and conditions of the Agreement, as amended from time to time;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

RESOLVED, that it is in the best interest of Company to establish and maintain one or more deposit accounts at Bank;

RESOLVED, that each person signing as an "Authorized Signer": (a) is an "Authorized Signer," as that terms is defined in the Agreement; and (b) all Authorized Signers, as well as all officers of Company (whether acting individually or together) are authorized to do each of the following on Company's own behalf: (i) negotiate and agree to the terms of the Agreement and related service agreements, as to accounts and services established for Company now and in the future; (ii) to open or close any deposit account that is subject to the Agreement, including any new accounts established in the future; and (iii) take such other action for and on behalf of Company as may be deemed by any one or more Authorized Signers or officers of Company as they deem reasonable or appropriate for the furtherance of the foregoing. Furthermore, any Authorized Signer (whether acting individually or together) are authorized to transact on any deposit account that is subject to the Agreement on behalf of Company, including any new accounts established in the future. Any Company restrictions on access to or authority to transact on any of the accounts by one or more Authorized Signers shall not apply to or limit Bank, even if Bank is aware of the same. For the avoidance of doubt, "transact" on an account shall include all services made available by Bank in connection with an account, signing and indorsing checks, making deposits and withdrawals, initiating payment orders and otherwise using the account services that are provided by Bank;

RESOLVED, that all such acts and deeds by an Authorized Signer or officer of Company are and shall be deemed to be the acts and deeds of Company;

RESOLVED, for the avoidance of doubt, the grant of authority to an Authorized Signer under these Company Resolutions does not preclude any person who is otherwise duly authorized by Company from performing or acting on behalf of Company in connection with an account or an account service, including as to matters included as within the scope of authority of an Authorized Signer;

RESOLVED, to the extent these Resolutions are inconsistent with prior resolutions of Company with respect to the authority granted herein, these Resolutions will supersede the prior resolutions; and

RESOLVED, the addition, deletion or other modification of an Authorized Signer may be taken by any person authorized by Company to do so and without limitation, the following are so authorized: the CEO, Treasurer or CFO.

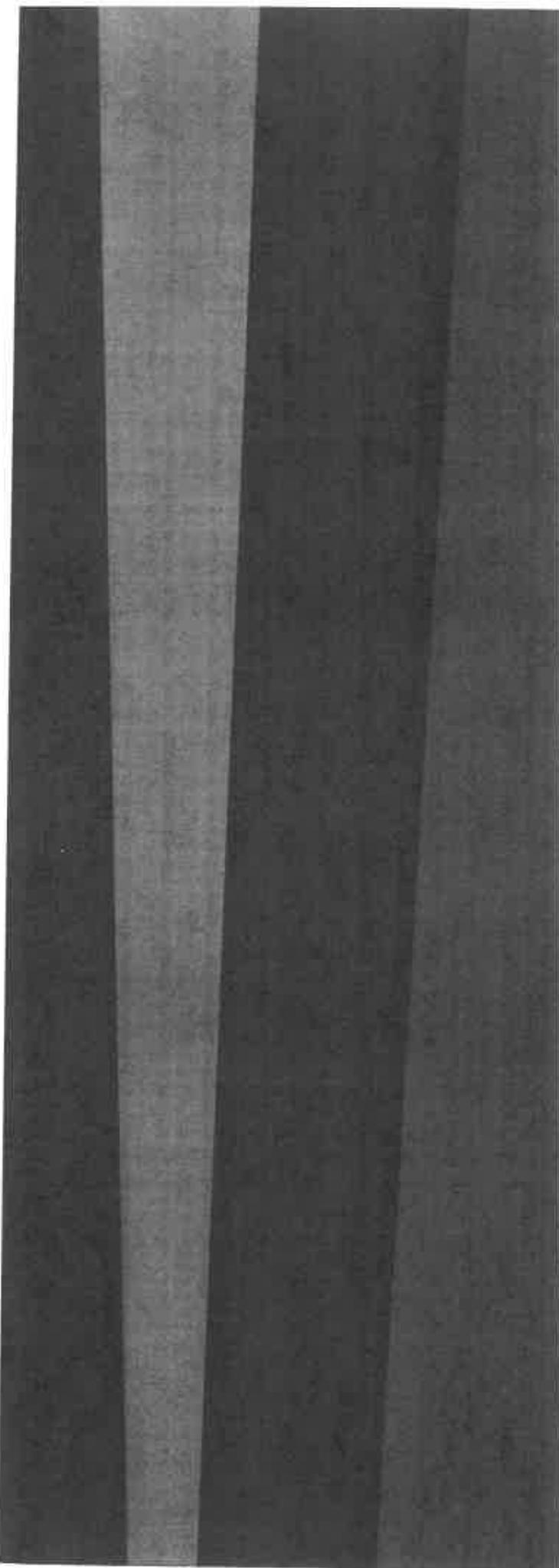
The Undersigned hereby certifies under penalty of perjury under the laws of the state of California that the foregoing resolutions were duly and legally adopted by the governing body of the Company and that said Company Resolutions have not been revoked and are currently in full force and effect:

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

/s/ \_\_\_\_\_  
Title: Secretary \_\_\_\_\_  
Print Name: \_\_\_\_\_

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

/s/ \_\_\_\_\_  
Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_



**HERITAGE**  
BANK OF COMMERCE

Deposit Account  
Agreement Disclosure

**This disclosure contains information about  
terms for some of the accounts we offer**

Electronic Funds  
Transfer Agreement  
and Disclosure

Funds Availability  
Policy Disclosure

EFFECTIVE APRIL 1, 2021

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**DEPOSIT ACCOUNT AGREEMENT  
AND DISCLOSURE**  
(Effective April 1, 2021)

**WELCOME TO HERITAGE BANK OF COMMERCE,  
AND THANK YOU FOR OPENING AN ACCOUNT.**

This Deposit Account Agreement & Disclosure, together with applicable schedules and disclosures, including our Schedule of Fees and rate disclosures (“Agreement”) is designed to provide information on the services available to you. It is our disclosure brochure and part of the contract between you and us. It outlines important items and conditions which apply to your deposit account(s).

When you open your account with us, whether in person or by other means, you and your authorized signers are agreeing to the terms and conditions of this Agreement, applicable federal and state laws and regulations, and the Bank’s by-laws, regulations, policies and practices. This Agreement supersedes all previous Agreements. Your use of an account or service, including deposits, withdrawals, balance inquiry or otherwise, will be deemed to confirm your agreement to the terms and conditions of this Agreement. Unless we have agreed in writing to perform special services for you outside the scope of this Agreement, our relationship with you is that of debtor and creditor; no fiduciary, quasi-fiduciary, or special relationship exists between us. We may rely on the information that you give us and enter it into our records until you notify us in writing of a change. The contact number(s) provided by you can be used for any and all business with the Bank. Please read this Agreement carefully and keep it for your records.

**NOTE THAT THIS AGREEMENT INCLUDES IMPORTANT CONSUMER DISCLOSURES, INCLUDING DISCLOSURES PROVIDED PURSUANT TO THE ELECTRONIC FUNDS TRANSFER ACT AND THE EXPEDITED FUNDS AVAILABILITY ACT.**

Throughout this Agreement, the words “you,” “your,” and “yours” refer to the account owner or owners. The words “Heritage Bank of Commerce,” “Bank,” “we,” “us,” and “our” refer to Heritage Bank of Commerce. Except to the extent otherwise defined herein, the term “commercial account” shall mean an account that is not primarily established for personal, family or household purposes. The term “consumer account” shall mean an account that is established primarily for personal, family or household purposes. The word “item” as used in this Agreement includes a check, draft, demand draft, preauthorized draft, or other order or instruction for the payment, transfer or withdrawal of funds including a withdrawal slip, deposit slip/adjustment, automatic transfers, electronic transactions, and miscellaneous charges to your Account. An item also means any other document created or authorized in your name that would be a check or draft but for the fact that it has not been signed. Except to the extent otherwise indicated in this Agreement, the term “may” shall mean that you authorize us to take action or not to take action, at our sole discretion without resulting liability to you.

## PART I

### ACCOUNT OWNERSHIP AND BENEFICIARY DESIGNATION

These rules apply to your account depending on the form of ownership and beneficiary designation, if any, specified in our account records. We reserve the right to refuse some forms of ownership on any or all accounts. You agree, upon request by us, to provide us with documentation acceptable to us designating each authorized signer with respect to your account(s) and related services. **Note:** *Because decisions concerning whether an account should be held in a particular capacity may have significant legal, tax and estate planning consequences, consultation with your attorney or tax advisor is recommended.* Minors, as defined by applicable state law, seeking to open a deposit account may be required to have a parent or legal guardian as a joint account holder.

**Individual Account** - This account is issued to one person who does not intend (merely by opening this account) to create any survivorship rights to any other person.

**Joint Account – Right of Survivorship** - This account is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s), subject to our right to setoff and security interest in the account, if any.

**Joint Account - No Right of Survivorship (commonly referred to as Tenants in Common)** - This account is owned by the named parties. Upon the death of any one of the joint account owners, that decedent's proportionate ownership interest will pass to the estate of the deceased account owner.

**Custodian for Minor** - This account shall be governed by the provisions of the California Uniform Transfers to Minors Act, as amended from time to time. The account is controlled by the custodian, but is owned by the minor. If the custodian resigns, is removed or dies, we will recognize the designated successor custodian. The custodian can designate a person or entity as a successor custodian to act when the current custodian resigns, or becomes legally incapacitated or dies. If no successor custodian is named, the California Probate Code will govern the determination of a successor custodian.

**Payable on Death (POD) Account** - One or more parties may open this account. The balance may be paid to any or all the account owners during their lifetime. When all account owners have died the account is owned by the surviving POD payee(s). A POD payee must survive the death of all account owners to receive any interest in the account funds. When there is more than one surviving POD payee, each payee's interest in the funds will be deemed to be in equal shares, unless otherwise expressly reflected in records of the Bank and as provided by applicable state law.

**Totten Trust Account** – This is an informal trust account, reflected on our records, but without a written trust agreement, where the account is owned by the account owner. The beneficiaries have no current interest in the account nor any right to any funds in the account during the account owner's lifetime. As the owner of the account, the account owner may withdraw money from the account and may, by written direction to the Bank, change or remove any beneficiary on the account. If the account owner dies, the collected funds in the account are owned by the named beneficiary or beneficiaries. If the Totten Trust Account is held by more than one account owner, the account owners will be subject to the rules pertaining to joint account ownership as set forth above. If there is no surviving beneficiary upon the death of the last account owner, state law will determine ownership of the funds in the account.

**Trust & Other Fiduciary Accounts** - Legal title to the account is owned by the signing party(ies) as trustee, custodian, guardian, executor, administrator, conservator, or other fiduciary for the named beneficiary(ies) under a separate trust agreement, employee benefit plan, court order or other fiduciary arrangement. Certain beneficiaries may, in turn, be acting as trustee or fiduciary for others. The signer(s) certify that they are authorized to manage funds in this account. If, in addition to the signature of the fiduciary or co-fiduciaries, a court order or other authority requires an additional or counter-signature (such as co-fiduciary, bondsman, court officer, or other party), a provision to this effect must be provided.

You may be asked to provide a copy of relevant pages of the trust agreement, execute a trustee's certification of trust, or other documents. Unless the written trust agreement or other document clearly states otherwise, trustee(s) may not ordinarily delegate authority under a power of attorney or in any other way to any other person, not even to another trustee.

The trustee(s) and/or any person opening a trust or other fiduciary account, in their individual capacity and jointly and severally, agree to indemnify and hold the Bank harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, the Bank may suffer or incur arising out of any action or claim by any beneficiary or other trustee with respect to the authority or actions taken by the trustee(s) in handling or dealing with the account.

### ACCOUNT OWNERSHIP TYPES FOR NON-CONSUMERS

Business accounts may be available to both profit or non-profit businesses and associations.

**Corporate, partnership, limited liability or other statutory business entity account** – These business accounts are established pursuant to statutory organizational requirements.

**Fictitious Business Name Account** - If the name in which the account is held is fictitious, the account holder represents he, she or it has the right to use that name and has fulfilled all legal requirements for using and or doing business under that name.

**Organization Account** - Such an account is issued in the name of a legal entity, such as a club or league. We reserve the right to require the governing body of the legal entity to give us a separate authorization telling us who is authorized to act on its behalf. We may honor such an authorization until we actually receive written notice of a change from the governing body.

## ATTORNEY/CLIENT TRUST ACCOUNT

This account is opened under a program sponsored by the California State Bar. The account is an interest bearing checking account that is used to hold funds given to attorneys on behalf of their clients. These funds are either not going to be held by the attorney for a long period or are not of a significant amount to segregate them on behalf of an individual client. The interest earned on these funds, less service charges, are remitted by the Bank to the State Bar on a monthly basis and used to support legal services for indigents. The Bank only acts as a depository of the trust funds and is under no obligation to act as a trustee or to inquire as to the powers or duties of the attorney or law firm as trustee(s). The attorney, law firm, or any authorized individual on the account agrees to indemnify and hold the Bank harmless from and against any and all loss, costs, damage, liability, or exposure, including reasonable attorney's fees, we may suffer or incur arising out of any action or claim by any beneficiary or third party with respect to the authority, actions, or inaction taken by the trustee(s) or authorized individuals in handling or dealing with the account. Additional account terms are governed by this Agreement.

## PART II ACCOUNT PROVISIONS

These provisions supplement the signature card that is completed at the time an account is opened. The Bank's Corporate Office is located in San Jose, California and therefore the relationship between us is governed by the laws of California, applicable federal laws and regulations, the account signature card(s), the policies of the Bank and the rules set out in this Agreement. You agree that if there is any inconsistency between the terms of this Agreement and any applicable law, regulation or rule, this terms of this Agreement will prevail to the extent any such law, regulation or rule may be modified by agreement.

### CUSTOMER IDENTIFICATION NOTICE UNDER THE USA PATRIOT ACT

#### IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means to you: When you open an account, we will ask for your name, address, date of birth, tax identification number (TIN) and other information that will allow us to identify you. We may also ask to see a driver's license or other identifying documents for account owners (and possibly authorized signers).

We may further ask you for specific information regarding the nature of anticipated activity, the sources of your funds, the purposes of transactions, the relationship you have with persons to whom you send funds and persons who send funds to you, the anticipated frequency of such transactions, the ultimate beneficiaries of funds you send and receive, and other questions that may help us clarify the nature and purpose of transactions. We may close accounts if we are unable to understand the purpose of the account, the structure of the organization, the authority of the signers, the documentation provided or the general risk associated with the establishment of the account. We may elect not to disclose the specific reason for our action.

Owners for fiduciaries, partnerships, corporations, and fictitious business names or other business names may also be asked at account opening and from time to time to provide us with valid documentation of trust agreements (or certification of trust), court orders, partnership agreements, certificates of limited partnership, articles of incorporation, and filed fictitious business name statements, in addition to any other documents deemed necessary by us.

#### Account Signers

The individuals authorized to sign checks and/or give instructions to the Bank are so authorized by signing the Bank's signature card or, in some cases, added as a signer by the account owner delivering to the bank correspondence or other documents acceptable to the Bank indicating the signers name and signature. Account signers are authorized to act until removed by the account owner. Any items, including checks or payment orders, signed prior to a signer being removed continue to be valid unless a stop payment is placed upon the outstanding items.

The owners of accounts are responsible to us for the actions of any account signers. We are authorized by you to cash or deposit all items payable to any account signer. We may accept an item for deposit to your account from anyone without questioning their authority to make a deposit into your account.

Any one of the authorized signers may sign items or withdrawal orders and give us instructions regarding the account. We do not offer accounts on which two or more signatures are required for a withdrawal or other instruction on an item or other charge. If you indicate on your signature card or other account opening documents that more than one signature is required, this indication is for your own internal procedures and not binding on us. We may attempt on occasion to enforce any multiple signature requirement, but we may cease to do so at any time without prior notice to you. We may act on the instruction or pay out funds from your account if the item or other charge is signed or authorized by (or otherwise authenticated as being the act of) any owner or by any authorized signer (including when acting alone). We have no liability to you if we do this.

The Bank's procedures for verifying signatures on checks is not intended to be a substitute for good internal controls by you or to substitute for any insurance policy that protects you from embezzlement. Under our procedures, some checks drawn against an account may not be examined. We will not investigate or question a check that has the signature of an authorized signer, including a check that is payable to the person who signed the check, the name on the account, cash, the Bank or other payee. These automated procedures rely primarily on information encoded on each check or item in magnetic ink. In paying or processing an item, we may rely on the information encoded on the check's magnetic ink character recognition (MICR) line, according to general banking standards,

whether or not that information is consistent with the other information on the check. You will reimburse us for any loss or expense we incur because you issue or deposit an item containing altered or extra information in the MICR line. You agree that automated check processing is reasonable and that you have responsibility for preventing and reporting forgeries, alterations, and other unauthorized use of your account. We do not fail to exercise ordinary care by posting or paying checks without sight examination of checks.

We will not be obligated to monitor items deposited to, or drawn against, accounts held by a trustee or other fiduciary to determine whether a trustee or fiduciary is acting consistently with or in breach of any fiduciary duty. When we take an item for processing by automated means, "ordinary care" does not require that we examine each item. "Ordinary care" requires only that we follow standards prevailing in the area in which we are located and that do not vary unreasonably from the general standards followed by similarly-situated financial institutions. A mere clerical error, or an honest mistake, is not considered a failure of the Bank to perform any of our obligations. The Bank's own policies and procedures are used solely for our internal reasons and do not establish a higher standard of care for the Bank other than that which is provided by applicable law or regulation.

### **Account Structure**

We may structure your account to consist of two sub-accounts to take advantage of an interpretation of federal regulations. The sub-accounts, a checking account, and money market account, will be used to allow for the transfer of funds between the accounts, subject to federal regulations. This structure of subaccounts will occur solely on our books, will have no impact on the way you use your checking account and will not be visible to you, nor will it affect the interest you earn interest (if any), your ability to withdraw funds, minimum balance requirements, the fees you pay, your FDIC insurance coverage or other features of your checking account. For example, if your checking account earns interest, we will pay the same interest rate on the two (2) subaccounts. If your checking account does not earn interest, no interest will be paid on the two (2) subaccounts.

For checking accounts subject to account analysis, the calculation of the investable balance on which earnings allowance is earned is based on the combined balance of the two (2) subaccounts, provided that the Federal Reserve requirements applicable to the checking account are also applicable to both subaccounts.

You agree that we may treat the two subaccounts as if they were one and the same account if we receive a levy, subpoena or other legal process regarding either subaccount. We reserve the right to convert the two legally separate deposit subaccounts back into one checking account at any time and with or without notice unless otherwise prohibited by applicable law. You agree that we can engage in such conversion on a retroactive basis; however, we are under no obligation to do so even if we have done so in the past.

### **ACH and Wires**

We may offer you automated clearing house (ACH) origination and wire transfer services, subject to the terms of our separate service agreements. From time to time, you may be a party to an ACH entry or a wholesale (wire) funds transfer, which may be credited or debited to your account. Division 11 of the California Commercial Code governs wholesale (wire) funds transfers, as well as non-consumer ACH credit entries and those consumer ACH credit and debit entries that may be excluded from the Electronic Funds Transfer Act and its implementing Regulation E (referred to herein as "payment orders"). The term "payment order(s)" includes payment orders as defined in Division 11 of the California Commercial Code. We reserve the right to choose any wire transfer system to affect your payment orders.

*Provisional Credit.* Credit given by us to you with respect to a payment order is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to your account in connection with the payment order, and the party (the originator of the entry) making payment to you will not be deemed to have paid you the amount of the payment order. Further, we will notify you of the receipt of payments in the periodic account statements we provide you. You acknowledge that we will not give next day notice to you of receipt of a payment order.

*Form and Accuracy.* All payment orders must be provided to us, which may be required to be in a form prescribed by us, presented in-person. If you will communicate payment orders using our online banking services, all payment orders must also be consistent with our separate online agreement.

You assume the sole responsibility for providing us with accurate transaction information in the form and format that we require. We are not responsible for confirming such information, or for failing to detect and reject duplicate payment orders. If you provide us with a payment order that is incorrect in any way, you agree that we may charge your accounts for the transaction whether or not the error could have been detected by us. We are not obligated to detect errors in your transfer or payment instructions.

*Inconsistent Information.* We advise you that any receiving financial institution (including us) of a payment order is entitled to rely on any account or bank number you have provided even though that account or bank number may identify a party different from the person or entity you have described by name in any transfer order.

*Security Procedures.* You may agree with us to the use of certain procedures and security devices (referred to individually and collectively, "Security Device(s)") designed to verify the authenticity of payment orders. In this regard, application of the procedures and Security Devices to authenticate a payment order will be collectively referred to as the "Security Procedures" in this Agreement. If we take any action not provided in the Security Procedures in connection with any payment order, such additional action shall not be deemed to become a mandatory part of the continuing Security Procedures. You understand and agree that we will use the Security Procedures to verify the authenticity of payment orders and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of payment orders, including discrepancies between account names and numbers.

Before requesting a payment order, you agree to review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable method for verifying whether a payment order is yours. As part of the review, you will consider the size, type, and frequency of payment orders you normally make or anticipate making, along with such other factors as you may deem relevant or appropriate.

*Commercially Reasonable Procedures.* If the size, type or frequency of payment orders made by you change such that the Security Procedures in use by you no longer provide a commercially reasonable method of providing security against unauthorized payment orders, you agree to immediately notify us.

*Supplemental Security Devices.* We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all of the services may be limited. The term "Security Devices" will include any supplemental authentication tools that are used by you. Your continued use of any modified Security Procedures will evidence your agreement that the modified Security Procedures are commercially reasonable for you.

*You Are Responsible for Verified Payment Orders, Even if Unauthorized.* If we act on a payment order in compliance with the Security Procedures, then you will be obligated on the payment order, and it will be treated as your payment order, whether or not authorized by you.

*You Are Responsible for Payment Orders Actually Authorized.* Regardless of whether or not we complied with the Security Procedures, any payment order received by us will be treated as yours and will bind you if the payment order is delivered to us directly or indirectly by any authorized representative, or if you would otherwise be legally bound by the payment order, regardless of whether the payment order was erroneous in any respect or that any loss would have been prevented if we had complied with the Security Procedures.

*Safeguarding.* You will use and safeguard the Security Devices and Security Procedures. In connection with such safeguarding obligations, you will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of the ACH and wire services, Security Device or Security Procedures. You assume all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to third parties, including employees. You agree to limit disclosures of Security Devices to those third parties, employees or agents you will authorize to access the services on your behalf, or who have a specific need to know.

*Delay or Refusal.* We may delay or refuse to execute any payment order. We may do so for any reason or for no reason. We may provide notice to you of such delay or refusal, but are not obligated to do so. We may delay or refuse processing of a payment order, for example, if: (A) processing would or may exceed the available funds in your affected account; (B) the payment order is not authenticated to our satisfaction or we believe the payment order may not have been authorized by you; (C) the payment order contains incorrect, inconsistent, ambiguous, or missing information; (D) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (E) processing would or may cause a violation of any laws or rules applicable to you or to us; (F) for any reason determined by us in our sole discretion; or (G) for any other reason under the Agreement.

*Recall, Cancel or Amend.* If you inform us that you wish to recall, cancel or amend a payment order after it has been received by us, we may, but will not be required to, use reasonable efforts to assist you to do so; however, we shall not be liable for any loss, cost or expense suffered by you if we do not, or are unable to, amend, cancel or recall a payment order. You hereby agree to indemnify us against any loss, liability, claim or expenses (including legal fees) you may incur in connection with assisting you to recall, cancel or amend a payment order, and you agree to immediately reimburse us for any monies paid by us associated with such losses, liability, claims or expenses incurred by us.

*Screening.* We may screen payment orders that would result in debits or credits to your account for compliance with applicable laws, rules, and regulations. Where we believe a credit to your account may be subject to being blocked or frozen under the OFAC-administered sanctions laws of the United States or of sanctions laws of another country, or may be otherwise suspicious or illegal, we may block (or "freeze") the funds and deny you access to them for a reasonable time sufficient to allow us to resolve the matter.

## **Amendments and Termination**

We reserve the right to amend, modify, add to, or delete (collectively referred to herein as "change(s)") the terms or conditions of this Agreement without prior notice to you, except as required by law. Your continued use of a service or an account constitutes your acceptance of the change. Changes may include a deletion, modification, or amendment of an existing term or the addition of a new term not otherwise contemplated when you entered into this Agreement or opened your account(s). Any change will take effect immediately, unless stated otherwise in any notice we make available to you. Unless otherwise expressly agreed by us, a notice of the changes, or a copy of the revised Agreement or schedule, may be sent to you to the address as it appears on our records or via the same delivery method as used for your account periodic statements.

## **Amounts Due the Bank; Notice under Section 3311 of the California Commercial Code**

If you have a dispute regarding an amount you owe to the Bank, you must direct all correspondence regarding the dispute to Heritage Bank of Commerce, Attention: Central Operations, 224 Airport Parkway, San Jose, CA 95110. Any communications sent elsewhere or to someone else will be of no legal effect. Any checks or drafts delivered to Heritage Bank of Commerce containing "payment in full" language or similar notation intending that the payment is in full satisfaction of a disputed amount, the Bank will ignore the notation and will not agree to settle the dispute for the amount of the purported full satisfaction check, even by cashing the check, unless the Bank, specifically, through an executive officer, assents to such a settlement.

## **Appropriate Account Usage**

Do not use a consumer account as a commercial account. If you do, it may be reclassified as a commercial account, and we reserve the right to change your consumer deposit account type to a commercial deposit account type. We further reserve the right to request that you provide to us legal documentation which establishes and support the ownership interest in the commercial business.

## **Business Days**

Our business days, also known as banking days, are Monday through Friday, excluding bank holidays or any other day we are authorized or required to be closed for business.

## **Cashier's/Official Checks**

You do not automatically have the right to stop payment on cashier's or official checks you receive from the Bank. In the event that a cashier's or official check is lost, stolen or destroyed, please contact the Bank for the procedures to follow to obtain reimbursement or have the cashier's check reissued. In general, you will have to complete a Declaration of Loss form, describing the cashier's or official check and how it came to be lost, stolen or destroyed, and sign the Declaration of Loss under penalty of perjury. The Bank must then wait 90 days from the date the cashier's or official check was issued before we can process your claim. If 90 days has already passed, then we will act on your claim within a reasonable time. If the cashier's or official check is presented during the 90-day waiting period, we may pay the item to a person entitled to enforce the cashier's or official check. If this happens, the Bank will not pay on your claim. If we determine that any such instrument is presented by or on behalf of a person who may be a holder in due course or who may otherwise have the right to obtain payment of the cashier's or official check from the Bank, we may, without notice to you, pay the cashier's or official check, even though you may have paid us a fee to not honor the cashier's or official check.

## **Change of Address, Name; or Authorized Signers**

You agree to notify the Bank in writing, or if applicable, through online banking, of any change of address, including your email address (if provided), phone number, change of name, or change of authorized signers, which will be effective after we have had a reasonable time to react. We may also change the mailing address of record we have for you if we receive an address change notice from the U.S. Postal Service. The address is changed only for the accounts you specify and does not affect your other account relationships with us unless you specify that you want the address changed for those accounts as well. The Bank is only required to attempt to communicate with you using the address you have provided to the Bank. If sent statements or other Bank documents are returned indicating an incorrect address, we will hold all future statements but those statements, including the returned statement will remain available to you by contacting us. If we are not notified of a new address after a statement or other Bank documents are returned, you authorize us, at our discretion, to block your account until we can verify your correct address.

## **Check Conversion into ACH Debit Entries**

Some checks that you give to a merchant may be converted by the merchant into ACH debit entries, in which case they will be collected electronically and charged against your account. You will not receive a copy of the check with your monthly statement. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account. A merchant who receives your check by mail should give you notice of the conversion and should destroy the original check. Whether your check is converted to an ACH debit at the point of sale or at the merchant's lockbox, a description of the transaction will appear on your monthly statement from the Bank.

## **Closing or Suspending an Account**

We may, at any time and in our sole discretion, close or suspend your account or any service we are providing to you. We may do so for cause or without cause. We may deliver the balance after an account is closed by any means chosen by us, including mailing a check for the balance by U.S. Postal Service, sent postage prepaid, to your last address as shown on our records. We may remit the balance by check payable to the name on the account as shown on our records, even if contrary evidence of account ownership has been given to us. We will provide you with notice before or after taking this action, unless prior notice is required by law, in which case we will provide you with such notice as is required by law.

Except to the extent otherwise agreed with us, you may close your account at any time upon notice to us, unless your account has a scheduled maturity date, subject to any applicable early withdrawal penalty. You will remain liable for the payment of accrued fees on the account and for checks in the process of collection, as well as any other obligations relating to actions or inaction prior to account closure. If you close an account, it may be subject to accrued or prorated fees or charges.

You agree to reimburse us immediately upon request for any overdrafts that arise after an account is closed, whether closed by you or by us.

We may honor any account holder's or authorized signer's request to close or suspend an account or transaction. At our discretion, we may require the signatures of all account holders and/or authorized signers before permitting the withdrawal of funds or the closing or suspension of an account.

As stated further in this Agreement, without limiting any of the foregoing, you authorize us, in our sole discretion, to "freeze" or place a hold on the balance in your accounts at the Bank if we suspect that there is irregular activity or we receive conflicting instructions involving your accounts. Should the Bank place a "freeze" on your accounts to reasonably investigate our concerns, you agree that we shall not be liable to you for any claims you might have, including but not limited to claims of wrongful dishonor.

We may dishonor any check, withdrawal order, item or transaction presented for payment after an account is closed or frozen by you or by us. At our option, we may honor checks, withdrawal orders, items or transactions after an account is closed or frozen if the transaction was part of an electronic fund transfer system, if you fail to place a stop payment order for any outstanding checks or other items or if we otherwise elect to honor the transaction in our discretion. You shall remain responsible and liable for such checks, items, and transactions.

If an interest bearing account is closed for any reason before accrued interest is actually paid, interest may not be paid for the last interest period.

## **Collection Items**

Handling an item as a "collection item" means that instead of accepting an item for deposit, we send the item directly to the issuer's financial institution for payment. If the item is returned unpaid, we will return the item to you. We are obligated only to use ordinary care in collecting items on your behalf. You agree that the Bank has sole discretion to determine whether to accept an item for deposit or collection. If we do credit your account for a collection item, but do not receive final payment for an item or if the item is later returned, we may charge your account for the item plus any interest earned and associated fees.

You agree to be responsible for all fees and charges assessed in the collection process as outlined in the Schedule of Fees. We may notify you that an item is not a deposit, but rather a collection item, as soon as practicable after we determine to handle the item as a collection item. This may include after you have left a branch office, for example. Items drawn on an institution located outside the United States are handled on a collection basis only. Collection items may be credited to your account, however you agree that availability of these funds may be delayed by us until we receive final payment. You waive any notice of nonpayment, dishonor, or protest regarding any items purchased or received by us for credit to your account or for collection. An item accepted for collection will not be deemed accepted for deposit for purposes of Regulation CC and is not governed by the Bank's funds availability policy.

### **Credit Verification**

From time to time we may obtain credit information about you from check or credit reporting agencies and/or other means. We may do so at the time you open an account, request a service, at any time while your account is open, or the service is available, or after your account or service is closed, or as otherwise permitted by law. For example, new accounts are subject to verification through a credit reporting agency (the "Reporting Agency") and may be declined based in whole or in part on information obtained in a report from the Reporting Agency. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the Reporting Agency. If we decline to open an account or otherwise provide deposit services, the Reporting Agency will have played no part in our decision and would be unable to supply specific reasons why we would have denied the account or services. You have a right to a free copy of your report from the Reporting Agency, if you request it no later than 60 days after you receive notice of a declined account or service. In addition, if you find that any information contained in a report received by you is inaccurate or incomplete, you have the right to dispute the matter with the Reporting Agency. The Reporting Agency's full name, address and phone number will be provided to you upon your written request to us.

Accounts not maintained in a satisfactory manner at the Bank are subject to closure by the Bank and may be reported to Reporting Agency.

### **Compliance with Laws, Rules, and Regulations**

You agree to comply with all laws, rules, and regulations applicable to you, to your activities and to your use of our services. This includes your agreement to comply with (to the extent applicable to you and your actions) federal anti-money laundering laws, sanctions laws administered by the Office of Foreign Assets Control, currency transaction or Bank Secrecy Act reporting and recordkeeping requirements, and any state counterpart of the same. You must inform us about and disclose to us the identity of all persons who have a beneficial interest in you (if you are a non-natural person) and in your transactions.

You represent and warrant that you will not use, and agree not to use, your account or any service we provide to you for any unlawful purpose. For example, you represent, warrant and agree not to accept or make payments in connection with the participation of any person (including yourself) in unlawful Internet gambling. You acknowledge that "restricted transactions" (as defined in the Unlawful Internet Gambling Enforcement Act and its implementing regulations) are prohibited from being processed through your accounts or your relationships with us. We reserve the right to deny transactions or authorization from merchants apparently engaging in the Internet gambling business or identifying themselves through card transaction records or otherwise as engaged in that or any other illegal or improper business. Further, we reserve the right to block or close any account which we believe may be involved in any such restricted transactions.

You represent and warrant that you are not, and you agree to take no action that would result in your being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business.

You covenant, and represent and warrant that the foregoing is true and correct, as of the opening of your account and again each time you make a deposit or withdrawal or otherwise use a service offered by us. You agree to provide us with evidence showing that you are in compliance with the above, reasonably satisfactory to us, upon our request.

### **Converting Account and Revoking Privileges**

Without limiting our ability to close your account, we may alternatively convert your account to another type of account or revoke privileges when we consider it appropriate or necessary to do so. For example, we may revoke privileges, or convert your account to another account type if your account frequently has debits against uncollected funds, if your account has excessive deposit activity or if you use a personal account for business purposes.

### **Deposit of Unsigned Checks**

The Bank may, at its discretion, accept an item for deposit that is not signed by the maker. You warrant that the payment represented by the item deposited has been authorized by the maker.

### **Deposited Checks or Items Returned Unpaid**

We submit items you deposit into your account to the institution upon which they are drawn on your behalf. At times, some items may be returned to us for various reasons, such as insufficient funds, stop payment, etc. If this happens, the amount of the returned item will be charged against your account, even if the item was delayed in the process of collection or is a late return. We may present the item to the maker's bank an additional time without notifying you. Refer to the Schedule of Fees for the fee applied when we re-present a returned deposited item. You also authorize us to process and deliver to you a substitute check, photocopy or other image of a returned item or other returned item, in lieu of the original, whether it is charged back to your account or automatically presented again, and whether or not the original item is available. If we are advised that an item is being returned unpaid, we may debit your account upon this notification rather than upon receipt of the actual item. We may also charge a fee for each item that you deposit that is returned to us.

Any item or other charge posted for credit to your account, including an item we cash for you, is subject to final payment by the payor or receiving bank (as applicable). Notwithstanding the foregoing, the Bank may debit your account for an item returned by "electronic or other means" at any time and notwithstanding the timing of the drawee bank's midnight deadline. If we credit your account for an item or other charge, we may charge back that item or other charge at any time, if we do not receive payment for the item or other charge or if we receive notice that the item or other charge will not be paid. We act as a collection

agent for you when we receive an item for deposit or when we cash an item for you, and are not responsible for the negligent actions or inactions of other financial institutions during the collection process. You agree that we can notify you of the return as part of the account statement or other communication method (including electronic communication).

We reserve the right to charge the applicable account if an item credited to the account is dishonored, returned or not paid even if we have not sent you notice of the dishonor, return or nonpayment. We also reserve the right to charge a dishonored, returned or unpaid item or other charge against the applicable account even if the item or other charge is dishonored or returned late, the dishonor or return does not comply with applicable laws, rules or regulations (including any clearinghouse rules), or we could have made a claim for reimbursement on the item or other charge from the bank on which the item was drawn or from another bank. We may charge a dishonored, returned or unpaid item or other charge against the applicable account even if the charge results in an overdraft.

We reserve the right to charge your account for any breach of warranty or other claim that a fraudulent item was deposited to your account, including, but not limited to, a claim that the item contains a forged signature (including a counterfeit item) or a forged endorsement, has been altered, is a remotely created check or is otherwise unauthorized.

In addition to charging your account for the amount of a returned item, you authorize us to charge your account for any returned item fee for each item returned unpaid, even if there is a delay in notifying you or in returning the unpaid item (or photocopy or other image) to you.

If you deposit an item that is payable in a foreign currency, that item could be returned any time in the future. Whenever that occurs, we may charge your account the amount that was credited plus any handling fees.

### **Deposited Items Lost in the Process of Collection/Presentation**

When we process an item you have deposited or cashed we act only as your collecting agent. Your item may pass through several banks in the collection process. If the item is lost anywhere in the process of collection, we may reverse the credit we gave for the item and charge the item back to the account it was processed into or any account of yours. If we decide not to reverse the credit we gave you, you agree to assist us in finding, reconstructing, replacing and collecting lost items. For this purpose, we strongly recommend that you make photocopies of deposited items or are otherwise able to reconstruct deposited items.

Items drawn on your account may also be lost while in transit to us. You assume all risk of items being lost in transit. If this occurs, you agree that we may accept and charge an electronic image drawn on your account in lieu of original items without prior approval unless a stop payment has been placed on the item.

### **Deposits to Account**

You authorize us to accept deposits into your account from any source without questioning the authority of the person making the deposit. All deposits made are subject to verification, adjustment and collection. Deposit receipts are provided for convenience and do not necessarily reflect the correct amount being deposited. Credit for deposits is provisional. You authorize us to accept for deposit items that are payable to one or all owners but endorsed by only one, items payable to one or more owners but endorsed by affixing an endorsement stamp, or items deposited without endorsement, in which case we are authorized to provide the endorsement. The collection process may involve other financial or governmental institutions. We are not responsible for the actions or inaction of these other institutions. We reserve the right to charge back an item for which we do not receive final payment or we receive notification that we will not obtain final payment.

You agree to endorse items that you deposit in the proper area on the reverse of the item within 1 1/2 inch of its trailing edge. You warrant that all endorsements on items that you deposit are genuine. You assume all liability for any improper endorsements. We may provide your endorsement if you fail to do so. You agree to reimburse us for any cost or expense we incur as a result of your failure to properly endorse items. If we receive an affidavit or similar document stating that one or more endorsements on an item deposited into your account is forged, that the item was altered, or that the item was otherwise unauthorized, we may freeze the amount or charge back the amount of the item(s) to any of your accounts without prior notice to you, even if such charge should overdraw the account. You agree that we have no obligation to investigate the accuracy of such affidavit or similar document. This right to charge your account applies without regard to (i) the timeliness of the return under applicable law, such as the midnight deadline, agreement or clearinghouse rule, (ii) whether or not we received an affidavit concerning the fraudulent item, and (iii) any defense to such claim that we may have.

We may refuse any deposit (whether in cash or by item or other charge) to an account, limit the amount of any deposit, or return all or any part of a deposit to you without prior notice, whether the deposit is attempted to be made by you or anyone else on your behalf. Without limiting the foregoing, the Bank may refuse to accept items for deposit that require the endorsement of individuals or businesses unknown to us. We may require that these items receive an endorsement guarantee from another financial institution prior to deposit into your account. We reserve the right to return to you any item or other charge that we receive for deposit to your account, if we decide not to handle that item or other charge. If we make this decision, we will send a notice by the next business day after we receive it.

### **Direct Deposits**

The Bank will accept electronic payments into your account via the Automated Clearing House (ACH). If you have made an agreement with another party, such as an employer, insurance company, social security administration, etc., you will typically sign an agreement prepared by them. That other party is responsible to you for making the transaction for the correct amount, on the right day and into the correct account. ACH payments are provisional until we receive final payment. In some cases, this could mean that the transfer could be revoked up to 60 days or later, such as if a consumer pays you by electronic means. If a transfer is revoked, we have the right to debit your account to recover the funds involved. If, in connection with a direct deposit plan, we deposit or credit any amount in your account which should have been returned to the state or federal government or any other third party for any reason, you authorize us to deduct the amount from your account or from any other account you have with us without prior notice and at any time, except as prohibited by law. You also authorize us to use any other legal remedy to recover the amount of our liability.

## **Disputed Ownerships**

If a dispute arises over control of or access to your account, or if we receive conflicting instructions from you (including any owner, joint account holder, contracting officer and/or other authorized signer on your account), or in the case of a corporate or partnership or association/LLC account, conflicting board resolutions or partnership authorizations or member instructions, we may require, but are not obligated to require, the signatures of all authorized signers on items, withdrawals, or other transactions. We may also, but are not obligated to, "freeze" the account until we get evidence satisfactory to us that either the dispute is resolved or there is general agreement on payment of the funds in the account.

Without limiting the foregoing, you also authorize us to do one or more of the following:

1. We may ignore any instructions (such as an instruction by one account holder not to honor items or other withdrawal orders by another account holder) that conflict with the terms of the signature card for the account unless all account holders sign the instructions;
2. We may reverse any debits or credits to the account in dispute, or other accounts with us, to correct what we believe in our sole discretion resulted from action taken to the disadvantage of one account owner, over another ;
3. We may return items unpaid, marked "Refer to Maker" or otherwise at our discretion;
4. We can close the account and issue a single cashier's check for the available account balance jointly payable to all account owners, or to all signatories to the account and we may mail or deliver that check to any one of the account holders or signatories, or to the address of record;
5. We may commence an action in interpleader, giving the disputed funds to a court so that it can decide who has the right to control the funds. We will not be liable to you for any costs, claims, damages, or other expenses that result from the payment or non-payment of items or other request for payment of the deposited funds. We will charge the account for our costs and expenses (including attorneys' fees) in commencing an action in interpleader or may seek recovery of such costs and expenses from the funds deposited in the interpleader action;
6. Continue to pay items and other withdrawals when the instructions to do so are given to us by an owner of the account according to our records; and/or
7. We can take any other action we believe to be reasonable under the circumstances even if the action is not listed here. These actions include but are not limited to any specific procedures that may be applicable under a law or regulation.

You agree to assume all liability for, and you agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us as a result of any dispute that arises under this Section. In addition to the foregoing rights, you authorize us in our sole discretion to elect to close your accounts pursuant to this Agreement.

## **Electronic Communications**

You agree that we may use electronic communication to enter into agreements and contracts between ourselves and you and otherwise to establish terms and conditions for products and services you receive from or through us. Electronic agreements may be provided to you through such things as hyperlinks or "click-through" agreements on our web site. Your consent to or agreement with the electronic communication in these circumstances may occur by your clicking "agreed" or similar terms, or by your subsequent use of a product or service, or otherwise as may be specified in the communication or as at law (subject to any limitations set forth in the communication). Your signature and agreement may be obtained by us electronically and includes mouse clicks, key strokes, your use of passwords or other authentication systems, or as is otherwise set forth in the particular electronic communication.

You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

## **FDIC Insurance**

Funds in your deposit accounts at Heritage Bank of Commerce are insured by the Federal Deposit Insurance Corporation (FDIC), an agency of the United States government. FDIC insurance applies only to accounts held in the United States and its territories. For more information, the Bank has a brochure available which explains federal deposit insurance coverage, or you may call the FDIC at 1.877.ASK.FDIC (1.877.275.3342) or visit [www.fdic.gov](http://www.fdic.gov).

## **Cutoff times**

The cutoff time for deposits at all branches is 5:00 p.m. (local time of the Bank). The cutoff time for deposits at any Heritage onsite ATM is 3:00 p.m. (local time for the Bank).

The cut-off hour with respect to any knowledge, notice or stop payment order is 11:00 a.m. (local time of the Bank). Therefore, any knowledge, notice or stop-payment order received by the Bank, or setoff exercised by a payor bank (excluding us), comes too late to terminate, suspend, or modify the Bank's right or duty to pay a check or to charge its customer's account for the check if the knowledge, notice or stop-payment order is received or served after this time. This provision is in addition to and separate from the legal process cutoff time referred to in the "Legal Process" Section in this Agreement.

## **Armored Courier Service**

Deposits delivered to the Bank via Armored Courier will normally be processed within twenty-four (24) hours of receipt. The Bank will make adjustments for any difference in the amount of such deposits, credit or debit, to your account as the case may require.

In addition, if requested by you from the Bank, delivery of sealed packages of currency and coin may be released to the Armored Courier against a receipt signed by its representative, and the Bank will charge your account for the total amount of each shipment.

Your authorization and instructions are agreed upon between you and the Armored Courier vendor and will remain in effect until such time you cancel your service with them.

### **Faulty Check Stock**

Checks you write may be converted into electronic images (truncated) during the check collection process and return process. If you elect to have your checks printed by a vendor that has not been approved by us, or you use check stock or features (e.g. security features) that cause critical data to disappear or be obscured upon truncation, or you make your check out in a way (e.g. using a lightly colored ink) that causes critical data to disappear upon truncation, you agree to bear the risk of loss. You also agree to bear the risk of loss if you use check stock that contains printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

### **Fees**

A schedule of fees associated with our personal and business deposit accounts is provided in our Schedule of Fees. The schedule that applies to your account is part of the contract between you and us. You agree to pay the fees we charge, and you give us the right to collect any fees, as earned, directly from any of your account balances.

From time to time we may list fees for some non-account services (such as wires, official checks, cashier's checks, collections, and so on) in the Schedule of Fees. Except as may be required by law, we may change non-account fees at any time without notice. You can get current information about non-account services and fees that apply at any of our banking offices.

### **Headings/Terms**

The headings in this Agreement are for convenience only and are not part of these terms.

### **Joint Accounts**

Each joint account holder is jointly and severally liable to us for any and all overdrafts to the account. This liability applies whether or not the joint account holder signed the item or authorized the transaction causing the overdraft and regardless of whether the joint account holder benefitted from the transaction. Each joint owner of an account may withdraw any or all funds from the account, close the account, enter into special agreements with the Bank regarding the account, and stop payment on any check drawn on the account. Each joint owner guarantees the signatures of the other joint owner and authorizes the others to endorse checks for deposit if they are payable to any of the joint owners. Each joint owner also authorizes the Bank to exercise set-off and enforce its security interest in the entire joint account, even though only one of the joint owners is the debtor; these rights apply irrespective of who contributed funds to the joint account. Similarly, the Bank can enforce overdraft liability in the joint account against any joint owner individually. Garnishments against either or both joint owners are subject to the Bank's right of set-off and security interest. Notice provided by the Bank to any one joint owner is notice to all.

### **Large Cash Withdrawals**

We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash an item (including a cashier's check or other official item) at a branch if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vaults by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions. Rather than permitting a large cash withdrawal, we reserve the right instead to provide you with a cashier's check for the amount requested.

### **Limitation on Time to Sue**

Unless a shorter time is provided in another provision of this Agreement or required by applicable law, an action or proceeding by you to enforce an obligation, duty, or right arising under this Agreement or under applicable law with respect to your account must be commenced within one year after the cause of action accrues.

### **Limitation on Liability; Hold Harmless and Indemnify**

Except as otherwise stated in this Agreement or as specified by applicable law, we will be liable to you only for damages arising directly from our intentional misconduct or gross negligence. "Ordinary care" requires only that we follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Our policies and procedures are general internal guidelines for our use and do not establish a higher standard of care for us that is otherwise established by the laws governing your account. A mere clerical error or an honest mistake will not be considered a failure by us to perform any of our obligations.

Except to the extent limited by applicable law, we are not liable for loss, damage, harm or expense ("Loss") from: (a) any inaccuracy, act or failure to act of any person not within our reasonable control; (b) the failure of other financial institutions to accept or perform in connection with items or other charges; or (c) your negligence or breach of this Agreement.

Our liability for any act or failure to act is limited to your direct Loss (and interest on that Loss, if required by law, at the average Federal Funds rate at the Federal Reserve Bank of New York for the period). Except if specifically imposed by statute that cannot be waived between parties, WE ARE NOT LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, such as loss or damage from subsequent wrongful dishonor from our acts or omissions, even if we are aware of the possibility of the same.

In addition to any other rights we may have under this Agreement or any related agreement, or at law or in equity, and except as expressly limited by applicable law or regulation, you agree that you will indemnify, defend, and hold harmless the Bank and our directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses ("Indemnified Losses") that result from or arise out of: (a) the wrongful acts or omissions of you, or any person acting on your behalf (including without limitation your authorized processor, if any), in connection with your use of your accounts or services we offer to you, including, without limitation: (i) the breach by you of any provision, representation or warranty; (ii) the negligence or willful misconduct (whether by act or omission) of you, your customers, your authorized processor (if any) or any third party on behalf of you; (iii) any misuse of the account or services by you, or any third party within the control or acting on behalf of you; or (iv) the failure by you to comply with applicable state and federal laws and regulations applicable to you; (b) any act or omission of ours that is in accordance with this Agreement or instructions from you; (c) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of information to us; or (d) any loss or corruption of data in transit from you or your authorized processor to us.

### **Monitoring, Recording and Retaining**

You authorize us (but we are not obligated) to monitor, record electronically and retain telephone conversations and electronic communications between you (including your purported authorized representatives) and us. Accordingly, you agree on behalf of yourself, and your employees and agents that we may monitor and record your telephone and electronic communications in connection with your account at any time, without further notice. You agree that we may produce the telephonic or electronic recordings or computer records as evidence in any proceedings brought in connection with the Agreement, and you hereby acknowledge the validity and enforceability of such telephonic or electronic recordings.

### **Notices**

Except as otherwise provided in this Agreement, all notices and other communications by you to us shall be in writing and, addressed to:

Heritage Bank of Commerce  
Attention: Central Operations  
224 Airport Parkway  
San Jose, CA 95110

or at such other address as we may specify in writing. Notices and communications to you may be mailed or made available to you electronically at the statement, email or mailing address shown for you in our records, or at our website. Any notice or communication sent or made available by us to you will be deemed given and effective when sent or otherwise made available to you, or as otherwise stated in the notice or communication. Certain notices and communications may be provided to you by telephone, facsimile or other electronic transmission at the telephone number, facsimile number or other location or number as shown in our records.

Any notice, instruction, or other communication sent by you to us will be effective when we have actually received and have had a reasonable time to act on the notice, instruction, or other communication. Notwithstanding anything to the contrary herein, we may rely on all notices, instructions, and other communications sent to us via facsimile or electronic transmission as though they are originals. Without limiting the foregoing, we are entitled to rely on any notice, instruction, or other communication believed by us in good faith to be genuine or to have been signed or authorized by your authorized representative.

If there are multiple authorized signers, we may send or make available communications to any one or more of them (unless otherwise agreed by us). You assume the risk of loss in the mail or in electronic transit.

Your statements and notices will be mailed to the last address the Bank has on file for the account. If you sign an agreement, a "Hold Statement Authorization," that statements and notices are to be held by the Bank, the Bank may mail them to the last address on file for the account if they are not picked up within 90 days. If statements and/or notices are returned to the Bank by the postal service for any reason, the Bank may destroy the returned statements and/or notices immediately but will maintain the ability to provide copies to you upon request for such period of time we established in our applicable record retention policy, as amended from time to time.

It is important that the Bank's record of your mailing address be kept current. Otherwise, you will not receive notices or other correspondence the Bank may send you from time to time. You agree to accept full responsibility for keeping the Bank's record of your address up-to-date and that any notice, including notices of interest rate changes, changes of the fees and charges imposed by the Bank and any other notice the Bank sends you will be effective if sent to the last address you have furnished to the Bank. You also agree that any notice to or from any account holder for your account will be effective for all account holders except as otherwise stated in this Agreement. You agree that if a notice or other correspondence sent to your address according to the Bank's records is returned by the postal service as undeliverable for any reason other than the Bank's failure to pay proper postage, the Bank need not send future notices to you until you have furnished the Bank with a new address. You agree to be bound by any notice not sent to you because previous mailings were undeliverable.

#### *Additional Electronic Notification Provisions for Consumer Disclosures*

Owners of consumer accounts have certain rights under law to receive consumer disclosures about their accounts in a non-electronic form, unless you affirmatively consent to the receipt of consumer disclosures electronically and have not withdrawn your consent. If you are a consumer account holder, we will not substitute electronic communications in lieu of written consumer disclosures unless your consent is first obtained electronically in accordance with applicable law. This restriction does not apply to all electronic communications from us to you, only those that include consumer disclosures under applicable law.

### **Notice of Withdrawal**

In compliance with banking regulations, the Bank must reserve the right to require seven days prior written notice of withdrawal from all interest bearing accounts, including savings, money market, and time deposit accounts. This restriction will not apply to demand deposit accounts.

## **Relationship**

The Bank's relationship with an account owner concerning an account owner's account is that of debtor and creditor; no fiduciary, quasi-fiduciary, or special relationship exists between you and the Bank. We owe you a duty of ordinary care.

## **Statement Review**

The rights and obligations in this section are subject to those contained in Section VIII concerning the Electronic Funds Transfer Act Disclosure for consumer accounts established primarily for personal, family or household purposes.

We will send or make available account statements to you monthly. Your statement will detail all of the transactions that have posted to your account during the statement cycle, including electronic transfers. If items are not returned with your statement, upon your request, the Bank will make a reasonable effort to promptly provide you with a copy or image of any item in our possession. Unless otherwise agreed, you waive any right to receive any original item after it is paid.

You must examine your account statement information and other account notices promptly after it is made available to you, and you agree to do so. You are responsible for examining your account statement whether it is made available to you in paper form or as an electronic communication. You agree to review your account statement as a fraud prevention measure. With respect to items paid from your account, when we make an account statement available to you, we are required to provide sufficient information to enable you to identify the items paid. If we describe the paid items by item number, amount, and date of payment, such information shall be treated as sufficient information for purposes of this Agreement. During your statement review, you agree to compare the transactions, which includes items posted to your account, against your own records, including the deposits and other credits you expected to have been made. If your statement is not available to you at the time it usually is, contact us right away. We can prepare a duplicate for you; there may be a charge for duplicate paper statements.

If you suspect that there is an error or omission in your account statement, or if you suspect that a paid item may have been forged or altered or is otherwise unauthorized, you must promptly notify the bank. If you fail to notify us within 30 days of the date we first make your account statement available to you, then: (a) you will be precluded from asserting any unauthorized transactions, errors or discrepancies, including forged, altered or unauthorized items, against the bank and the transactions, errors or discrepancies will be considered properly payable or otherwise authorized; and (b) the bank will not be responsible for any unauthorized transactions, errors or discrepancies, including forgeries, alterations or unauthorized items, even if you allege the bank failed to exercise ordinary care and even if you maintain proper controls over your items or accounts.

Prompt action on your part can prevent further losses. If you fail to notify us promptly of any unauthorized transaction, including any forged, altered or unauthorized item within thirty (30) days after the statement is made available, you will be precluded from asserting against us a claim for any subsequent unauthorized use or transaction by the same wrongdoer(s).

Unauthorized transaction in this section includes a missing or diverted deposit, an alteration of an item, a forged or counterfeit item, an unauthorized debit, a missing or forged signature or endorsement, failure to credit interest or any other discrepancy.

Because you are in the best position to discover an unauthorized signature, an unauthorized endorsement or a material alteration, you agree that we will not be liable for paying such items if you have not reported the unauthorized items to us within the time provided herein.

Business accounts have a limited time frame to return ACH debits. If the transaction is presented to the Bank as a CCD (Cash Concentration or Disbursement) the debit must be returned within 24 hours. A 60 day return time frame is allowed on PPD (Prearranged Payment and Deposit Entry) transactions.

If you are a consumer account holder and suspect a problem with a substitute check, notify us of your suspicions. For these purposes, the terms "consumer" and "substitute check" are used as defined in Federal Reserve Board Regulation CC. See the "Substitute Checks and Your Rights" disclosure in this Agreement for information on rights you may have with respect to substitute checks. If you are a consumer account holder and suspect a problem with an electronic fund transfer to or from your consumer account, see the "Electronic Funds Transfer Act" disclosure in this Agreement for information on rights you may have with respect to these transfers.

## **Systems and Software**

The Bank will not be responsible to you for any loss or damages suffered by you as a result of the failure of systems and software used by you to interface with the Bank's systems or systems and software utilized by you to initiate or process banking transactions whether such transactions are initiated or processed directly with the Bank's systems or through a third party service provider. You acknowledge that you are solely responsible for the adequacy of systems and software utilized by you to process banking transactions and the ability of such systems and software to do so accurately.

## **Taxpayer Identification Number/Backup Withholding**

We are required to obtain a taxpayer identification number ("TIN") for each account you open or maintain with us. The TIN for an individual is usually a social security number (SSN). The taxpayer identification number for a business is usually an employer identification number (EIN). The taxpayer identification number for a sole proprietorship may be either a SSN or an EIN. We must obtain this number even if you are not required to file tax returns. This number is included on reports we must file with state and federal tax authorities about interest we pay you.

U.S. persons, including resident aliens may be required to complete a Form W-9 to certify their TIN and backup withholding status. To establish that you are not a U.S. citizen or other U.S. person (including a resident alien individual), we may require you to (among other things) complete a Form W-8. We may report interest in cases where it is not mandated for us to do so. We are not responsible for your action or inaction in selecting or completing a form, and no information in these matters that may be supplied by us to you should be relied upon by you. In all tax matters, you should consult your own tax advisor. You agree to notify us and submit a new Form W-9 or W-8, as applicable, within 30 days if any certification made on the form becomes incorrect.

If you fail to provide your TIN and certify that it is correct, or if you fail to certify that you are not subject to backup withholding or if the IRS notifies us that you have furnished an incorrect taxpayer identification number, then federal tax rules may require us to re-solicit your TIN and/or withhold a percentage of interest paid to you. We forward amounts withheld to the IRS. If there are any fines, penalties, or charges assessed upon us due to any incorrect name/TIN mismatch or error not caused by us, you agree to reimburse us for the fine, penalty, or charge, and we may charge your account for the same.

When an account earns interest, we may report the interest paid and the amount withheld to the IRS (and to the California Franchise Tax Board). You will receive a copy of the information reported to the tax authorities.

### **Utilization of Accounts**

You agree that you will not draw checks on the deposit account in a fashion that will create an overdraft that will be used for the purpose of: (a) buying, carrying or trading in securities; (b) buying or carrying any part of an investment contract security; or (c) obtaining such overdraft to repay any debt incurred for such purposes.

## **PART III SPECIAL CIRCUMSTANCES**

### **Assigning Deposit Account to a Third Party**

The Bank is not required to accept an "assignment" or a "notice of security interest" in your account. We will not be bound by any attempt to pledge your account to someone else unless we acknowledge the assignment in writing. If we agree to accept an assignment, you release us from any liability to you as a result of our complying with the terms of such assignment. Any assignment that we acknowledge is subject to the rules and regulations contained in this Agreement and therefore you should supply your creditor with a copy of this Agreement. If we fail to comply with an assignment that we have agreed to in writing, you and your creditor will need to show that our failure was the sole cause of any loss of the creditor.

### **Circumstances Beyond Bank's Control**

Notwithstanding any other provisions of the Agreement, the Bank shall not have any responsibility or liability for any failure, error, malfunction or any delay in carrying out any of its obligations under the Agreement if such failure, error, malfunction or delay results from events due to any cause beyond its reasonable control, including, without limitation, unavailability of any communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes, stoppages of labor or industrial action of any kind, riots, insurrection, war or acts of government, power or equipment failure (including that of any common carrier, transmission line or software), emergency conditions, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in the Bank's control. We will not be liable or responsible for the acts or omissions of any other financial institution or any third party or for any inaccuracy or omission in a notice or communication received by the Bank from you, your agents, your authorized signers, other financial institutions, or any other third party. In addition, we shall be excused from failing to transmit, or delaying the transmission of, any transaction, if such transmittal would result in our having exceeded any limitation upon its intra-day net funds position established pursuant to present or future FRB guidelines or are otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. The Bank shall not be liable for any failure to perform any of its obligations under the Agreement if such performance would result in it being in breach of any law, regulation, requirement or provision of any government, government agency, banking or taxation authority in accordance with which the Bank is required to act, as shall be determined in our sole discretion.

### **Currency Transaction Reporting**

The Bank Secrecy Act ("BSA"), a federal law, requires all financial institutions to report currency transactions of more than \$10,000 to the Financial Crimes Enforcement Network ("FinCEN"). In addition, we may report to FinCEN multiple cash transactions which together total more than \$10,000 in any one day. In order to better comply with the law, we may maintain a log of all sales of bank checks or drafts, cashier's checks, money orders or traveler's checks for \$3,000-\$10,000 in currency. We may also report to the FinCEN or other government agency transactions that may be structured to avoid the reporting requirement and other transactions that appear to involve illegal activity. In order to satisfy BSA requirements, we may, and, in many cases, must request certain information about the individual presenting the transaction, as well as the organization or individual for whom the transaction is being conducted. This includes the individual's/organization's full name, permanent street address, social security number, identification number (such as a driver's license or passport), date of birth (if applicable), and business, occupation or professions.

### **Death or Incompetency of Depositor**

You agree to notify us promptly if any owner or authorized signer on your account dies or are declared incompetent by a court. Until we receive such notice in writing, and have a reasonable opportunity to act on it, we may continue to honor items drawn on your account by the authorized signer(s). We may freeze your account and refuse to accept deposits when an owner dies or is declared incompetent until we are certain that we know the identity of the proper successor or appointed representative.

If any regular monthly income, including salary, pension, Social Security and Supplemental Security Income (SSI) payable to the deceased owner is credited to the account after the date of the deceased owner died or, in some instances up to 30 or more days prior to the death, we may debit the account for this income and return the funds to the payor.

The Bank may suspend, refuse and reverse any transactions or deposits (for example, automatic federal direct deposits of benefit payments belonging to the decedent) if any account owner or Authorized Signer dies or is declared by a court to be incompetent.

## ARBITRATION; CHOICE OF FORUM; JURY TRIAL WAIVER

All disputes or claims arising out of or relating to this Agreement, or your use of the Bank's products and services, or the relationships that arise from this Agreement or your use of our products and services, whether based in contract, tort or otherwise, shall be resolved by binding individual arbitration under the expedited procedures of the American Arbitration Association (AAA) under its Commercial Arbitration Rules and Mediation Procedures (Commercial Rules), including the AAA Consumer-Related Disputes Supplementary Procedures, a supplement to AAA Commercial Rules, for consumer customers, in effect at the time the claim is made. The Bank will not invoke its right to arbitration for any claim filed by you in small claims court so long as the claim is pending only in that court.

This arbitration provision shall be interpreted and enforced in accordance with the Federal Arbitration Act in Title 9 of the US Code. The filing fees and costs of the arbitrator shall be paid by the Bank. However, the parties shall each be responsible for and pay their respective costs, including attorneys' fees, incurred by them in preparing and presenting their cases during the arbitration proceedings. Arbitration hearings will be held at a location that is within 50 miles of your residence at the time the arbitration is commenced, to be designated by the arbitrator, or at another location if mutually agreed. A single arbitrator will be appointed by the AAA and will be an attorney or a retired judge. The arbitrator shall have experience and knowledge in financial transactions. Any issue concerning whether or the extent to which a dispute or claim is subject to arbitration, including but not limited to issues relating to the validity or enforceability of these arbitration provisions, shall be determined by the arbitrator. All statutes of limitations or other defenses relating to the timeliness of the assertion of a dispute or claim that otherwise would be applicable to an action brought in a court of law shall be applicable in any such arbitration, and the commencement of an arbitration under this Agreement shall be deemed the commencement of an action for such purposes. **Except as may otherwise be restricted or prohibited by applicable law, the arbitration shall be solely between the parties to this Agreement and no class arbitration or other representative action shall be permitted, nor shall the arbitration be joined or consolidated with any other arbitration.** Judgment upon the award rendered in arbitration shall be final and may be entered in any court, state or federal, having jurisdiction. Any relief available in a court of law can be awarded by the arbitrator. Where mandatory arbitration is prohibited by law, the exclusive forum for any litigation arising out of or relating to this Agreement your use of the Bank's products and services, or the relationships that arise from this Agreement or your use of the Bank's products and services, shall be a court in San Jose, California.

YOU AND THE BANK HEREBY MUTUALLY WAIVE THE RIGHT TO TRIAL BY JURY OF ALL DISPUTES, CONTROVERSIES AND CLAIMS BY, BETWEEN OR AGAINST EITHER YOU OR THE BANK WHETHER THE DISPUTE, CONTROVERSY OR CLAIM IS SUBMITTED TO ARBITRATION OR IS DECIDED BY A COURT.

This Agreement does not preclude you from informing any federal, state or local agency or entity of your dispute. Such agency or entity may be able to seek relief on your behalf.

### Legal Process

If we are served with a subpoena, tax levy, writ of attachment or execution, restraining order or other legal process that we believe in good faith is valid and applies to your account, including if we are served at our designated central location, the Bank may, and in most instances must, comply with the legal process, including legal process issued from another state or jurisdiction. We may charge you a fee for handling such process as indicated in our Schedule of Fees and Changes. You agree to pay our fees and expenses for research and copying of documents and all other expenses, including administrative expenses, we incur in responding to any legal process related to your account. These may include attorneys' fees. You authorize us to deduct these fees and expenses from any of your accounts without prior notice to you. You agree to indemnify, defend and hold us harmless from any and all action, including wrongful dishonor, claims, liability, losses, costs and damages associated with our compliance with any legal process that we believe to be valid.

Unless prohibited by law, we will notify you by phone and/or mail when we receive legal process related to your account as long as it remains open. If we receive legal process after your account has been closed we may or may not notify you, however we will still comply with the legal process to the extent required for a closed account.

We may accept and act on legal process served to us in person, by mail or by facsimile transmission.

If required to remove funds from your account, depending on the type of order, we either immediately deliver the funds or property or hold them for a legally required period, usually no longer than ten days but can be as long as 21 days depending on the legal process. We do not pay interest on funds that are held due to the legal process. Any legal process requiring us to attach, garnish or turn over your funds shall be subject to the Bank's right of setoff and security interest in the account. We are not liable to you for not paying items because we have withdrawn funds from your account or in any way restricted your access to funds because of a legal process or our setoff.

Our cutoff time for receipt of legal process is 11:00 a.m. (local time of Bank) each business day. This cutoff time relates to our obligation to pay or return checks. If we receive legal process before this cutoff time, we may review checks and other items presented for payment against your account on the previous business day to determine whether we need to return any of them unpaid to comply with the terms of the legal process. If we receive any legal process after this cutoff time, we may choose not to review checks and other items presented the previous day. Setoff exercised by the Bank is not covered by this cutoff time for legal process, however. The cutoff time with respect to setoff is midnight of the banking day following the banking day we receive a check or other item, or such later time by which we must return the check or other item.

### Order Transactions are Posted to Your Account.

There are basically two types of transactions in your account: credits or deposits of money into your account, and debits or payments out of your account. It is important to understand how each is applied to your account so that you know how much money you have and how much is available to you at any given time. This section explains generally how and when we post transactions to your account.

**Credits.** Most deposits are added to your account when we receive them. For some checks you deposit, only \$200.00 will be made available at the time of deposit; the balance will be available two (2) business days later. There may be extended holds on checks over \$5,000.00. Thus, your available balance may not reflect the most recent deposits to your account. For details on the availability for withdrawal of your deposits, see the section of this Agreement entitled "Funds Availability Policy."

**Debits.** There are several types of debit transactions. Most debit transactions are described generally below. Keep in mind that there are many ways transactions are presented for payment by merchants and the Bank is not necessarily in control of when transactions are received.

- **Checks.** When you write a check, it is processed through the Federal Reserve system. We receive data files of cashed checks from the Federal Reserve each day. The checks drawn on your account are compiled from these data files and paid each day.
- **ACH Payments.** We receive data files every day from the Federal Reserve with Automated Clearing House or ACH transactions. These include, for example, automatic bill pays you have signed up for. Files are posted in the order received.
- **Point of Sale (POS) Debit Card Transactions (PIN).** These are transactions where you use your debit card and you enter your PIN number at the time of the sale. They are similar to ATM withdrawals because money is usually deducted from your account immediately at the time of the transaction. However, some POS transactions are not presented for payment immediately; it depends on the merchant.
- **Point of Sale (POS) Signature Debit Card Transactions.** These are transactions where you make a purchase with your debit card and you do not enter your PIN but you are instead asked to sign for the purchase. In these situations, the merchant may seek prior authorization for the transaction. When that happens, we generally place a temporary hold against the available funds in your account. We refer to this temporary hold as an "authorization hold," and the amount of the authorization hold will be subtracted from the funds available for you to use or your "available balance", which is described in the next paragraph. Authorizations are deducted from your available balance but not your current balance (which is also described in the next paragraph) as they are received by us throughout each day. At some point after you sign for the transaction, it is processed by the merchant and submitted to us for payment. This can happen hours or sometimes days after you signed for it, depending on the merchant and its processing company. These payment requests are received in real time throughout the day and are posted to your account as they are received. Please note: the amount of an authorization hold may differ from the actual payment because the final transaction amount may not yet be known to the merchant when the authorization request is submitted. For example, if you use your card at a restaurant, a hold will be placed in the amount of the bill presented to you, but when the transaction posts it will include any tip that you may have added to the bill. This may also be the case where you swipe your debit card at gas stations and hotels and other retail establishments. We cannot control how much a merchant asks us to authorize, or when a merchant submits a transaction for payment.

This is a general description of how certain types of transactions are processed. You authorize us to, and we may, process checks or other payments against your account in any order we may choose, and we may change this order from time to time. For example, we may charge your checks or other payments or charges beginning with the smallest dollar transactions first. We may process certain types of transactions before other types (for example, we may deduct Bank fees and charges, followed by ATM and POS transactions, followed by other charges and/or other checks). Processing includes placing a hold on your account, paying checks or other payments (and decisions regarding payment or return) and other aspects of our processing your checks or other charges (such as assessment of fees and charges for overdraft fees or charges for returning check or other charges).

Our order of processing your transactions may not be the order in which they occur, and the order in which transactions are processed and cleared can affect the total amount of fees (including overdraft fees) you incur.

We may receive multiple deposit and withdrawal transactions on your account in many different forms throughout each business day. This means that you may be charged more than one overdraft fee if we pay multiple transactions when your account is overdrawn.

The best way to know how much money you have and avoid paying overdraft fees is to record and track all of your transactions closely.

IF YOU DO NOT UNDERSTAND THIS AGREEMENT OR HAVE ANY QUESTIONS, PLEASE CONTACT US AT 888-494-4599 DURING BUSINESS HOURS, MONDAY THROUGH FRIDAY, 8 AM TO 5 PM, EXCLUDING HOLIDAYS.

## **Overdraft Practices**

**DO NOT OVERDRAW YOUR ACCOUNT.** If you overdraw your account, our fees and charges can be expensive; therefore, you should make sure not to overdraw your account. This Section helps explain overdrafts and how they affect you, but an important thing for you to understand is that overdrafts are expensive, can cost you a lot of money and are not something we promise to pay or honor. There are ways to avoid overdrafts, including avoiding poor account management. If you would like more information on preventing and managing overdraft fees, visit the FDIC website at <http://www.fdic.gov/consumers/overdraft/>.

We offer overdraft protection plans through a linked sweep account or through a line of credit. Please refer to the "Sweep Accounts and Overdraft Protection Plans" Section of this Agreement for details on these overdraft protection plans. Additional terms and conditions for a line of credit overdraft protection plan may be provided to you separately.

There are fees and charges if your transaction is covered using one of these overdraft protection plans, but they are normally less expensive and are a promise by us to honor (up to the available funds or credit limit). Using one of these overdraft protection plans is normally a better way to manage your account than overdrawing your account. If you are interested, call us at 1-888-494-4599 during normal business hours to speak with a Bank representative about linking another account to avoid overdrafts or establishing a line of credit to cover overdrafts.

An overdraft occurs when you do not have enough available funds on deposit in your account to pay checks and other payments that are being charged to your account. An overdraft is the negative balance that results. It can occur due to an ATM withdrawal, a debit card transaction, a preauthorized automatic debit, a telephone- or web-initiated transfer, a check, or paper or electronic transfers or withdrawal. When you conduct a transaction, make sure that you have enough

available funds on deposit in your account (or under an overdraft plan) to cover the transaction and avoid the overdraft.

Our standard overdraft practice comes with your account. On the one side are checks (and other transactions made using your checking account number), along with automatic bill payments such as automated clearing house (ACH) or recurring debit card transactions. On the other side are ATM transactions and every-day (that is, non-recurring) debit card transactions. In contrast to our overdraft protection plans, where we promise to cover an overdraft if there are available funds in your sweep account or available credit in a line of credit, under our standard overdraft practices we may at our discretion cover an overdraft but do not promise to do so.

On the other hand, you will see that we do not authorize and pay ATM and everyday debit card transactions presented for payment against insufficient available funds. Infrequently, exceptions to this may arise (and your ATM or debit card transaction might wind up approved or paid into overdraft) due to systems limitations, but you will not be charged an overdraft fee.

Note again that we do not promise to pay overdrafts under our standard overdraft practices. This includes overdrafts due to checks or automatic bill payments. Ask us to learn about our overdraft protection plans, which can be less expensive and may be more effective to cover transactions that might otherwise cause an overdraft.

Overdraft fees and charges for checks (and other transactions made using your checking account number) and automatic bill payments are in our "Fee Schedules" under the heading "NSF Charges." You will see that there is a limit on the overdraft fees and charges. You will also see that we may impose fees that are based on individual transactions that overdraw your account as well as based on negative balance at end of day or over time. There are also charges for returning checks, ACH and recurring debit card transactions unpaid.

These fees and charges can quickly add up and quickly become significant. Overdrafts are not "free." A small transaction can become quite expensive if overdrafts occur due to the transaction. You need to avoid overdrafts and, if they occur, pay them off quickly.

Processing your checks, other deposits and other payments is a dynamic environment that is complex and may change due to technological innovation, changes in payment systems or changes in our policies and practices, including our order of processing. Overdrafts can arise due to a number of factors, so bear in mind that:

- You should not assume or expect that you will be able to avoid an overdraft by making a covering deposit before your transaction settles with us. Your checks, for example, can clear very quickly – sometimes even on the same day as you deliver the check to a merchant or other payee.
- Transactions may not be processed in the order in which they occur and the order in which transactions are processed and cleared can affect the total amount of overdraft fees incurred by you.
- If you use an ATM or debit card, sometimes a hold is placed on your account. The hold amount may be more than the actual transaction, based on system processing methods and the type of transaction and the merchant involved. A hold can result in an overdraft, since "held" funds are not available. You should therefore check to be sure your funds are not being "held" if you are concerned that another transaction might cause an overdraft.
- You can see an account balance online, via an ATM or by calling us. This account balance typically will not disclose the predetermined amount under the standard overdraft services, such as preauthorized overdraft transfers from a savings account, money market account, or line of credit.
- You may not be able to tell if a particular transaction will or may cause an overdraft. For example, a merchant point-of-sale terminal may not provide account balances, or a balance at an ATM may reflect yesterday's balance information. Your bank account balance is continually changing, so any balances you see may not reflect current transactions or may otherwise be out of date. You can call us at 1-888-494-4599 during normal business hours if you want clearer information about your balances, to help avoid overdrafts.
- You should not expect us to monitor or track your overdraft usage and to warn you or caution you if the usage pattern becomes excessive or high. On the other hand, we may contact you if this is the case, possibly to suggest an alternative arrangement such as one of our overdraft protection plans.
- The predetermined amount under the standard overdraft services may change at any time, increasing or decreasing. This is also true of our order of payment and processing. However, we do not manipulate these on a daily, or on a customer-by-customer basis, in order to maximize customer fees.
- Our standard overdraft practices are NOT designed to help avoid your future financial challenges and should not be used by you that way. Extensive use of overdrafts is an indicator of poor account management and can result in significant expenses for you.

For some of our customers and their accounts, we may allow overdrafts and not impose a fee or charge as an accommodation to the customer relationship. If you are interested in our overdraft practices as they apply to your business accounts or relationship accounts, please contact your relationship manager or local Bank branch during normal business hours.

## **Overdrawn Accounts**

If your account does become overdrawn (whether because the Bank is unable to collect a deposit you have made to your account, because the Bank intentionally or unintentionally pays a check, item or other payment, when your account is overdrawn or has insufficient funds or for any other reason), in addition to paying any applicable Bank fees or charges, you agree to pay the Bank the amount of the overdraft.

If you do not have sufficient available funds on deposit in your account at the time a check, item or other payment is presented for a transfer from your account, or any other transaction is posted to your account or received by us, we may return the check, item or other payment unpaid or otherwise reject the transaction.

We have no liability to you for rejecting some checks or items or other payments from your account, while we continue to pay others, or for otherwise processing a transaction when your account is overdrawn, even if: the check, item or other payment that we choose to pay is payable to us; or your account is overdrawn due to our Bank charges.

Each account owner is jointly and severally responsible for paying all overdraft amounts created by any authorized users, regardless of whether the account owner authorized the check or other payment or received any benefit from the check or other charge. You agree that we may, to the maximum extent permitted by law, apply deposits (including Social Security, SSI, and similar benefits) to overdrafts and overdraft fees or other Bank fees and charges, without notice to or further specific consent from you.

If we pay a check, item or other charge, cash a check for you, or process a transaction, and the amount we pay or process is more than the available balance in the account on which it is drawn, we may hold balances in other accounts of yours, up to the amount we have paid until we have received final payment for the check we paid or the transaction we processed.

### **Power of Attorney**

Under certain types of account ownership, you may authorize another person as your agent and attorney-in-fact to act on the account ("agent"). You shall be bound by and responsible for the actions of your agent, even if the agency relationship is not indicated on the item, withdrawal order or other instruction. Prior to accepting the authority of your agent, we may require the appointment to be in a form satisfactory to us. Unless prohibited by law, we may reasonably refuse to honor a power of attorney or agency that you grant to others for any reason. We may require you or your agent to present the original form. In some cases, we may require that the agent confirm in an affidavit that the powers have not been revoked or terminated. We may continue to rely on the instructions and actions of your agent until we receive written notice in accordance with applicable law and this Agreement that the agent's authority has been terminated, and we have had time to act upon it. You must tell us of any changes involving the power of attorney. We will not be liable to you or anyone else if we, in good faith and without actual knowledge that the power of attorney is deficient or has terminated for any reason, act on the written instructions of your attorney-in-fact. We may charge you a fee to cover our costs to review any power of attorney document other than the form we provide.

### **Remotely Created Check and Electronic Items**

A remotely created check is a check or writing not signed by the customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a financial institution. A remotely created check is also known as a demand draft. A remotely created check must contain the customer's account number and may contain the customer's printed or typewritten name, a notation that the customer authorized the draft, or the statement 'no signature required' or words to that effect.

If you voluntarily give information about your account (such as our routing number and your account number) to someone and authorize them to draw against your account, we may charge your account and pay any items, including remotely created checks initiated by the person to whom you gave the information. You also agree that we may pay an electronically created item even though the item was not created from an original paper check, whether presented in the form of a remotely created check or an electronic item. You authorize us to continue to honor items or debits from a payee previously authorized by you, until you instruct us to cease to do so, whether or not the payee is acting within the scope of your initial authorization, subject only to such liability as may be imposed upon us by law. If you want us to stop honoring items from a payee previously authorized by you, you must tell us in writing. Until you notify us that such items are not authorized, we can continue to pay them and will not be liable to you even though the items are not in accordance with any authorization you may have given.

This does not, however, obligate us to honor remotely created checks or similar items or entries. We may refuse to honor remotely created checks or similar items or entries without cause or prior notice, whether or not we have honored or dishonored similar items or entries previously.

You agree that we are under no obligation to verify whether the name and account number shown on the remotely created checks are consistent. If any information on a remotely created checks is incomplete, inaccurate, or in error, you agree that we may, at our sole discretion, either pay the remotely created checks and charge your account for the item as drawn or refuse to honor the remotely created checks and, without prior notice to you, return the item unpaid. You further agree to indemnify and hold the Bank harmless for losses resulting from our honoring or dishonoring any such debit.

### **Research on Your Behalf**

Occasionally, you may need us to do special research or photocopying for you (for example, if you need copies of your paid checks for tax reasons, and we must photocopy them from our image records). If your request requires us to do extensive work, we will charge you for both the clerical time involved as well as the cost for copies of the items requested. If you ask us to we will estimate these costs for you before we start.

### **Reserve Account**

You agree that you will, if requested by us at any time, establish one or more reserve accounts to be maintained with us in type (including time deposits) and amount satisfactory to us, to serve as collateral for and to secure your obligations to us under the Agreement. We may restrict or prohibit your access to any reserve account(s) and the funds on deposit in them, and we may hold such accounts following termination of the Agreement for a period of time sufficient to protect us against loss. We may increase or decrease the required reserve account amount from time to time, upon notice to you and you agree to provide immediately available funds to cover a reserve amount requested by us. In addition, we may transfer funds from another account of your, or use funds payable to you or owed by us to you under the Agreement, and credit such funds to a reserve account if a deficiency exists between the available funds in your reserve account(s) and the amounts specified by us as the required reserve amount.

### **Right of Set-Off**

The law provides that we may apply funds on deposit in your accounts to satisfy any debt, including fees and charges, owed to us that is not paid when due. If you ever owe the Bank money as a borrower, guarantor or otherwise, and it becomes due, the Bank has the right under the law (called "set-off") and under this agreement (by which you grant the Bank a security interest in your deposit account) to use the money from your account to pay the debt, even if the withdrawal results in an interest penalty or the dishonor of checks. In the case of a partnership or joint account, each partner or joint owner agrees that the Bank may use

the money in the account to satisfy any one of their individual obligations. Similarly, each partner or joint owner agrees that the Bank may use the money in their individual accounts to satisfy obligations in the joint account or partnership account. If your account is a checking or money market account and if we exercise our right of set-off, our duty to pay any items presented for payment on your account during the business day preceding the day on which the set-off occurs may be terminated, and you agree that we may return those items unpaid. If we do return items, we also will charge you an Insufficient Funds fee for each returned item. See the Schedule of Fees. We will not be liable for the dishonor of any item or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment. The security interest granted by this Agreement is consensual and is in addition to the Bank's right of set-off. However, the set-off and security interest may not apply to your account if it is an IRA, the debt is created by a consumer credit transaction under a credit card plan, or the debtor's right of withdrawal arises only in a representative capacity. If we use funds from a time deposit account, the funds withdrawn are subject to the early withdrawal penalty. After we exercise this right, we will mail a notice to the address you gave us for your account.

### **Security Interest**

You grant us a security interest in your accounts to secure the repayment of any obligation that you incur under the Agreement. The security interest provided under the Agreement is in addition to any other security interest we may have in your accounts or other assets. This security interest will survive termination of the Agreement.

### **Severability**

If any provision of this Agreement is determined to be void or invalid, the remainder of the Agreement shall remain in full force and effect. No provision of this Agreement shall be deemed to deny (and any term to the contrary is modified so as not to deny) protections, rights or privileges that under state or federal law are required to be made available to consumers or to consumer accounts, except that any modification of your protections, rights and privileges under this Agreement will be effective to the extent (but only to the extent) that the relevant state or federal law allows us and you to agree to modify them.

### **Unclaimed, Inactive or Abandoned Accounts**

The funds in your account may be transferred to the appropriate state if no activity occurs in the account within the time period specified by state law.

We may consider accounts with no activity for a requisite period to be dormant. We may, but are not obligated to, try to contact you before we classify the account as dormant. A dormant account will continue to be charged a normal monthly service charge. We may, but are not required to, hold statements on accounts that are in a dormant status until the account has been removed from dormant status. You authorize us to, at our discretion, refuse to permit withdrawals from an account that has become dormant until we are satisfied that we are dealing with the true owner or authorized signer of the account.

If an account or other property is inactive for more than three (3) years (or other escheat period or as required by escheat law as may apply to the account or property), we may comply with what we in good faith believe to be any legal requirement to turn the balance over to the state of California or to another jurisdiction. To the extent required by law, we will send a notice to your last known address before we turn your account or other property over to the state. If your mail has been returned to us as undeliverable, we may not send you any notice. If you discover that an account of yours has been turned over to the state, you may reclaim your funds by submitting proof of ownership to the State Controller's office in Sacramento or to such other comparable authority as may be responsible for escheated funds. The California State Controller's office may be contacted by visiting [www.sco.ca.gov](http://www.sco.ca.gov).

The following notice generally applies to safe deposit boxes: The State of California requires us to inform you that your property or the proceeds of the sale of your property may be transferred to the appropriate state upon the time period specified by law running from the earlier of: (i) the date the lease or rental period on the safe deposit box expired; or (ii) the date of termination of any agreement because of which the safe deposit was furnished to you without cost. Refer to the Bank's Safe Deposit Account Agreement and Disclosure, as may be amended from time to time, for more information.

### **Waivers**

We may delay enforcing our rights under this Agreement without losing them. Any waiver by us shall not be deemed a waiver of other rights or of the same right at another time. You waive diligence, demand, presentment, protest and notice of every kind, except as otherwise set forth in this Agreement.

### **Withdrawals**

Unless otherwise clearly indicated to the contrary, any one of you who signs in the space designed for signatures on the signature card, including any authorized signers and agents, may withdraw or transfer all or any part of the account balance at any time. Withdrawals will first be made from collected funds, and we may, unless prohibited by law or our written policy, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request, which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitations. We may limit the amount of cash that can be withdrawn each day. Even if we honor a nonconforming request, repeated abuse of the stated limitation may eventually force us to close this account. Additional withdrawal limitations may be disclosed elsewhere.

## PART IV

### MISCELLANEOUS INFORMATION REGARDING CHECKS

The following information concerns checks issued by you on your account or deposited by you into your account.

#### **Checks Presented in Person for Payment by a Non-Account Holder**

If an item drawn against your account is presented for payment in person for payment by a payee who is not an account holder of the Bank, the Bank may charge a fee to the person presenting the check as a condition for cashing the check. See the Schedule of Fees. The Bank may also require identification acceptable to the Bank and not prohibited by law, including a fingerprint of the person presenting the check or other fraud prevention methods. You agree that the Bank may refuse to honor payment for checks presented for payment in person by a non-account holder, if the person refuses to pay the fee or provide the identification requested by the Bank. You agree that none of the foregoing will be deemed to be wrongful dishonor by us.

#### **Endorsements**

You warrant that all endorsements on items deposited to your account are genuine and further warrant that you are authorized to negotiate and/or deposit any items that contain no endorsements. We are authorized to supply your endorsement to any item taken for collection, payment, or deposit to your account. Also, we are authorized to collect any unendorsed item made payable to you without first supplying your endorsement, provided the item was deposited to your account, but may, at our option, require your personal endorsement prior to accepting an item for deposit.

We may require that each payee personally endorse any items, including government checks, insurance company items, or other special types of items. You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us in connection with your failure to endorse an item exactly as it is drawn or for any item that is alleged to have a forged, missing or unauthorized endorsement.

To the extent legally permitted, each co-owner of an account appoints the other co-owner as his or her attorney-in-fact with full power to endorse the name of any co-owner on any item for deposit, or to deposit without endorsement any such item, into the account or cash the item.

There are rules regarding both how you endorse checks that you ask us to cash or deposit and what you may place or have preprinted on the back of checks that you purchase for your own account.

You must endorse checks in the area that extends 1-1/2 inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. If your endorsement obscures our bank's endorsement, you're liable for checks that are returned late and unpaid.

You must also confine information that you place or have preprinted on the back of your checks to the area described below. If this information obscures the depository bank's endorsement, you're liable for checks that are returned late and unpaid.

Checks and other items you want to deposit or cash must be endorsed by all parties to whom the items are payable. We may require that any third parties have their bank verify or guarantee their endorsements.

#### **Facsimile, Mechanical and Electronic Signatures**

Many customers use a facsimile, mechanical or electronic signature, including a stamp or computer generated signature to authorize transactions, provide and authorize instructions and to endorse or otherwise complete other documents (referred to herein collectively as "facsimile signature"). If you use any form of facsimile signature in connection with any account, you agree to deliver a sample to us before you begin using it, and to execute and deliver agreements in a suitable form, if we so require. If you use a facsimile signature for any of these purposes, you are responsible for any such transactions, instructions or endorsements that appear to us to bear a signature that resembles the signature of a person authorized to sign on your account. When you use a facsimile signature in connection with any account, you agree you shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and you shall bear the entire risk for unauthorized use thereof, whether or not you are negligent, except as may be required by law. You agree that we may rely on facsimile signatures that resemble the appropriate original or any signature specimen given to us and that appears to have been made through an authorized medium, regardless of how the facsimile signature came to be placed on the item. We may rely on facsimile signatures, even if they were placed on items without your knowledge or consent. We may pay items bearing facsimile signature, regardless of the persons to whom they are drawn or paid. A facsimile signature that resembles an authorized signer's signature or any facsimile signature specimen is not considered a forgery or an unauthorized signature, and such a facsimile or automated signature shall be effective as your signature or endorsement, without regard to color variation, whether or not you have been negligent. You further agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile signature or the device by which it is affixed. This means that we are not responsible for any misuse of a facsimile signature we believe you authorized.

#### **Foreign Currency and Instruments**

You may not write items or other withdrawal orders on your account which order payment in a foreign currency. The processing and collection of foreign instruments are not subject to United States laws and regulations. We may refuse to accept for deposit or collection an item that is payable in a currency other than U.S. dollars or that is drawn on a bank or a branch of a bank located outside of the United States (a "foreign instrument"). If we accept a foreign instrument for deposit or collection, you bear all the risks associated with the collection process and foreign currency fluctuation (exchange rate risk). A foreign instrument may be returned unpaid much later (sometimes several months after we process the foreign instrument) than instruments that are drawn on banks located in the United States. You bear all the risks of a late return. We may decide not to credit a foreign instrument to your account until we receive the proceeds in

cleared funds from the paying bank. If we do provide credit, such credit is provisional and we may reverse the credit at any time if the foreign instrument is returned unpaid or is initially paid but then subsequently returned for fraud or any other reason. You agree that we may use the current exchange rate and we may charge your account for the full value of the foreign instrument, including any applicable fees, which may result in a loss to you. You are responsible for all fees incurred including exchange rate, our collection fee, and other charges assessed by the payor bank. You understand that foreign instruments sent for collection are sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control including a default by any banks or agents involved in the collection process or for loss of the foreign instrument in transit.

### **Forgeries/Alterations**

If your negligence contributes to a check being altered, changed or forged, we will not be responsible if we pay the check in good faith and in accordance with the reasonable commercial standards of our business. If anyone disputes the payment of a check because it was altered, changed, forged, bore an unauthorized signature or was otherwise improper, we may not credit the amount to your account until the dispute has been resolved.

We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless a law, rule or regulation provide otherwise, such a claim is deemed not to have been made until submitted in writing to us. You agree to fully cooperate in our investigation of such a claim. Your cooperation may include among other things, at the Bank's discretion: (1) a requirement that you submit a declaration under penalty of perjury describing your claim; (2) a report filed with the appropriate police and/or investigatory authority; (3) promptly providing documentation in support of your claim that the Bank requests them from you; and (4) if your claim arises from employee fraud or embezzlement, the Bank may require you to make a claim against any insurance coverage that you might carry for such a claim. Our liability to you will be reduced by the amount your insurance company pays you for any claim you tendered to it. Any failure to cooperate in the Bank's investigation may result in our decision not to honor your claim. We may, although we are not required to do so, provisionally credit your account pending the final outcome of the investigation. If we determine, in our sole discretion, that the debit to your account was not improper, then we may reverse any provisional credit made to your account.

We will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you to recover your loss against the person responsible and you agree to indemnify and hold us harmless from any such losses. In the event that we reimburse your loss, you agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources, including insurance coverage. At our request, you will provide us with all reasonable information about your insurance coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles.

In addition, from time to time we may make certain products and services that are designed to detect and/or deter check fraud available to you. While no product or service will be completely effective, we believe that the products and services we may offer will reduce the likelihood that certain types of fraudulent items will be paid against your account. You agree that if you fail to implement any of these products or services, or you fail to follow these and other precautions reasonable for your particular circumstances, you will be precluded from asserting any claims against the Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such items.

The following applies only to non-consumers: In addition to the above, you agree to review and monitor the work of your employees, accountants and other agents in order to reduce and prevent fraud. You also agree to implement effective policies and procedures to prevent and detect unauthorized transactions. For example, separating the functions of check issuing and check/statement reconciliation and reviewing these functions periodically to ensure accounts are being handled properly. You will be considered negligent in the handling of your account if you delegate the tasks of preparing checks and reviewing your statement to the same individual.

### **Fraud Prevention Guidelines**

There are several precautions that you can and should take to decrease the risk of unauthorized transactions from your accounts, and to help prevent check fraud, identity theft and other criminal activities against you. Please comply with the following guidelines and precautions:

- Call the Bank at the number listed on your account statement immediately if your new checks or Debit Card do not arrive within 10 business days of your order.
- Call the Bank immediately if there are discrepancies you cannot explain on your account statement as soon as you receive it. Look for discrepancies, including, but not limited to, checks cashed out of sequence or unexplained cash flows to or from your account.
- Keep accurate records. You can help prevent fraud to your account by keeping an accurate record of your account balance. Your account statement provides space for you to balance your account for each statement period. Remember to record any transaction you make at an ATM, or by telephone or online. Also remember to record any POS transaction or automatic payment from your account.
- Store blank and canceled check copies in a safe place. Remember that your checks provide access to your account. Even blank and canceled checks have information on them that someone could use to obtain funds from your account. Notify the Bank immediately if any check is lost or stolen.
- Use tamper-resistant checks at all times. Although we recommend that you use a Bank approved vendor, if you do not order your checks through the Bank, ask your check vendor about checks with special security features.
- Thoroughly shred unused deposit slips, transaction receipts, canceled checks and statements for your account before discarding them.
- Notify the Bank immediately if any form of identification, your checkbook or any blank checks are missing, lost or stolen.

- Write your checks in black or dark blue ink and fill in all lines completely.
- Write your checks carefully. Make sure that your numbers are readable and that they begin as far to the left side of the line as possible so someone cannot easily insert additional numbers.
- Sign your checks in a clearly legible manner and with indelible ink in order to prevent your checks from being altered or forged.
- Review carefully your checkbook and unused checks for unauthorized activity if you suspect that any of these items may have been stolen or tampered with, or if you are the victim of theft or your property was burglarized.
- Consider placing a credit watch on your account by contacting the major credit reporting agencies.
- Do not preprint your driver's license or Social Security number ("SSN") or taxpayer identification number on your checks.
- Do not give anyone permission to sign your name on checks.
- Do not allow others access to your PIN, ATM Card or VISA Debit Card.
- Do not give anyone a pre-signed blank check.
- Do not store signed blank checks.
- Do not provide account information, including account numbers, PINs, or Social Security Numbers to callers, even if they claim to be Bank representatives or law enforcement.
- Do not leave any outgoing mail containing checks in an unlocked mail collection box or in your residence mailbox. Whenever possible, deposit this type of mail in the designated slots inside your local post office.
- Review your account information frequently using the online banking system or by phone.
- Issue checks with care to avoid alterations or forgeries.
- Close your account immediately upon discovery of any known or suspected unauthorized activity. When you report missing, stolen, or unauthorized checks, we may recommend that any account(s) that has been compromised by unauthorized or fraudulent activity be closed. If you decline this recommendation and elect to leave your account open, we will not be liable to you for subsequent losses on the account due to unauthorized activity and we may require you to indemnify us for any losses we incur as well.
- Maintain close control over your facsimile signature devices to immediately detect any unauthorized use of those devices.
- Limit your telephone transactions with us to landline telephones. Cordless or cellular phone conversations can be intercepted without your knowledge or authorization.

### **Legends or Notations**

You recognize that the Bank has adopted automated collection and payment procedures so that it can process the greatest volume of items at the lowest possible cost to all customers. These automated procedures rely primarily on information encoded onto each item in magnetic ink. In recognition of this fact, you agree that in paying an item, the Bank may disregard all information on the item other than the identity of the drawee bank, the amount of the item, and any other information encoded onto the item in magnetic ink according to general banking standards, whether or not that information is consistent with other information on the item. We are not responsible for complying with any legends or notations placed upon checks either deposited into your account or drawn against it. Instructions such as "Void after 90 days", "Not good over \$1,000", "For deposit only", or similar language that purportedly restricts the negotiability of the item, whether preprinted, handwritten or typed on either the front or back of the item shall carry no effect on us and you agree to assume all risks and losses resulting from our payment or acceptance for deposit of these checks.

### **Multiple Party Checks**

Checks or other instruments that you wish to deposit, send for collection or cash should be endorsed by all parties to whom the instrument is payable. The Bank may require that any endorsement by a non-customer be verified or guaranteed by that party's financial institution. The Bank may also refuse to accept any multiple party check.

### **Post-Dated, Stale Dated and Other Checks**

Processing checks is a highly automated service, and we use commercially reasonable efforts to process them. We may pay checks drawn on an account even if one or more of the following are true: the check is dated after the date we pay it; the check is presented to us for payment more than six months after the date on the check; a stop payment previously requested has expired; the check contains language that purports to make it void before the time it was paid; or the check contains other language that purports to establish conditions under which it may be paid.

Unless you give us and we agree to honor a special "notice of post-dated check," we may charge your account for an item that is otherwise properly payable from the account, even though we pay the check before the date on it. You can provide this special notice to the Bank verbally, but it must be received by us so as to give us a reasonable opportunity to act on it before final payment of the item. In placing your notice of post-dated check, you must describe the check by giving the date, check number, amount of the check and name of the payee in order for us to return the item if it is presented for payment before the date on the check. Within fourteen (14) days of your verbal notification not to pay a post-dated item, we require that you provide notice to us in writing. We have a special form for this purpose. If you do not put your notice in writing, then your notice of post-dated check will expire at the end of the fourteen (14)-day period. If you put your notice in writing to us, then your notice of post-dated check will remain in effect for a total of six (6) months. If you wish to continue

your notice of post-dated check for additional six (6)-month periods, you must renew your notice before the current notice of post-dated check expires. We will impose a stop payment fee for each notice of postdated check and each renewal. See the Schedule of Fees. We may pay the item as of its date, even if you have given us a notice of post-dated check. If you do not want the item to be payable as of its date, you must provide us with a stop payment order in time for us to act on it before the date of the item.

Upon presentment of an item for payment more than six (6) months after its date, you agree that we may, in our sole discretion and without notice or inquiry to you, charge your account for the item. However, we are not obligated to do so. You agree that our obligation of good faith does not require us to make any inquiry of you or require us to give you notice prior to the payment of an item more than six (6) months after its date. Our payment of the item will be in good faith absent written notice from you in the form of a timely received stop payment order. If you want to ensure that we do not pay a stale dated item, you should place a stop payment order on the item.

### **Purchasing Checks**

Checks are processed electronically using the magnetic ink that is printed on the bottom of the check and contains the Bank's routing number, customer account number and the serial number of the check. This ink is specially formulated to provide the exact signal strength needed for the electronic equipment to read it. The placement of the characters on the item must also be exact in order to prevent errors.

As that is the case, we recommend that you use checks that we may obtain for you from a number of printers with whom we place orders. Check prices vary according to the types of checks you select. You can obtain information on the current price of checks by calling us at 888-494-4599 or contacting your office of account. Check charges may vary from time to time without specific notice to you. You are responsible for verifying the accuracy of all information shown on your checks and deposit tickets. If you find an error, please notify us immediately. We are not liable for losses resulting from incorrectly printed checks or deposit tickets.

If you want to use a different printer or a personal computer program that purports to print with an acceptable magnetic ink, you assume responsibility for any loss or obligation arising from the use of such check due to a failure to read the magnetic encoding properly. You agree not to print special limitations on checks, withdrawal orders or other items drawn on your account, such as "void over \$100" or "paid in full" or "void after 90 days." If you do print any special limitations, you agree that we are not bound by such limitations. You authorize us to pay such items without regard to the stated limitation(s). You further agree to indemnify us and hold us harmless for any claims or losses arising out of our refusal to honor said restrictions.

### **Stopping Payment on Checks**

If you want to stop payment on a check you have written, you may place a written stop payment order at a banking branch office before it is finally paid by us. Any authorized signer on the account may furnish a stop payment order.

You must furnish us with the account number, date, check number, amount of the check and name of the payee in order for us to stop payment on the item. If you provide us with any incorrect information, we will not be responsible for our failure to stop payment on the check. We will not be responsible for a stop payment order if we do not have a reasonable opportunity to act on it before final payment of the item. You may not stop payment on a check guaranteed by us.

You may furnish the stop payment order orally or in writing. If you give us an oral stop payment order, then it will be effective for fourteen (14) days. The stop payment order will expire at the end of fourteen (14) days unless you give us written notice of the stop payment order. We have a special form for this purpose. Upon confirming the order in writing, the order will remain in effect unless withdrawn by you in writing to us. If you do not renew the stop payment order when it expires and the item is presented for payment, we may pay the item and charge it to your account. There is a charge for each stop payment order and renewal order requested. See Schedule of Fees.

In some cases, we may pay an item even if a stop payment request is in effect. If we, or another person or entity, is determined by us to be a "holder in due course" of the item, we may pay the item. If we pay a check which has a valid stop payment order on it with correct information, we may be responsible to you for up to the face amount of the item if you establish that you have suffered a loss because we paid the item. You agree to assign to us all of your rights against the payee and/or any other holder of your check. You also agree to cooperate fully with us in any legal actions that we subsequently take against such persons.

Anyone holding the check, including the Bank, may be entitled to enforce payment against you despite the stop payment order. You agree to indemnify, defend, and hold us harmless from all costs (including attorneys' fees), actions, damages, claims and demands related to or arising from our action in stopping payment on the check.

### **Verify Accuracy When Check Stock Is Received**

You are responsible for verifying the accuracy of all the information shown on your checks. If you find an error in the printing, you should notify us immediately. Our liability in matters involving incorrectly printed checks is limited to the replacement cost of the checks, if we made arrangements for their printing.

## PART V

### SUBSTITUTE CHECKS AND YOUR RIGHTS: IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT

#### **What is a substitute check?**

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks, with a reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

#### **What are my rights as a consumer regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other laws.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we receive your claim and the remainder of your refund (plus interest if your account earns interest) no later than 45 calendar days after we receive your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

#### **How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at Heritage Bank of Commerce, Attention: Central Operations, 224 Airport Parkway, San Jose, CA 95110. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

#### **Your claim must include:**

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: identifying information, for example, the check number, the name of the person to whom you wrote the check and the amount of the check.

## PART VI

### PROTECTING YOUR ACCOUNT •

It is very important that you actively participate in affording protection to your account(s) due to fraud or wrongful use of your account or checks. Of paramount importance is the prompt examination of the account bank statement by an owner of the account. This review should include all checks and other debits along with verifying that the deposits shown on your internal records have posted to the account.

#### **Authorized Signers**

The term "authorized signer(s)" in this Agreement refers to those individuals that an account owner allows to have signature authority over an account and are authorized to sign checks and other payment orders. We are not in a position to question each and every payment order or check received, even if the payee is cash, or in the name of the authorized signer, therefore only the most trusted individuals should be allowed this responsibility and their actions should be monitored by the account owner(s).

#### **Internal Fraud**

All businesses must be alert to situations that could lead even trusted employees to take advantage of the responsibility given to them by their employer.

Following are some ideas that an account owner should incorporate into their plan for internal control.

- Whenever possible, separate the duties of employees handling financial transactions so that no one person handles a transaction from start to finish.
- Review paid checks, ACH activity and deposits processed on your account through the Bank's Internet banking system.
- Have the Bank statement delivered to the attention of the account owner prior to it being opened. The account owner should then, at minimum, review the checks presented on the statement and ask questions about unusual or questionable items.
- Never sign a blank check in advance for use later.
- Statements should be reconciled as soon as possible after receipt. Notify us immediately if any discrepancies occur in either the items paid or the deposits received.
- Investigate vendor complaints of non-payment or late payments immediately. If someone is diverting payments, your vendors could be affected.
- Watch for carry over balances on invoices coming in from vendors. If you generally pay-off monthly bills, the beginning balance should be zero.
- On occasion, an account owner should personally perform some accounting functions, such as preparing a deposit or reconciling an account.
- Be alert to checks being cashed out of sequence or checks made payable to an employee or cash.
- Keep canceled checks and/or copies of the bank signature card in a secure place to prevent a forger from easily copying a signature and finding out about any signing instructions that you may have.

The above items will help strengthen your controls but they do not substitute for proper insurance coverage and bonding of employees.

### **Protecting Your Supply of Checks**

Blank checks for your account should be treated the same way as other important business papers and assets in order to prevent misuse. They should not be left out or easily accessible. They should not be located in the same area as the paid checks that have the authorized signatures already in place. You should notify us immediately if you suspect that any checks are missing, even if it is a single check. You understand and agree that it is your obligation to safeguard your checks by taking reasonable steps and protective measures to prevent their unauthorized use. The Bank reserves the right to deny claims for monetary loss due to forged, altered or unauthorized checks paid against your account if you do not guard against improper access to your checks.

### **Safekeeping Your Paid Checks**

Your paid checks contain a wealth of information regarding your business and/or personal dealings, including the signatures of those authorized to transact business with the Bank. After the bank statement has been reviewed and reconciled, the statement which includes copies of paid checks should be stored in a secure place allowing only those you have authorized to have access to them.

## **PART VII ACCOUNT SPECIFIC TERMS**

### **Time Deposits**

If your account is a time deposit, you have agreed to keep the funds on deposit until the maturity of your account unless specifically stated otherwise. If your account has not matured, any withdrawal of all or part of the funds from your account may result in the closure of the account and may result in an early withdrawal fee. The Bank may consider requests for early withdrawal and, if granted, the early withdrawal fee provided in the Agreement will apply.

#### *Early Withdrawal Fee*

The early withdrawal fee is calculated as a forfeiture of part of the accrued interest that has been or would be earned on the account. If your account has not yet earned enough interest so that the early withdrawal fee can be deducted from earned interest, or if the interest already has been paid, the difference will be deducted from the principal amount of your account. For fixed rate accounts, the Bank may use the rate in effect for your deposit.

#### *Exceptions*

The Bank may let you withdraw money from your account before the maturity date without an early withdrawal fee: (a) when one or more of you dies or is determined legally incompetent by a court or other administrative body of competent jurisdiction; or (b) when the account is a Keogh Plan (Keogh), if you forfeit at least the interest earned on the withdrawn funds; or (c) if the time deposit is an Individual Retirement Account ("IRA") or Keogh Plan established pursuant to 26 USC 408 or 26 USC 401, as may be amended from time to time, when you reach age 59 1/2 or become disabled, and the money is not paid within seven (7) days after the account is opened; or (d) within an applicable grace period (if any).

### **Interest**

If your account earns interest, the following information applies:

#### *Payment of Interest*

The Bank will pay interest at the annual rate specified on the Deposit Rate Sheet, which does not reflect compounding ("Interest Rate"). The Agreement sets

forth the frequency of interest payments, the frequency of any compounding and crediting, the interest accrual basis, the balance on which interest will be paid, and any minimum balance requirements.

#### *Minimum Balance Requirements*

The Agreement may specify a minimum balance that you are required to maintain in your account. If the minimum balance is not maintained during a specified period, the Bank, at its option, may not pay interest on your account and/or may charge a fee for that period. You should review any minimum balance requirements in the Agreement.

#### *Initial Interest Rate*

The initial interest rate is the current annual rate of interest that the Bank will pay on the specified balance, if any is required, in your account. The Bank may pay interest at different rates, depending on the amount deposited and the type of depositor (individual, business, non-profit organization, etc.).

#### *Interest Compounding and Crediting*

The Agreement will indicate the interest compounding and crediting frequency for your account (if any). Compounding generally means that interest is being accrued on earned interest. Interest may be compounded more frequently than interest is credited to your account.

#### *Interest Accrual*

The Bank may accrue interest on your account more frequently than the Bank may pay or credit interest. The interest that has been calculated, but not paid to the account, is called accrued unpaid interest. If you deposit a non-cash item, such as a check, interest begins to accrue no later than the business day the Bank receives credit for the deposit of that item. This may not be the same day that you deposit the non-cash item to your account.

#### *Interest Adjustments*

If you receive a statement for your account, an interest adjustment may be reflected on the statement for your account for the month after it occurs rather than the month in which it occurs.

#### *Annual Percentage Yield and Annual Percentage Yield Earned*

The Bank may periodically disclose the annual percentage yield that is applicable to your account. The annual percentage yield ("APY") is a percentage rate that reflects the total amount of interest paid on the account. It is based on the interest rate earned on the account and the frequency of compounding for a 365-day period. If you receive a statement for your account, that statement will include the APY earned on your account for the period covered by the statement. The annual percentage yield earned ("APYE") is an annualized rate that reflects the relationship between the amount of interest actually earned on your account and the average daily balance in the account. Both the APY and the APYE are calculated according to formulas established by federal regulations. The APY that is disclosed in connection with your account may not be the same as the APYE that appears on the statement for your account.

### **Balance Methods**

As used in this Agreement, the "average daily balance" method means "the application of a periodic rate to the average daily balance in the account for the period, determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of the days in the period." The "daily balance" method means "the application of a daily periodic rate to the full amount of principal in the account each day."

## **PART VIII**

### **ELECTRONIC FUNDS TRANSFER ACT DISCLOSURE**

The provisions of the following Electronic Fund Transfer Disclosure apply only to electronic fund transfers to or from accounts established primarily for personal, family, or household purposes ("consumer accounts"). These provisions do not apply to any transactions that are not covered under the Electronic Funds Transfer Act or Regulation E.

#### **Direct Deposits**

You may authorize others to access your account on a regular basis and make electronic deposits (credits) to your account. For example, you may authorize your employer to electronically deposit your payroll into your account. Certain government benefit programs may also pay you through electronic deposits to your account. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you may call us at 888-494-4599 during normal business hours to find out whether the deposit has been made.

#### **Electronic Check Conversion**

You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to;

1. Pay for purchases; and
2. Pay bills.

#### **Visa Debit Card**

The electronic access device provided to you for use under the terms of this Agreement can either be an ATM Card that carries the Bank's logo ("ATM Card"),

an ATM Card enhanced with the Visa logo on the front of the card ("Debit Card"), or an ATM Card which has limited access to your savings account(s) ("Savings ATM Card"). Unless otherwise specified in this Agreement, the word "Card" shall mean both an ATM Card and a Debit Card. The ATM Card and the Debit Card are not a credit cards, which means you may not defer payment of transactions.

*Access Device Issuance* - We will issue one or more Cards which may be used to access your account(s) that are linked to the Card ("Linked Accounts"). You will specify each Linked Account during your enrollment for the Card. Additional accounts may be linked, subject to our discretion and approval. Only accounts with identical ownership and the same authorized signers may be linked.

Each Card will be issued in the applicable account owner's name. It will also bear a unique identifying number, it will include a field for the signature of the cardholder, and a unique personal identification number ("PIN").

*Types of Transfers* - Cards provided in connection with this Agreement may be used to obtain the following services ("Services"):

- Withdraw cash from Linked Accounts at participating ATMs;
- Make deposits to your Linked Accounts at one of our ATMs;
- Transfer funds between Linked Accounts (identical ownership with the same signers is required);
- Obtain balance information on Linked Accounts (Note: the information may not reflect recent transactions, and may include funds which are not available for immediate withdrawal);
- Conduct point-of-sale ("POS") transactions to purchase goods and services at merchant locations that agree to accept the Card, for Debit Cards this will include the ability to purchase goods and services from merchants that display the Visa logo; and

Some of these services may not be available at all ATMs, terminals or merchant locations. Also, Savings ATM Cards may not be used to conduct POS transactions. We are not responsible for the refusal of any merchant to accept or honor a Card.

*Electronic Check Conversion* - You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check (if you maintain a checking account with us).

*Dollar Limitations* - Access is not available to any line of credit associated with a Linked Account. Your available account balance must be sufficient to cover all withdrawal(s) and other transactions. Different dollar limitations may apply to different ATM Cards, Debit Cards or Services; dollar limitations may vary across nonproprietary network ATMs, POS terminals, or merchant locations (if applicable). At this time, the following dollar limitations apply to your Card usage:

- Heritage ATM/Debit cards have daily limits, our standard daily withdrawal limit for Cash at an ATM is \$525.00. You may also make POS transactions with a PIN ("PIN based transactions") up to \$1,000.00 each day, including cash back. The aggregate total of ATM and PIN based transactions may not exceed \$1,525.00 each day.
- In addition, you may engage in transactions with a signature ("signature based transaction") up to \$2,500.00 each day with your Debit Card at locations that accept cards with the VISA® logo.

*Consumer Use* - This Agreement applies only to electronic fund transfer (EFT) services to and from the accounts you have established with the Bank that are primarily for personal, family or household purposes ("consumer accounts"). You agree not to use the EFT services for non-consumer account purposes without a separate agreement with us for that purpose.

*Transaction Cutoff Times* - For purposes of determining when you have reached your daily limit, a day ends at 3:00 p.m., our local time. Transactions after 3:00 p.m., our local time, or on any day other than a business day, will be added together and treated as occurring on the next business day. For security purposes, we may place other limits on these accounts. Different limitations may apply at network ATMs maintained by other banks which have been programmed to accept your Card.

*Illegal Transactions* - You agree not to use your Card for any illegal transactions, including transactions in violation of the Unlawful Internet Gambling Enforcement Act of 2006 and its implementing Regulation GG. If we suspect that your transaction may be in violation of this Section, we may in our sole discretion block or delay a Card transaction to or from your account. We may also block or delay Card transactions that are reasonably determined by us to present security or fraud risks unacceptable to us. You agree that we may block or delay transactions under this Section without incurring any liability to you.

*PIN-less Transactions Outside of Visa* - In addition to Visa network processed transactions, the Debit Card is enabled to allow non-Visa network transaction processing. This means you may use your Debit Card on a PIN Debit Network. Not all PIN Debit Network transactions require a PIN to authenticate transactions. Examples of the PIN Debit Networks for which such transactions are allowed are Accel, and Star. Examples of the types of actions that you may be required to make to initiate a Visa network transaction on the Debit Card include signing a receipt, providing a Debit Card number over the phone or via the Internet, or swiping the Debit Card through a point-of-sale terminal. Examples of the types of actions you may be required to initiate a transaction on a PIN Debit Network include initiating a payment directly with the biller (possibly via telephone, Internet, or kiosk locations), responding to a logo displayed at a payment site and choosing to direct payment through that network, and having a cardholder's identity verified using known information derived from an existing relationship with you instead of through the use of a PIN.

*Hold on Funds; Security Interest* - When you use a Card, a hold will be placed on the Linked Account. The hold may be for the amount of the transaction, or for a pre-established amount in excess of individual transactions (for example, hotel or car reservations). The held funds will not be available for other account purposes, and we have the right to return checks or other items drawn against the Linked Account to maintain sufficient funds to pay for any previously authorized Card transactions. The hold will be released on or before the date that the Card transaction is settled through the applicable network, and you agree to maintain sufficient available funds on deposit in the affected account to cover all previously authorized transactions. The hold may continue even if you do not purchase

any goods or services for which authorization was obtained. If checks are returned, you agree to pay all applicable non-sufficient funds fees. However, we will not assess a fee or charge as a result of an overdraft created by paying an ATM or one-time Debit Card transaction.

*ATM Fees* - When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a balance inquiry fee even if you do not complete a fund transfer). At this time, our policy is to reimburse you for these third party ATM operator and network fees upon request up to \$20 per statement cycle.

*Foreign Currency Transactions* - If a Card is used to conduct a transaction in a currency other than U.S. dollars, then the merchant, network or card association that processes the transaction may convert any related debit or credit into U.S. dollars in accordance with its current policies and may impose fees or charges as part of this process. Visa currently uses a conversion rate that is either: (a) selected from a range of rates available in the wholesale currency markets (note: this rate may be different from the rate that Visa receives), or (b) the government-mandated rate. Visa and others may impose fees or charges and add them to the price of the conversion. The conversion rate may be different from the rate in effect on the date of the transaction or date posted on the Linked Account. You agree to pay the converted dollar amount to us. In addition, you will be required to pay any International Service Assessment fee (ISA fee) or other fee that Visa imposes on you or us in connection with the transaction. You agree to pay the converted dollar amount to us, as well as the International Service Assessment ("ISA") charges, a fee equal to up to 5% of the transaction amount, which may change from time to time.

*Card and PIN Security* - The PIN for your ATM Card or Debit Card is confidential and should not be disclosed to third parties or written on your Card. You are responsible for safekeeping your Card and PIN. You agree not to disclose or otherwise make your PIN, ATM Card or Debit Card available to anyone not authorized by you to use the PIN, ATM Card or Debit Card. If you authorize anyone to use your PIN, ATM Card or Debit Card, you will be liable for all of their transactions, and you cannot limit your liability to only specified transactions, unless and until you notify us that your authorization has been revoked (at which time we will cancel and/or substitute a new PIN, ATM Card or Debit Card).

*Cards* - The Cards are the property of the Bank. You agree to surrender all Cards to us upon request.

*Merchant Disputes* - If you have a dispute with a merchant regarding goods or services purchased with a Card transaction or other Service, you will need to resolve its dispute with the merchant.

*ATM Safety Tips* - As with all financial transactions, please exercise discretion when using an ATM. For your own safety, be careful. The following suggestions may be helpful.

- Prepare for your transactions at home (i.e., by filling out a deposit slip) to minimize your time at the ATM.
- Mark each transaction in your account record, but not while at the ATM. Always save your receipts. Don't leave them at the ATM because they may contain important account information.
- Don't lend your Card to anyone.
- Protect the secrecy of your PIN. Don't tell anyone your PIN. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
- Prevent others from seeing you enter your PIN by using your body to shield their view.
- When you make a transaction, be aware of your surroundings. Look out for suspicious activity near the ATM. At night, be sure the facility (including the parking area) is well lighted. It may be safer to bring someone with you when you make a transaction. If you observe any problem, go to another ATM.
- Don't accept assistance from anyone you don't know when using an ATM.
- If you notice anything suspicious or any other problem arises after you have begun an ATM transaction, cancel the transaction, pocket your card and leave.
- Wait until you are at home or in other secure surroundings to count your cash.
- At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
- Be especially cautious when making transactions in neighborhoods which are unfamiliar to you.
- We want the ATM to be safe and convenient for you. Therefore, please tell us if you know of any problem with an ATM. For instance, let us know if a light is not working or there is any damage to a facility. Report any suspicious activity to us and to the local law enforcement.

## **Fees**

See our Schedule of Fees for all fees that may apply.

## **Telephone Transfer Service**

You may call one of our representatives during regular business hours to use our telephone transfer service to: transfer funds between your linked savings and checking accounts; make a loan payment by funds transfer to your linked loan; get a loan advance from your linked line of credit account; and make inquiries as to the status of your linked savings and loan accounts and recent transactions. By use of the telephone transfer service with your personal identification code ("Codeword"), you authorize us to transfer funds between your linked checking or savings accounts and linked credit or loan accounts with us in accordance with instructions given by you through the telephone transfer service. All telephone transfer service transactions are covered by our rules and regulations governing accounts, including the "Frequency Limitations" outlined above, applicable to savings and money market accounts. There is no service fee required to use the telephone transfer service. Transfers are subject to your linked account having sufficient available balances.

## **Documentation**

*Terminal Transfers* - You can get a receipt at the time you make any transfer to or from your account using one of our automated teller machines or at point-of-sale terminals.

*Preauthorized Credits* - If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 888-494-4599 to find out whether or not the deposit has been made.

*Periodic Statements* - You will get a monthly account statement unless there are no transfers in a particular month. In any case you will get the statement at least quarterly.

## **Preauthorized Payments**

**Right To Stop Payment And Procedures For Doing So** - If you have told us in advance to make regular payments out of your account, you can stop any of these payments. You can visit your local branch or contact us during regular business hours at 888-494-4599. You may also write to us at:

Heritage Bank of Commerce  
Attention: Central Operations  
224 Airport Parkway  
San Jose, CA 95110

in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. We will charge you the stop payment fee listed in our Schedule of Fees for each stop payment order you give.

*Notice Of Varying Amounts* - If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

*Liability For Failure To Stop Payment Of Preauthorized Transfer* - If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

## **Consumer Liability**

Tell us AT ONCE if you believe your debit card or Personal Identification Number has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your Personal Identification Number, you can lose no more than \$50 if someone used your Personal Identification Number without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your Personal Identification Number, and we can prove we could have stopped someone from using your Personal Identification Number without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was sent to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

## **Contact in Event of Unauthorized Transfer**

If you believe your Personal Identification Number has been lost or stolen, you can visit your local branch or contact us during normal business hours at 888-494-4599. You may also write us at:

Heritage Bank of Commerce  
Attention: Central Operations  
224 Airport Parkway  
San Jose, CA 95110

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

## **Special Instructions for Reporting Lost/Stolen Cards after Banking Hours:**

If you believe your Card has been lost or stolen or a transfer has been made using the information from your check without your permission, call (833) 221-8633 to report the information if you are calling when the Bank is closed.

## **Financial Institution's Liability**

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

1. If, through no fault of ours, you do not have enough money in your account to make the transfer;
2. If the transfer would go over the credit limit on your overdraft line;

3. If the telephone system was not working properly and you knew about the breakdown when you started the transfer;
4. If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken; or
5. There may be other exceptions stated in our agreement with you.

### **Confidentiality**

We will disclose information to third parties about your account or the transfers you make:

1. Where it is necessary for completing transfers, or
2. In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
3. In order to comply with government agency or court orders,
4. Pursuant to a legal process served on us, or
5. If you give us your written permission.

Refer to our privacy notice, applicable to consumer accounts for further details.

### **Change in Terms/Termination/Suspension of Service**

We may change the terms, terminate or suspend your use of some or all of our electronic fund transfer services at any time, with or without cause and without affecting your outstanding obligations.

### **In Case of Errors or Questions about Your Electronic Transfers**

You can visit your local branch or telephone us or write us at

Call us at:

888-494-4599

or Write us at:

Heritage Bank of Commerce  
Attention: Central Operations  
224 Airport Parkway  
San Jose, CA 95110

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number;
2. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information; and
3. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

Special Rules for Visa Debit Card Transactions - If the Debit Card is used in a transaction that is processed through a VISA, Interlink, or Plus network, including ATM transactions, then the Visa Zero Liability Policy may apply. The VISA Zero Liability Policy does not apply to transactions not processed by VISA or certain commercial card transactions. If the VISA Zero Liability Policy applies, upon notification from you of unauthorized transactions, we will limit your liability for those transactions to zero and will provide you with provisional credit for those transactions within five business days from receipt of notification; provided that you provide us with written confirmation of those transactions. Subject to limits provided under the Electronic Fund Transfer Act, we may withhold provisional credit, to the extent allowed under applicable VISA rules or otherwise allowed by law, if we determine that the circumstances or account history warrant the delay. For purposes of this Section and the VISA Zero Liability Policy, the term "unauthorized transaction" excludes any transaction not otherwise subject to the VISA Zero Liability Policy, as set forth in the applicable VISA operating regulations, as amended from time to time. The Visa Zero Liability Policy does not apply if we determine that you were grossly negligent or fraudulent in the handling of your account or Debit Card.

## PART IX

### FUNDS AVAILABILITY POLICY DISCLOSURE

#### **Funds Availability Policy**

##### *Your Ability to Withdraw Funds*

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash, and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 5:00 p.m. in a branch, before 8:00 a.m. in a Heritage onsite night depository, or before 3:00 p.m. at a Heritage onsite ATM (local time of the Bank), on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 5:00 p.m. in a branch, after 8:00 a.m. in a Heritage onsite night depository, after 3:00 p.m. at a Heritage onsite ATM (local time of the Bank), or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

##### *Longer Delays May Apply*

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$225 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will send you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available;

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid;
- You deposit checks totaling more than \$5,525 on any one day;
- You redeposit a check that has been returned unpaid;
- You have overdrawn your account repeatedly in the last six months; or
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the fifth business day after the day of your deposit.

##### *Special Rules for New Accounts*

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, travelers, and federal, state, and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,525 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the ninth business day after the day of your deposit.

##### *Holds on Other Funds (Check Cashing)*

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

##### *Holds on Other Funds (Other Account)*

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

# Schedule of Fees

# Analysis & Standard Fees

CLIENT AGREES TO PAY BANK THE FEES LISTED BELOW. WHERE APPLICABLE, FEES AND CHARGES MAY BE APPLIED TO ACCOUNT ANALYSIS.

## Account Analysis Fees

### ACH/EFT

Credits / each .....	0.16
Debits / each .....	0.16

<b>DEPOSIT ADJUSTMENT</b> (Credit / Debit).....	4.00
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<b>CHANGE ORDER FURNISHED</b> .....	5.00
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### CHECKS

Copies / each .....	4.00
Paid / each .....	0.16

### COIN

Deposited / per roll .....	0.15
Deposited / per loose bag .....	12.00
Deposited / per loose bag, subject to count .....	15.00
Coin Supplied / per roll .....	0.15

### CURRENCY

Deposited / per \$1,000 .....	1.50
Supplied / per \$1,000 .....	1.50

<b>DEPOSITED ITEMS</b> / each .....	0.15
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<b>DEPOSITS</b> / each .....	1.50
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<b>MAINTENANCE CHARGE</b> / monthly .....	22.00
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<b>NEGATIVE AVAILABLE BALANCE RATE</b> .....	Prime + 5.00%
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## Standard Fees

### ACCOUNT RESEARCH

Per Copy .....	4.00
Per Hour .....	45.00

<b>BOND/COUPON COLLECTION</b> / each .....	25.00
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### CHECKS

Copies / each (online banking copies - no cost).....	4.00
Cashing / each (non-customer) .....	5.00
Images with Statement / monthly.....	5.00

<b>CHEXSYSTEMS® COLLECTION FEE</b> .....	75.00
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<b>CLOSED ACCOUNT WITHIN 90 DAYS OF OPENING</b> .....	20.00
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### COLLECTION

Service Fees / each .....	*25.00
<small>*plus all charges imposed on us by another Financial Institution in the course of the collection</small>	

Returned Unpaid .....	15.00
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<b>COIN DEPOSITED</b> / per loose bag (Subject to count) .....	15.00
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<b>COURIER/NIGHT DROP PROCESSING</b> / each envelope .....	2.50
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### DEBIT/ATM CARD

Lost Card Fee .....	5.00
Rush Order (in U.S.) .....	50.00
Rush Order (outside of U.S.) .....	75.00

Continued...

**HERITAGE**  
BANK OF COMMERCE

[www.HeritageBankofCommerce.bank](http://www.HeritageBankofCommerce.bank)

If you have questions regarding the Schedule of Fees, please call **800.796.4777**



**DOCUMENTARY COLLECTION** / each ..... \*50.00  
 \*plus all charges imposed on us by our correspondent bank(s)

**ESCHEATMENT NOTICE** ..... 2.00

**FOREIGN CURRENCY**

Purchased / each currency ..... \*10.00  
 \*plus all charges imposed on us by our correspondent bank(s)

Redeemed / each currency ..... \*10.00  
 \*plus all charges imposed on us by our correspondent bank(s)

Foreign Dollar Check Processing / each ..... 10.00  
 Foreign Drafts / each ..... 50.00

**IRA**

Annual Fee ..... \*20.00  
 \*waived with a \$10,000+ minimum balance

Transfer Out or Closure Fee ..... 25.00

**LEGAL PROCESS** ..... 100.00

**MISCELLANEOUS FEES** ..... as applicable

**NIGHT DEPOSITORY**

Annual Fee ..... 25.00  
 Key Deposit / Lost Key Replacement ..... 10.00

**NOTARY FEE** / each ..... 15.00

**NSF**

Paid NSF Item / each ..... 35.00  
 Checks, ACH and Recurring Debit Card Transactions Paid

Returned NSF Item / each ..... 33.00  
 Checks, ACH and Recurring Debit Card Transactions Returned

Daily Maximum ..... 10 charges  
 Daily Overdraft Fee ..... \*5.00

\*fee assessed beginning on the third consecutive day in which your account has carried a negative balance. This fee will be assessed each business day until the account balance becomes positive.

**OFFICIAL CHECKS**

Customer / each ..... 8.00  
 Non-Customer / each ..... 20.00

**RETURNED DEPOSITED ITEMS**

Returned Item Charge / each ..... 12.00  
 Checks, ACH

Redeposited Item Charge / each ..... 12.00  
 Checks, ACH

Manual ACH Return / each ..... 75.00

**SAFE DEPOSIT BOX**

Drilled Box ..... 200.00  
 Lost Key ..... 25.00

**SAVINGS OVERDRAFT TRANSFER** ..... no charge

**STATEMENT**

Special Request ..... 5.00  
 Copies ..... 5.00

CD / each ..... 40.00

**STOP PAYMENTS** - Includes ACH/EFT Reversal ..... 30.00

**TELEPHONE TRANSFER** between Heritage Accounts ..... 2.00

**TREASURY BILL/NOTE PURCHASE** ..... 50.00

**WIRE TRANSFERS**

Incoming Domestic ..... 15.00  
 Incoming Foreign ..... 15.00

Outgoing Domestic ..... 35.00  
 Outgoing Foreign ..... 45.00

Foreign Wire Tracer ..... 20.00  
 Phone Notification ..... 5.00

OLB Wire Verification ..... 15.00

**ATM USAGE FEES**

We will reverse up to ten (10) ATM usage fees assessed by another Domestic Financial Institution per statement cycle, not to exceed \$20.00. These fees are assessed when using another Financial Institution's ATM machine. Requests for reimbursement must be made within 60 days of the statement cutoff.

## Heritage Direct Business Online Banking

**ONLINE BANKING** / monthly ..... 5.00

**QUICKBOOKS INTEGRATION** ..... no charge

**ACCOUNT TRANSFERS** ..... no charge

**BILL PAY** / monthly ..... 10.00

**STOP PAYMENTS** / each ..... 30.00

## Heritage Direct Personal Online Banking

**ONLINE BANKING** ..... no charge

**QUICKEN INTEGRATION** ..... no charge

**ACCOUNT TRANSFERS** ..... no charge

**BILL PAY** (\*transaction fees may apply) ..... \*no charge

**MOBILE BANKING**

Monthly ..... no charge

Mobile Deposit ..... no charge

**STOP PAYMENTS** / each ..... 30.00

CUSTOMER NAME SONRISAS DENTAL HEALTH INC
---

ACCOUNT NUMBER(S) 551003262
--------------------------------

**Heritage Bank of Commerce and the client named above agree as follows:**

1. Bank may honor checks, drafts and other orders for the payment of money drawn on client's above described account(s) when the items bear or appear to bear the facsimile or electronic signature of any of the following persons:

PRINTED NAME Tracey Carrillo Fecher
--

Sample Facsimile Stamp or Attach Copy of Check for Sample of Electronic Signature

PRINTED NAME
--------------

Sample Facsimile Stamp or Attach Copy of Check for Sample of Electronic Signature

PRINTED NAME
--------------

Sample Facsimile Stamp or Attach Copy of Check for Sample of Electronic Signature

2. Bank may honor and charge client for any orders for payment or funds transfer which are received by facsimile (FAX) machine or telecopier or similar means.
3. Bank may honor and charge client for such items, regardless of by whom or by what means the actual or purported facsimile or electronic signature has been made, provided the facsimile or electronic signature resembles the signature or the facsimile or electronic specimen which client has filed with the Bank.
4. Client is responsible for maintaining security of the facsimile signature or the device by which it is affixed and will bear the entire risk for unauthorized use thereof whether or not client is negligent. Client agrees that no facsimile or electronic signature that the Bank has been authorized to honor may be considered a forgery or unauthorized signature, but that such facsimile or electronic signature shall be effective as the client's signature or endorsement whether or not client is negligent.
5. Client agrees to indemnify and hold Bank harmless from and against any and all loss, costs, damage, liability, or exposure (including reasonable attorney's fees) that Bank or client may suffer or incur as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile or electronic signature or the device by which it is affixed.
6. All previous authorizations for the signing and honoring of checks, drafts or other orders for the payment of money drawn on Bank by client are continued in full force and effect.
7. Bank may terminate this Agreement at any time with or without cause or prior notice.

CUSTOMER SIGNATURE 
---

DATE
------

CUSTOMER SIGNATURE
--------------------

DATE
------

**CORPORATIONS, PARTNERSHIPS, LLC'S, LODGE, SOCIETY, OR UNINCORPORATED ASSOC. OR ORGANIZATIONS , PLEASE ALSO COMPLETE THE REVERSE SIDE.**

FOR BANK USE ONLY REVIEWED BY: _____ DATE: _____
---

## CORPORATE CERTIFICATION

I certify that:

I am the Secretary or Assistant Secretary of the Corporation named on the reverse side of this form.

The following resolution is a complete and accurate copy of a resolution duly adopted by the Corporation's Board of Directors:

RESOLVED: The President, any Vice President, the Secretary or Treasurer of this Corporation is authorized to enter into Facsimile / Electronic Signature Agreements with Heritage Bank of Commerce on behalf of this Corporation.  
FURTHER RESOLVED: This authorization is in addition to any other authorizations in effect and shall remain in effect until Heritage Bank of Commerce receives written notice of its revocation.

This resolution is now in full force and has not been revoked or changed in any way.

CORPORATE SECRETARY OR ASSISTANT CORPORATE SECRETARY'S SIGNATURE

DATE

## AUTHORIZATION

BY PARTNERSHIP, LLC, LODGE, SOCIETY OR UNINCORPORATED ASSOCIATION OR ORGANIZATION

By signing below, you certify and agree that:

1. If client is a partnership, the persons signing below as partners constitute all of the general partners of the partnership, and authorize the person signing on the reverse to enter into Facsimile / Electronic Signature Agreements with Heritage Bank of Commerce.
2. If client is an LLC, the person(s) signing below is/are the Manager(s) of the client and are authorized to enter into Facsimile / Electronic Signature Agreements with Heritage Bank of Commerce.
3. If client is a lodge, society or unincorporated association or organization, the persons signing below are the officers of the client and are authorized to enter into Facsimile Signature Agreements with Heritage Bank of Commerce.
4. This Authorization is in addition to any other authorizations in effect and shall remain in effect until Heritage Bank of Commerce receives written notice of its revocation.

PARTNER / MANAGER / OFFICER'S SIGNATURE

DATE

**D**



**DATE:** August 12, 2022

**TO:** SDH Board of Directors

**FROM:** Tracey Fecher, CEO

**RE: CEO Report**

---

1. Clinic Operations:

- Visits in July were off by 110 visits due to Covid absences for providers and staff being on PTO.
- Beginning in September, the Practice Manager will be creating a monthly visit volume report for board members, highlighting actual visits vs budget as well as the payer mix actual vs. budget.

2. FQHC and Farmworkers Contract:

- The SMMC FQHC contract was approved by the San Mateo County Board of Supervisors on August 2<sup>nd</sup>. CEO Fecher attended the board meeting and thanked the supervisors for the on-going partnership.
- The Puente team has been challenged to fill open farmworker appointments, especially for last-minute cancellations, due to the farms being busy at this time of year. Farmworker's managers are denying requests for time off. The SMMC, Puente and Sonrisas team brainstormed ways to alleviate this issue, including treating farmworker families who are covered under the contract. Sonrisas receives payment under the contract for no-shows in Pescadero.

3. Staffing Update:

- On July 19<sup>th</sup>, a summer picnic was held for all Sonrisas' staff at a local park. The team had a wonderful time hanging out, playing games, and competing in a relay race. After the stresses of the pandemic, the team enjoyed being together without masks outdoors. There are multiple staff who excel at Giant Jenga!

4. Operations Update:

- This month the team is moving phone systems from 8x8 to a local company, Langineers. After reviewing three new phone systems, the team chose Langineers based on their support model, that phones are included in the monthly contract and that their software allows advanced queues and auto attendant features. It will also allow the CCC team to text Sonrisas patients from the main phone number with a shared message queue, so CCCs can all see and handle messages from/to patients. The cost of the system is slightly less than the 8x8 contract that expires on 8/31/22.
- The team is beginning to explore selling the Sonrisas truck, since it is not needed to move mobile equipment weekly. An update will be provided in September.

5. Partnership Update:

- Puente has invited Sonrisas to be their institutional partner at their Fall Harvest event on Saturday, September 24<sup>th</sup>. Director Cutler has agreed to represent Sonrisas at the event. Several staff members will also be invited to attend.
- CEO Fecher met with Rita Mancera, Executive Director of Puente, to discuss a permanent dental clinic in Pescadero. The teams are currently exploring the viability of a dental van, since building permits in Pescadero are very difficult to get.

**6. Financial Update:**

- The front office management and finance team worked closely together to review open insurance claims, correcting Accounts Receivable revenue. The team uncovered some areas for workflow improvement moving forward. The next project for the team is reviewing and improving patient billing workflow.
- On August 12th, Sonrisas' current cash position was \$2,128,000.

**E**



**DATE:** August 12th, 2022

**TO:** SDH Board of Directors

**FROM:** Cheryl A. Fama, CFO  
Tina Wang, Senior Accountant

**RE:** **May & June Unaudited Financials and YTD Performance to Budget**

---

**MAY PERFORMANCE:**

**Noteworthy Activity:**

- **\$130,515 Employee Retention Credit was received from IRS and was recorded as a reduction to salaries: (\$97,219) for direct salaries and (\$33,296) for administrative.**
- A. Revenue:** Net Patient Revenue was **\$221,342** below budget by \$20k.
  - Total visits were 1182, 38 visits below budget.
  - Total gross revenue was \$481,520 - **(\$38K)** below budget due to fewer visits.
  - Total uncompensated care deductions of **(\$260,178)**, 54% of gross revenue including estimated \$24,502 Tobacco tax revenue.
- B. Expenses:** \$138,802 better than budget due to receipt of \$130,515 for Employee Retention Credit.
  - Total Direct Expenses- \$116,751 better than the budget.
  - Total Indirect Expenses- \$22,051 better than the budget.
- C. Donations/Grants & Other Income:** **\$123,740** - \$19K below budget.
  - Grants and Donations included \$44,709 of released grants, \$3,849 in individual donations, and \$75,000 in PHCD support.
  - Interest Income was \$181.

**NET INCOME \$101,129 - \$99,179 better than budget**

**JUNE PERFORMANCE:**

**Noteworthy Activity:**

- Per Board approval, a total of \$60,000 of the IRS Employee Retention Credit was distributed to employees based on hours worked hours in FY22: \$14,520 to Admin Staff and \$45,480 to Clinic Staff.
- In August, a check for \$187,102 was received for Denti-Cal Incentive Payments for fiscal years '20 and '21. As FY '22 books have not been closed, the funds were allocated between centers and booked in June: \$32,511 for HMB and \$154,591 for San Mateo.



- A. Revenue:** Net Patient Revenue was **\$206,189**, below the budget by \$38k
- Total visits were 1175, 105 visits below budget.
  - Total gross revenue was \$534,389 - **(\$10K)** below budget due to fewer visits.
  - Total uncompensated care deductions were **(\$328,200)**, 61% of gross revenue with no estimated Tobacco Tax separately recorded. Tobacco tax revenue was recorded in the gross revenue line.
- B. Total Expense:** **(\$463,177)** – \$77,242 higher than budgeted
- Total Direct Expenses- \$51,954 higher than budget due to \$45k bonus distributed to employees and needed equipment repair and maintenance.
  - Total Indirect Expense- \$25,288 higher than budget due to \$14K bonus distributed to employees and placement fee paid for the office administrator.
- C. Donations/Grants & Other Income:** **\$345,633** - \$193K better than the budget
- Grants and Donations included \$80,689 released from restricted grants, \$19k received from First 5 Grant, \$2,666 in individual donations, and \$75,000 in PHCD support.
  - \$187,102 Denti-Cal incentive grant was accrued for 2020 & 2021. The check was received in August 2022 as noted above.
  - Interest Income was \$175.
- NET INCOME \$88,643 - \$77,423 better than budget**

**YTD PERFORMANCE:**

- Visit volume was challenged by Covid and its impact on staff availability bringing visits for the year short of budget target by 413 visits (3%). 463 of the visits below budget were commercial and PPO visits and 268 visits more than budget were Farmworkers (not budgeted anticipating contract termination) and Medi-Cal Dental.
- Variable costs related to patient care continue to be well managed; visits down 3%; Direct costs under budget by 7%
- Net income was \$473,037 as compared to the budget of \$360. This performance was achieved in large part due to unique, non-recurring items such as the Employee Retention Credit, transfer in of grant money for capital project at San Mateo, Medi-Cal Dental incentive check for two prior years and other items delineated below. However, when these unique items are removed, the Net Income would be \$27K over budget.

**YTD PERFORMANCE TO BUDGET:** YTD net income is **\$471,764** better than budget. The estimated Cash-flow is **\$466K** better than budget. PHCD grant received to date is \$900,000.



Sonrisas  
Dental Health

	YTD Actual	YTD Budget	Performance
<i>Visits</i>	13,691	14,104	(413)
Gross Patient Revenue	\$5,763,720	\$6,029,790	(-4%)
Uncompensated Care (Deductions)	\$(3,227,091)	\$(3,327,781)	3%
Grants/Donations/Other Income	2,384,730	1,927,168	24%
Direct Cost	\$(2,880,402)	\$(3,086,589)	7%
Indirect Cost	\$(1,568,833)	\$(1,542,220)	(-1%)
<b>Net Income</b>	\$472,124	\$360	1311%
<i>Non-cash items adj.</i>			
Depreciation	\$292,611	\$305,695	4%
Capital Expenditure	\$(359,865)	\$(367,544)	2%
<b>Estimated Cash Flow</b>	\$404,870	\$(61,849)	755%

**YTD net income of \$472K** includes \$140k grant for San Mateo Build Out capital expenditures and \$23K in-kind donations which will be capitalized monthly. Also includes \$131K in Employee Retention Credits and \$151K in unbudgeted Denti-Cal incentive payments for 2020 and 2021.

Sonrisas Dental Health  
 Revenues and Expenditures - Budget vs Actual  
 As of June 30, 2022

As of Date:  
 Location:  
 Restriction:

05/31/2022  
 Sonrisas Dental Health  
 Unrestricted

06/30/2022  
 Sonrisas Dental Health  
 Unrestricted

	Month Ending 05/31/2022			Month Ending 06/30/2022			Year To Date 06/30/2022		
	Actual	2022 BUDGET	Budget Diff	Actual	2021 BUDGET	Budget Diff	Actual	2021 BUDGET	Budget Diff
Revenue and Expenditures									
Net Program Income									
Patient Revenue									
Patient Services									
Commercial Insurance	14,613.00	17,790.41	(3,177.41)	23,107.00	18,667.04	4,439.96	189,502.00	207,516.84	(18,014.84)
PPO	77,723.72	118,563.90	(40,840.18)	92,723.85	124,413.81	(31,689.96)	1,130,994.89	1,386,588.23	(255,593.34)
Public Dental Insurance	341,908.00	288,866.23	53,041.77	338,999.30	303,032.89	35,966.41	3,482,763.00	3,337,774.69	144,988.31
Private Pay	5,535.00	9,577.15	(4,042.15)	8,677.00	10,050.37	(1,373.37)	91,491.00	112,327.29	(20,836.29)
Affordable Scale	8,875.00	21,958.21	(13,083.21)	16,696.00	23,021.64	(6,325.64)	226,251.00	247,383.99	(21,132.99)
Farmworker	8,301.00	0.00	8,301.00	12,043.00	0.00	12,043.00	79,511.00	0.00	79,511.00
FQHC	24,564.00	62,769.01	(38,205.01)	42,143.00	65,874.77	(23,731.77)	562,956.00	738,199.33	(175,243.33)
Gross Patient Revenue	481,519.72	519,524.91	(38,005.19)	534,389.15	545,060.52	(10,671.37)	5,763,468.89	6,029,790.37	(266,321.48)
Uncompensated Care									
Prior Period Adjustment	1,668.64	(3,200.00)	4,868.64	(4,086.35)	(3,200.00)	(886.35)	(18,704.97)	(38,400.00)	19,695.03
Uncompensated Care - Commercial Insurance	(4,384.70)	(2,607.57)	(1,777.13)	(5,203.37)	(2,735.81)	(2,467.56)	(39,970.12)	(30,293.59)	(9,676.53)
Uncompensated Care - PPO	(33,417.93)	(50,956.40)	17,538.47	(40,912.84)	(53,470.01)	12,557.17	(494,444.18)	(595,660.97)	101,216.79
Uncompensated Care - Public Dental Insurance	(236,866.10)	(184,294.71)	(52,571.39)	(240,306.65)	(193,334.84)	(46,971.81)	(2,440,868.75)	(2,223,108.79)	(217,759.96)
Tobacco Tax	24,501.90	0.00	24,501.90	0.00	0.00	0.00	119,906.10	0.00	119,906.10
Uncompensated Care - Affordable Scale	(4,031.00)	(10,232.13)	6,201.13	(7,387.00)	(10,727.38)	3,340.38	(102,590.00)	(115,142.39)	12,552.39
Uncompensated Care - Farmworker	914.00	0.00	914.00	(1,292.00)	0.00	(1,292.00)	(13,841.00)	0.00	(13,841.00)
Uncompensated Care - FQHC	(5,878.20)	(25,101.32)	19,223.12	(21,228.00)	(26,343.31)	5,115.31	(206,299.00)	(295,205.87)	88,906.87
Fee Adjustments	(2,733.62)	(1,775.00)	(958.62)	(2,497.26)	(1,775.00)	(722.26)	(25,384.55)	(21,300.00)	(4,084.55)
Patient Account - Bad Debt Write-off	48.87	0.00	48.87	(5,286.96)	(8,669.00)	3,382.04	(4,894.54)	(8,669.00)	3,774.46
Total Uncompensated Care	(260,178.14)	(278,167.13)	17,988.99	(328,200.43)	(300,255.35)	(27,945.08)	(3,227,091.01)	(3,327,780.61)	100,689.60
Other Program Revenue									
Other Program Revenue	0.00	0.00	0.00	0.00	0.00	0.00	250.00	0.00	250.00
Total Other Program Revenue	0.00	0.00	0.00	0.00	0.00	0.00	250.00	0.00	250.00
Net Patient Revenue	221,341.58	241,357.78	(20,016.20)	206,188.72	244,805.17	(38,616.45)	2,536,627.88	2,702,009.76	(165,381.88)
Total Expenses									
Direct Expenses									
Direct Personnel Expense									
Direct Program Salaries	80,764.24	190,492.12	109,727.88	238,792.15	190,492.12	(48,300.03)	2,128,065.90	2,285,905.44	157,839.54
Payroll Taxes	12,639.92	13,486.85	846.93	17,351.92	13,486.85	(3,865.07)	164,539.37	161,842.20	(2,697.17)
Unemployment Taxes	71.39	2,285.90	2,214.51	471.57	2,285.90	1,814.33	12,509.82	27,430.80	14,920.98
Benefits	7,111.07	6,171.94	(939.13)	3,954.67	6,171.94	2,217.27	59,766.12	74,063.28	14,297.16
401k Match	4,615.94	5,200.43	584.49	4,993.67	5,200.43	206.76	51,906.72	62,405.16	10,498.44
Worker's Comp	782.37	662.30	(120.07)	782.37	662.30	(120.07)	9,809.19	7,947.60	(1,861.59)
Continuing Education	0.00	50.00	50.00	0.00	50.00	50.00	2,732.00	600.00	(2,132.00)
License and Registration	705.19	1,075.00	369.81	1,593.19	1,075.00	(518.19)	11,602.39	12,900.00	1,297.61

Total Direct Personnel Expense	106,690.12	219,424.54	112,734.42	267,939.54	219,424.54	(48,515.00)	2,440,931.51	2,633,094.48	192,162.97
Clinic Expenses									
Sterilization Services	793.80	756.00	(37.80)	793.80	756.00	(37.80)	9,553.80	9,072.00	(481.80)
Shredding	73.00	67.00	(6.00)	107.00	67.00	(40.00)	887.00	804.00	(83.00)
Dental Specialist-Claims Processing	2,346.73	0.00	(2,346.73)	2,690.22	0.00	(2,690.22)	5,036.95	0.00	(5,036.95)
Dental Supplies	14,163.47	17,000.68	2,837.21	15,267.58	17,833.67	2,566.09	215,958.87	196,078.91	(19,879.96)
Small Dental Equipment	140.38	0.00	(140.38)	1,032.67	0.00	(1,032.67)	2,182.35	7,291.00	5,108.65
Dental Equipment Repair	2,616.66	1,036.00	(1,580.66)	5,660.20	1,036.00	(4,624.20)	29,649.61	20,508.00	(9,141.61)
Lab Fees	7,870.49	10,373.53	2,503.04	12,503.92	10,883.71	(1,620.21)	114,432.49	120,539.84	6,107.35
Uniforms	0.00	92.00	92.00	0.00	92.00	92.00	200.00	1,104.00	904.00
PPE& Covid Related	5,904.43	8,600.23	2,695.80	5,071.39	9,019.32	3,947.93	61,569.00	98,106.06	36,537.06
Total Clinic Expenses	33,908.96	37,925.44	4,016.48	43,126.78	39,687.70	(3,439.08)	439,470.07	453,503.81	14,033.74
Total Direct Expenses	140,599.08	257,349.98	116,750.90	311,066.32	259,112.24	(51,954.08)	2,880,401.58	3,086,598.29	206,196.71
Indirect Expenses									
Indirect Personnel Expenses									
Salaries/Wages	27,112.78	57,699.20	30,586.42	71,961.98	57,699.20	(14,262.78)	688,616.60	692,390.40	3,773.80
Payroll Taxes	4,081.11	4,085.11	4.00	4,669.63	4,085.11	(584.52)	53,047.50	49,021.32	(4,026.18)
Unemployment Taxes	0.00	761.63	761.63	67.40	761.63	694.23	4,467.79	9,139.56	4,671.77
Benefits	4,922.47	1,246.30	(3,676.17)	4,372.35	1,246.30	(3,126.05)	22,153.47	14,955.60	(7,197.87)
401k Match	1,906.30	1,730.98	(175.32)	2,295.90	1,730.98	(564.92)	24,977.21	20,771.76	(4,205.45)
Worker's Comp	352.88	519.70	166.82	352.88	519.70	166.82	4,234.56	6,236.40	2,001.84
Total Indirect Personnel Expenses	38,375.54	66,042.92	27,667.38	83,720.14	66,042.92	(17,677.22)	797,497.13	792,515.04	(4,982.09)
Facility Expenses									
Auto Expenses	92.75	110.00	17.25	92.75	110.00	17.25	1,285.09	1,320.00	34.91
Building Maintenance	1,537.77	899.00	(638.77)	1,034.87	899.00	(135.87)	16,350.96	10,888.00	(5,462.96)
Janitorial Service	2,560.00	2,260.00	(300.00)	3,236.81	2,260.00	(976.81)	31,246.81	27,120.00	(4,126.81)
Rent	3,484.00	3,600.00	116.00	3,484.00	3,600.00	116.00	41,440.00	42,900.00	1,460.00
Phone/Internet	1,533.78	1,833.00	299.22	2,062.53	1,833.00	(229.53)	21,047.78	21,996.00	948.22
Utilities	3,520.29	2,850.00	(670.29)	3,528.32	2,850.00	(678.32)	39,196.35	34,200.00	(4,996.35)
Total Facility Expenses	12,728.59	11,552.00	(1,176.59)	13,439.28	11,552.00	(1,887.28)	150,566.99	138,424.00	(12,142.99)
Office Expenses									
Claims Processing	124.37	156.00	31.63	341.06	156.00	(185.06)	2,436.43	1,872.00	(564.43)
Patient Notification	485.00	485.00	0.00	485.00	485.00	0.00	5,565.00	5,820.00	255.00
Office Supplies	1,198.63	1,000.00	(198.63)	1,544.40	1,000.00	(544.40)	12,095.31	12,000.00	(95.31)
Postage and Shipping	350.14	200.00	(150.14)	114.08	200.00	85.92	2,780.32	2,400.00	(380.32)
Printing Costs	84.32	255.00	170.68	0.00	202.00	202.00	984.37	2,857.00	1,872.63
Office Equip. Maintenance	0.00	0.00	0.00	0.00	0.00	0.00	(36.24)	0.00	36.24
Property Taxes	0.00	0.00	0.00	0.00	0.00	0.00	367.00	250.00	(117.00)
Dues, Fees & License	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	4.00
Employee Goodwill	226.57	350.85	124.28	348.42	290.85	(57.57)	4,215.58	4,290.20	74.62
Recruitment Expense	65.44	208.00	142.56	120.11	208.00	87.89	7,151.23	2,496.00	(4,655.23)
Total Office Expenses	2,534.47	2,654.85	120.38	2,953.07	2,541.85	(411.22)	35,559.00	31,989.20	(3,569.80)
Insurance									
Insurance - Auto	375.00	349.71	(25.29)	375.00	349.71	(25.29)	4,043.32	3,910.41	(132.91)
Insurance - Malpractice	928.83	565.77	(363.06)	928.83	565.77	(363.06)	7,158.34	6,377.72	(780.62)
Insurance - Liability & Property	804.00	837.83	33.83	804.00	837.83	33.83	9,321.63	9,368.52	46.89
Insurance - Directors & Officer Liability	498.82	380.05	(118.77)	498.82	380.05	(118.77)	6,047.98	4,249.65	(1,798.33)
Total Insurance	2,606.65	2,133.36	(473.29)	2,606.65	2,133.36	(473.29)	26,571.27	23,906.30	(2,664.97)
Fundraising Department									
Fundraising Expenses	2,749.51	167.00	(2,582.51)	2,775.66	2,682.66	(93.00)	18,011.96	19,861.30	1,849.34

Fundraising Consulting	5,342.00	6,050.00	708.00	2,000.00	5,250.00	3,250.00	70,705.75	73,800.00	3,094.25
Total Fundraising Department	8,091.51	6,217.00	(1,874.51)	4,775.66	7,932.66	3,157.00	88,717.71	93,661.30	4,943.59
Professional Fees									
Consultant - Professional Fees	5,664.52	2,900.00	(2,764.52)	6,661.37	2,900.00	(3,761.37)	54,423.39	37,300.00	(17,123.39)
Consultant - Legal	0.00	0.00	0.00	0.00	0.00	0.00	748.00	0.00	(748.00)
Total Professional Fees	5,664.52	2,900.00	(2,764.52)	6,661.37	2,900.00	(3,761.37)	55,171.39	37,300.00	(17,871.39)
General									
Depreciation Expense	25,331.15	25,708.96	377.81	23,992.53	25,708.96	1,716.43	292,610.84	305,695.02	13,084.18
Marketing Expense	206.25	390.00	183.75	149.90	390.00	240.10	2,071.17	7,258.00	5,186.83
Meeting & Travel Expenses	293.55	243.00	(50.55)	1,019.32	27.00	(992.32)	3,658.92	3,208.00	(450.92)
Fees and Interest	829.78	1,200.00	370.22	1,138.35	1,200.00	61.65	13,866.99	14,400.00	533.01
Merchant Processing	826.67	880.00	53.33	569.66	880.00	310.34	12,099.13	10,560.00	(1,539.13)
Outreach Supplies	423.59	0.00	(423.59)	5,984.24	0.00	(5,984.24)	12,751.93	8,815.00	(3,936.93)
Training & Membership	0.00	0.00	0.00	0.00	0.00	0.00	6,212.29	2,060.00	(4,152.29)
Board Expense	0.00	414.00	414.00	0.00	446.00	446.00	3,554.63	5,000.00	1,445.37
Total General	27,910.99	28,835.96	924.97	32,854.00	28,651.96	(4,202.04)	346,825.90	356,996.02	10,170.12
Computer expense									
Computer Support	4,745.40	4,270.00	(475.40)	4,330.38	4,270.00	(60.38)	53,224.33	52,240.00	(984.33)
Software Support	696.00	799.00	103.00	771.00	799.00	28.00	14,699.40	15,188.00	488.60
Total Computer expense	5,441.40	5,069.00	(372.40)	5,101.38	5,069.00	(32.38)	67,923.73	67,428.00	(495.73)
Total Indirect Expenses	103,353.67	125,405.09	22,051.42	152,111.55	126,823.75	(25,287.80)	1,568,833.12	1,542,219.86	(26,613.26)
Total Total Expenses	243,952.75	382,755.07	138,802.32	463,177.87	385,935.99	(77,241.88)	4,449,234.70	4,628,818.15	179,583.45
Total Net Program Income	(22,611.17)	(141,397.29)	118,786.12	(256,989.15)	(141,130.82)	(115,858.33)	(1,912,606.82)	(1,926,808.39)	14,201.57
Grants and Other Income									
Grants and Donations									
Fundraiser	1,506.45	0.00	1,506.45	0.00	15,000.00	(15,000.00)	37,647.25	30,000.00	7,647.25
Donations	2,342.86	15,000.00	(12,657.14)	2,665.93	9,000.00	(6,334.07)	87,840.14	120,000.00	(32,159.86)
In-Kind Donations	0.00	0.00	0.00	0.00	0.00	0.00	26,335.00	0.00	26,335.00
Incentives	0.00	0.00	0.00	187,102.50	0.00	187,102.50	187,792.50	36,000.00	151,792.50
Grants	44,709.33	53,333.00	(8,623.67)	80,689.13	53,337.00	27,352.13	939,058.75	640,000.00	299,058.75
PHCD Grants	75,000.00	75,000.00	0.00	75,000.00	75,000.00	0.00	900,000.00	900,000.00	0.00
Total Grants and Donations	123,558.64	143,333.00	(19,774.36)	345,457.56	152,337.00	193,120.56	2,178,673.64	1,726,000.00	452,673.64
Other Income									
Estimated PPP Loan Forgiveness	0.00	0.00	0.00	0.00	0.00	0.00	201,105.00	201,000.00	105.00
Interest Income	181.25	4.00	177.25	175.13	4.00	171.13	2,153.33	48.00	2,105.33
Dividends	0.00	10.00	(10.00)	0.00	10.00	(10.00)	13.94	120.00	(106.06)
Other Income	0.00	0.00	0.00	0.00	0.00	0.00	2,784.51	0.00	2,784.51
Sale of Fixed Asset	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Other Income	181.25	14.00	167.25	175.13	14.00	161.13	206,056.78	201,168.00	4,888.78
Total Grants and Other Income	123,739.89	143,347.00	(19,607.11)	345,632.69	152,351.00	193,281.69	2,384,730.42	1,927,168.00	457,562.42
Net income	101,128.72	1,949.71	99,179.01	88,643.54	11,220.18	77,423.36	472,123.60	359.61	471,763.99

Total grants and donations includes \$140k which is restricted to San Mateo Build Out capital expenditures and \$23K in-kind donations which is capitalized monthly.

**Sonrisas Dental Health**  
**Balance Sheet**  
Year To Date 06/30/2022

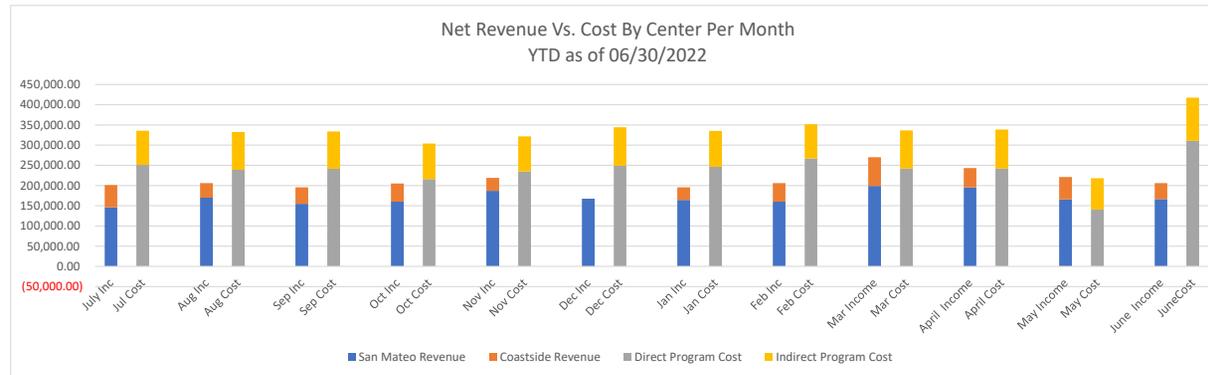
	Current Year Balance
<b>Assets</b>	
<b>Current Assets</b>	
<b>Cash and Cash Equivalents</b>	
11205 - Operating - Boston Private Checking	916,042.79
11211 - Boston Private-CD 1	200,643.40
11213 - Boston Private-CD 3	501,361.96
11600 - Petty Cash	198.84
<b>Total Cash and Cash Equivalents</b>	<b>1,618,246.99</b>
<b>Accounts Receivable, Net</b>	<b>785,954.16</b>
<b>Other Current Assets</b>	<b>40,364.67</b>
<b>Total Current Assets</b>	<b>2,444,565.82</b>
<b>Long-term Assets</b>	
<b>Property &amp; Equipment</b>	
17000 - Fixed Asset Clearing	15,402.42
17300 - Improvements	1,188,253.68
17400 - Equipment	1,298,658.09
17500 - Furniture/Fixtures	129,460.29
17600 - Vehicle	111,934.08
17999 - Accum Depreciation	(1,730,792.91)
<b>Total Property &amp; Equipment</b>	<b>1,012,915.65</b>
<b>Other Long-term Assets</b>	<b>16,297.00</b>
<b>Total Long-term Assets</b>	<b>1,029,212.65</b>
<b>Investments</b>	
<b>Long Term Investments</b>	
11410 - Investment Acct. - Merrill Lynch	45,474.36
<b>Total Long Term Investments</b>	<b>45,474.36</b>
<b>Total Investments</b>	<b>45,474.36</b>
<b>Total Assets</b>	<b>3,519,252.83</b>
<b>Liabilities and Net Assets</b>	
<b>Liabilities</b>	
<b>Short-term Liabilities</b>	
<b>Accounts Payable</b>	
21110 - Accounts Payable	129,332.37
23100 - Patient Prepayments	32,065.20
23200 - Patient Refunds Payable	6,869.93
<b>Total Accounts Payable</b>	<b>168,267.50</b>
<b>Accrued Liabilities</b>	
22210 - Accrued Payroll	150,066.59
22220 - Accrued PTO	102,396.72
22250 - Accrued 401k Funds Payable	19,398.16
22260 - Accrued HSA Fund Payable	0.02
22320 - FSA Employee Account	1,881.50
<b>Total Accrued Liabilities</b>	<b>273,742.99</b>
<b>Withholding Tax Payable</b>	
22230 - Accrued Payroll Taxes	64,430.47
<b>Total Withholding Tax Payable</b>	<b>64,430.47</b>
<b>Total Short-term Liabilities</b>	<b>506,440.96</b>
<b>Long Term Liabilities</b>	

**Sonrisas Dental Health**  
**Balance Sheet**  
Year To Date 06/30/2022

	<u>Current Year</u> Balance
Notes Payable - Long Term	
28000 - PPP Loan	402,210.00
28001 - Estimated PPP Loan Forgiveness	(402,210.00)
Total Long Term Notes Payable	0.00
Other Long-term Liabilities	7,481.11
Total Long Term Liabilities	<u>7,481.11</u>
Other Liabilities	44,458.88
Total Liabilities	<u>558,380.95</u>
Net Assets	<u>2,965,908.83</u>
<b>Total Liabilities and Net Assets</b>	<b><u><u>3,524,289.78</u></u></b>

### Sonrisas Dental Health Operations

	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	April 22	May 22	June22	YTD	YTD Budget	B(W)
<b>San Mateo Revenue</b>	146,167	169,861	154,995	160,237	187,118	167,317	164,297	160,126	198,860	195,767	165,647	166,554	2,036,945	2,323,249	(286,304)
<b>Coastside Revenue</b>	55,195	36,338	40,578	44,708	32,102	(35)	31,119	45,757	71,168	47,423	55,695	39,635	499,682	378,761	120,921
<b>Total Net Revenue</b>	201,362	206,199	195,573	204,945	219,220	167,282	195,416	205,883	270,027	243,190	221,341	206,189	2,536,627	2,702,010	(165,383)
<b>Direct Program Cost</b>	250,922	239,041	241,643	215,921	235,007	248,764	246,388	267,002	242,170	241,878	140,599	311,066	2,880,401	3,086,598	206,197
<b>Indirect Program Cost</b>	121,756	127,636	137,370	124,709	125,381	144,315	129,724	125,089	137,818	139,571	103,354	152,112	1,568,834	1,542,220	(26,614)
<b>Total Cost</b>	372,678	366,677	379,013	340,630	360,388	393,079	376,112	392,091	379,988	381,449	243,953	463,178	4,449,235	4,628,818	179,583
<b>TOTAL</b>	<b>(171,316)</b>	<b>(160,478)</b>	<b>(183,440)</b>	<b>(135,685)</b>	<b>(141,168)</b>	<b>(225,797)</b>	<b>(180,696)</b>	<b>(186,208)</b>	<b>(109,960)</b>	<b>(138,259)</b>	<b>(22,611)</b>	<b>(256,989)</b>	<b>(1,912,608)</b>	<b>(1,926,808)</b>	<b>14,200</b>
<b>Dividend/Other Income</b>	67,000	70,003	67,292	344	154	181	171	188	241	128	181	175	206,059	201,168	4,891
<b>Donations Received</b>	223,149	86,942	50,901	52,967	95,133	124,383	64,830	99,157	87,444	74,750	48,559	270,458	1,278,674	826,000	452,674
<b>Grant from PHCD</b>	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	900,000	900,000	0
<b>OTHER INCOME</b>	365,149	231,945	193,193	128,311	170,287	199,564	140,001	174,345	162,685	149,878	123,740	345,633	2,384,732	1,927,168	457,564
<b>NET INCOME</b>	<b>193,833</b>	<b>71,467</b>	<b>9,753</b>	<b>(7,374)</b>	<b>29,119</b>	<b>(26,233)</b>	<b>(40,695)</b>	<b>(11,862)</b>	<b>52,725</b>	<b>11,619</b>	<b>101,129</b>	<b>88,644</b>	<b>472,124</b>	<b>360</b>	<b>471,765</b>



	Jul 21	Aug 21	21-Sep	21-Oct	21-Nov	21-Dec	22-Jan	22-Feb	22-Mar	22-Apr	22-May	22-Jun	YTD	Budget	Variance
San Mateo Visits	839	855	836	845	841	1,016	804	848	766	870	821	852	10,193	11,182	(989)
Coastside Visits	340	322	339	302	255	304	304	311	316	325	361	323	3,498	2,922	576
<b>Total Visits</b>	<b>1179</b>	<b>1177</b>	<b>1175</b>	<b>1,147</b>	<b>1,096</b>	<b>1,016</b>	<b>1,108</b>	<b>1,159</b>	<b>1,082</b>	<b>1,195</b>	<b>1,182</b>	<b>1,175</b>	<b>13,691</b>	<b>14,104</b>	<b>(413)</b>

Visits by Payer -San Mateo

	May 22	Budget	Variance	YTD	YTD Budget	Variance
Commercial Insuran	26	44	(18)	359	468	(109)
PPO	187	257	(70)	2321	2754	(433)
Private Pay	19	31	(12)	281	328	(47)
Affordable Scale	10	28	(18)	229	296	(67)
FQHC	78	130	(52)	1164	1391	(227)
Farmworker	23	23		148	148	
Public Dental Insura	150	151	(1)	1570	1619	(49)
Public Dental Insura	328	311	17	3270	3327	(57)
<b>Total Visits</b>	<b>821</b>	<b>952</b>	<b>(131)</b>	<b>9342</b>	<b>10183</b>	<b>(841)</b>

Visits by Payer -San Mateo

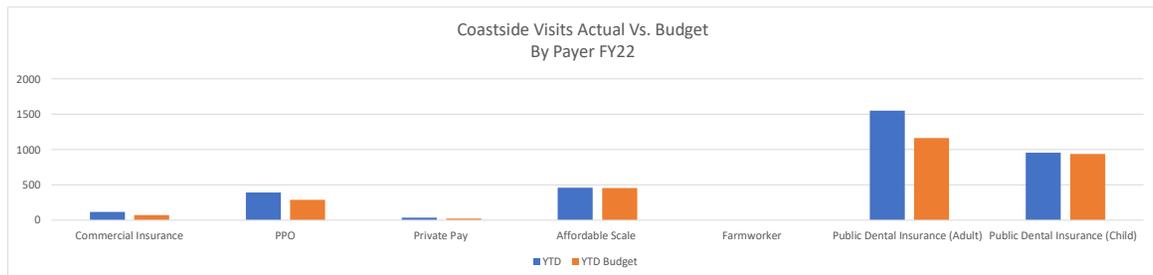
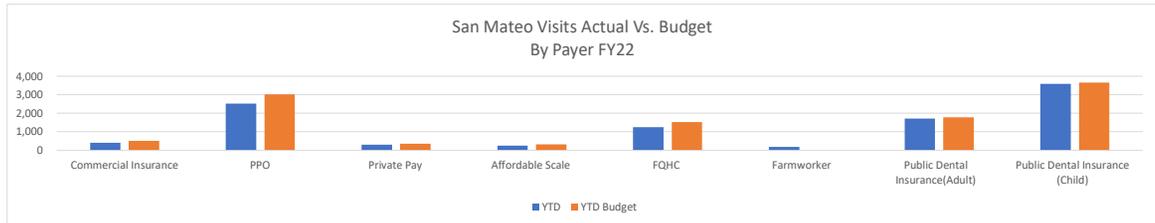
	June 22	Budget	Variance	YTD	YTD Budget	Variance
Commercial Insur	40	46	(6)	399	513	(114)
PPO	205	270	(65)	2,526	3,024	(498)
Private Pay	27	32	(5)	308	360	(52)
Affordable Scale	19	29	(10)	248	326	(78)
FQHC	76	136	(60)	1,240	1,528	(288)
Farmworker	32	32		180	180	
Public Dental Insu	135	159	(24)	1,705	1,778	(73)
Public Dental Insu	318	326	(8)	3,588	3,653	(65)
<b>Total Visits</b>	<b>852</b>	<b>998</b>	<b>(146)</b>	<b>10,194</b>	<b>11,182</b>	<b>(988)</b>

Visits by Payer -Coastside

	May 22	May Budget	Variance	YTD	YTD Budget	Variance
Commercial Insuran	14	6	8	103	63	40
PPO	37	26	11	353	256	97
Private Pay	3	2	1	31	17	14
Affordable Scale	34	41	-7	427	409	18
Farmworker						
Public Dental Insura	176	107	69	1397	1049	348
Public Dental Insura	97	86	11	864	847	17
<b>Total Visits</b>	<b>361</b>	<b>268</b>	<b>93</b>	<b>3175</b>	<b>2641</b>	<b>534</b>

Visits by Payer -Coastside

	June 22	une Budget	Variance	YTD	YTD Budget	Variance
Commercial Insur	10	7	3	113	70	43
PPO	37	27	10	390	284	106
Private Pay	1	2	(1)	32	18	14
Affordable Scale	32	44	(12)	459	452	7
Farmworker						
Public Dental Insu	154	112	42	1551	1161	390
Public Dental Insu	89	90	(1)	953	937	16
<b>Total Visits</b>	<b>323</b>	<b>282</b>	<b>41</b>	<b>3498</b>	<b>2922</b>	<b>576</b>



Avg. Income (Loss) per Visit		
YTD		
Net Revenue per Visit	\$	185.47
Direct Cost per Visit	\$	(210.98)
*Indirect Cost	\$	(79.73)
Net Income per Visit	\$	(105.24)

True Income (Loss) per Visit by Payer	
Payer	Avg. YTD
Farmworker	\$ 203.85
Commercial Insurance	\$ 53.93
PPO	\$ (15.76)
Public Dental Insurance	\$ (197.71)
Private Pay	\$ 192.70
FQHC	\$ 12.45
Affordable Scale	\$ 60.52

\* Indirect cost represents clinic overhead cost and excludes fundraising program cost and

Sonrisas Dental Health Operations FY22 VS. FY21						
	June 22	June 21	Variance B(W)	YTD 22	YTD 21	Variance B(W)
<b>Visits</b>	<b>1,175</b>	<b>1,121</b>	<b>54</b>	<b>13,691</b>	<b>10,791</b>	<b>2,900</b>
<b>San Mateo Revenue</b>	\$166,554	\$161,273	\$5,281	\$2,036,945	\$1,437,536	\$599,409
<b>Coastside Revenue</b>	\$39,635	\$106,061	(\$66,426)	\$499,682	\$530,629	(\$30,947)
<b>Total Net Revenue</b>	\$206,189	\$267,334	(\$61,145)	\$2,536,627	\$1,968,160	\$568,467
<b>Direct Program Cost</b>	\$311,066	\$263,857	(\$47,210)	\$2,880,401	\$2,440,175	(\$440,225)
<b>Indirect Program Cost</b>	\$152,112	\$129,444	(\$22,667)	\$1,568,834	\$1,191,062	(\$377,772)
<b>Total Cost</b>	\$463,178	\$393,301	(\$69,877)	\$4,449,235	\$3,631,237	(\$817,998)
<b>TOTAL</b>	<b>(\$256,989)</b>	<b>(\$125,967)</b>	<b>(\$131,022)</b>	<b>(\$1,912,608)</b>	<b>(\$1,663,077)</b>	<b>(\$249,531)</b>
<b>Dividend/Other Income</b>	\$175	\$244,234	(\$244,059)	\$206,059	\$774,895	(\$568,836)
<b>Donations Received</b>	\$270,458	\$231,468	\$38,990	\$1,278,674	\$1,010,844	\$267,830
<b>Grant from PHCD</b>	\$75,000	\$0	\$75,000	\$900,000	\$250,000	\$650,000
<b>OTHER INCOME</b>	\$345,633	\$475,702	(\$130,070)	\$2,384,732	\$2,035,739	\$348,994
<b>NET INCOME</b>	<b>\$88,644</b>	<b>\$349,735</b>	<b>(\$261,092)</b>	<b>\$472,124</b>	<b>\$372,662</b>	<b>\$99,463</b>

**F**



**DATE:** August 5, 2022  
**TO:** SDH Board of Directors  
**FROM:** Maura LeBaron-Hsieh, MPH, Director of Development  
**RE:** **Special Development Update: *Visions of Valencia***



Sonrisas’ Development Team’s top priorities during August are: searching for a stellar Development Associate to join our team (please spread the word!); and bringing our vision of Sonrisas’ signature fundraising event to reality *with your help!*

**How is the evening shaping up?**

Live Spanish music, sangria, Spanish wines, and delicious Spanish food will set the mood for our evening of giving! *Visions of Valencia* is shaping up to be a huge success.

How are ticket sales going?	
Individual Tickets purchased	7
Tables purchased (includes 10 tickets)	1
Tables pledged (includes 10 tickets)	8
Total tables purchased or pledged	9 out of 16 tables

What about sponsorships and donations?	
Monetary Business Sponsorships (pledged and received)	\$3,500
Individual Sponsorships (includes pledged tables)	\$16,000
Fund-A-Need pre-pledges	\$10,000+
Running total raised ( <i>as of 8/5, including pledges</i> )	\$30,900

**What’s the most important way I can help right now as a Board member?**

- If sponsoring a table, purchase your table via our ticketing site, or if you wish, send a check to our San Mateo Center and we will assist you with the process
- Confirm the guests who will join you at your table by 8/19, or by 8/26 at the latest
- (Knowing how many guests you will seat at your table helps the event team start to plan where we can place VIPs at hosted tables so they have the best connection to our mission during the evening. Thank you for recruiting your guests as soon as possible!)



**What’s the ticketing site?**

- The site to purchase tickets, tables, or find more information is: [bit.ly/VisionsofValenciaTickets](https://bit.ly/VisionsofValenciaTickets)
- If you have questions or need help, please reach out to Maura at [mhsieh@sonrisasdental.org](mailto:mhsieh@sonrisasdental.org) or 650-727-3487.

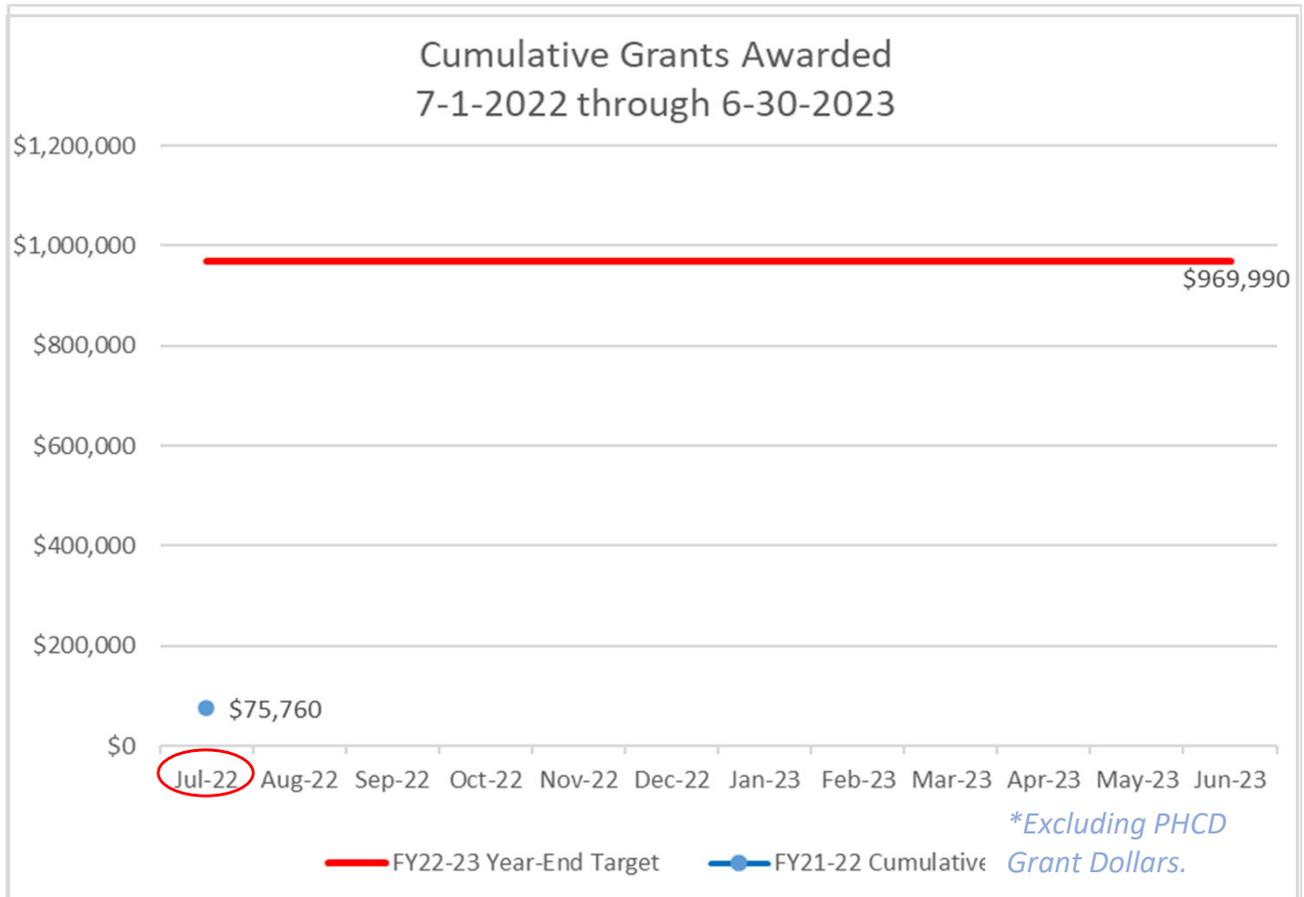
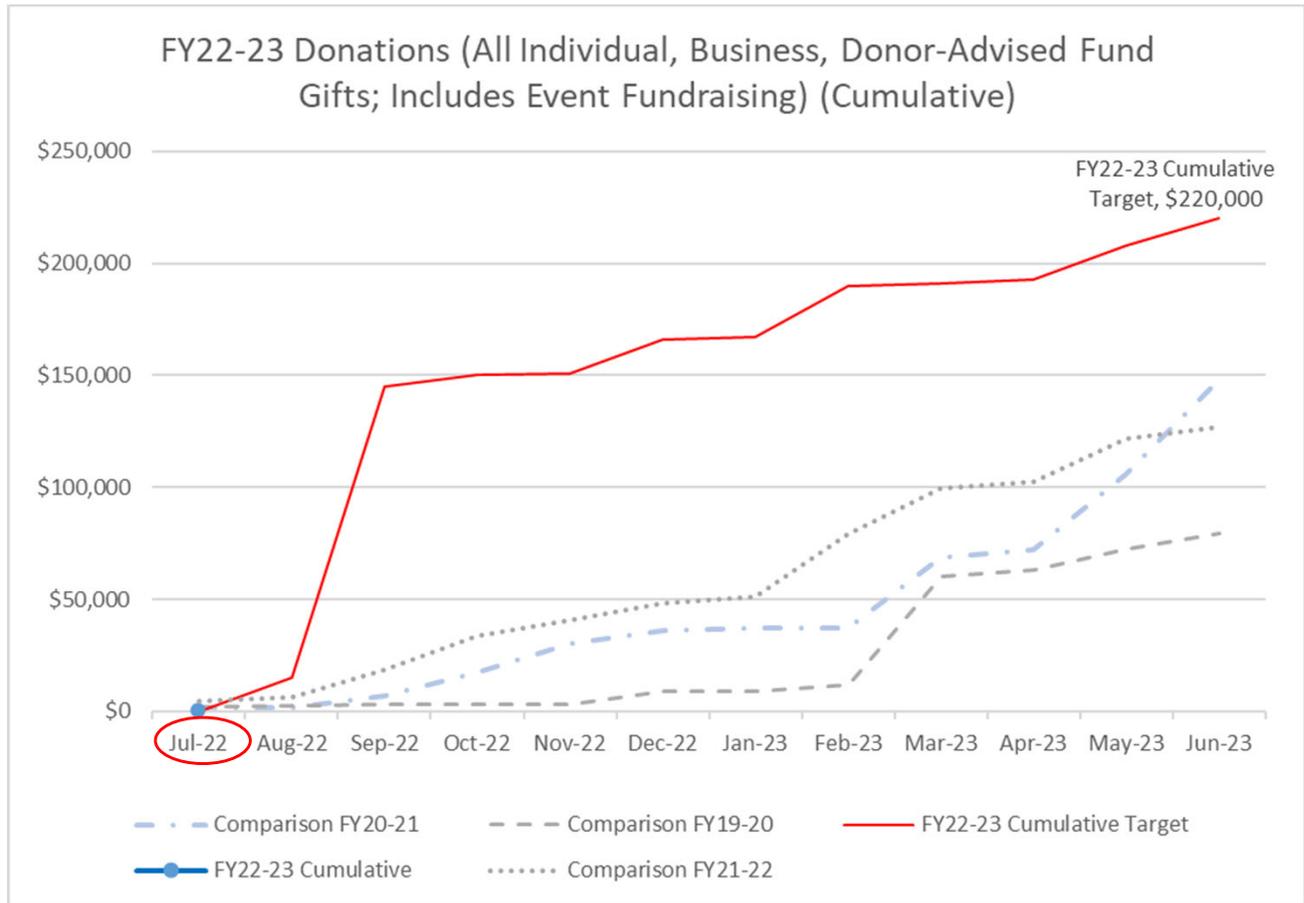
**What else can I do to help?**

- **Sponsorships:** Know anyone or a business who might want to sponsor? Please connect them with Maura
- **Auction items:** Do you have season tickets to a sports, theater, or music organization? Own or know someone who owns a vacation home? Or, would you enjoy putting together a luxurious gift basket? If so – we would love to include these as auction items. Please reach out to Maura for more info or to share ideas.

*Thank you for embracing your Board Member role in maximizing the impact of Sonrisas’ signature event!*

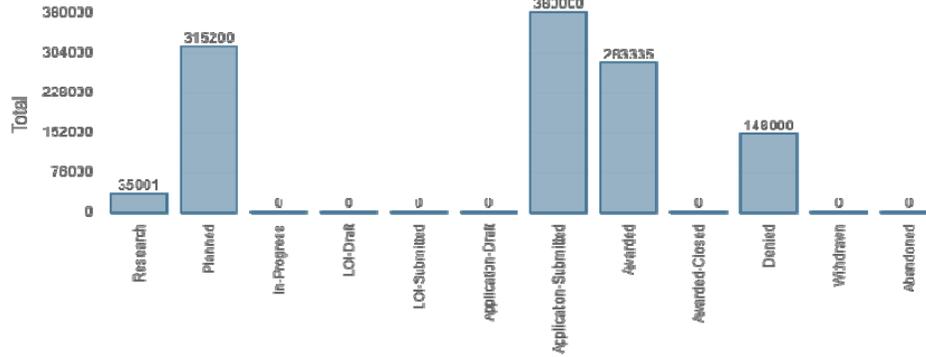


# SDH Fundraising Report FY22-23 Through July 31, 2022



## Opportunities By Status

3/1/2022 - 6/30/2023



Funder	Funding Opportunity	Funding Category	Deadline	Amount Requested	Amount Awarded	Status
Atkinson Foundation	2022 Senior Programs Grant	Access to Care, Seniors, Outreach	2/1/2022	15000	7500	Awarded
Delta Dental Community Care Foundation	FY22-23 Senior ATC Grant	Access to Care, Seniors, Outreach	3/25/2022	100000	100000	Awarded
The Comcast Nbcuniversal Foundation	2022 Project Innovation	School Screenings	3/25/2022	55000	0	Denied
Kaiser Permanente Community Health	FY22-23 Kaiser Safety Net Grant	Access to Care	3/25/2022	25000	25000	Awarded
Sequoia Healthcare District	FY21-22 Sequoia Healthcare District A	General Operations	4/4/2022	60000	60000	Awarded
City of Burlingame	2022 Community Funding Information	Access to Care	4/15/2022	5000	1760	Awarded
Mills Peninsula Hospital (Sutter Health)	2022 RFP Mills Sutter Health	Access to Care, School Screenings	4/29/2022	20000	20000	Awarded
First 5 San Mateo County	2022 First Five Oral Health Extension	School Screenings, Access to Care Children	4/30/2022	50000	54075	Awarded
AstraZeneca Corporate Contributions Prog	2022 RFP AstraZeneca	School Screenings, Access to Care Children	5/13/2022	25000		Application-Submitted
City of Half Moon Bay	FY22-23 CSFA Grant	Access to Care	5/15/2022	20000	14000	Awarded
Chan Zuckerberg Initiative Foundation	2022-2024 CZI Community Fund	School Screenings, General Operations, Access to Care Children	6/30/2022	200000		Application-Submitted
Sequoia Healthcare District	FY21-22 Sequoia Healthcare District A	General Operations	7/5/2022	60000		Application-Submitted
Workforce Matters	<a href="https://www.granhubonline.com/2022">https://www.granhubonline.com/2022</a>	Workforce Equity Fund Grant	7/31/2022	70000		Application-Submitted
Woodlawn Foundation	2022 Woodlawn Foundation Grant		8/4/2022	25000		Application-Submitted
ARCHSTONE FOUNDATION	2022 Archstone		8/17/2022			Research
Get Healthy San Mateo County	2022 Get Healthy San Mateo County		9/15/2022			Research
Stanford Health Care	2022-23 Stanford RFP	Access to Care	9/23/2022	61000		Planned
American Academy of Pediatric Dentistry	2022 AAPD	Access to Care Children	10/1/2022	20000		Planned
Sequoia Healthcare District	FY22-23 Sequoia Healthcare District A	Access to Care, General Operations	10/1/2022	71400		Planned
Dignity Health-Sequoia Hospital	2023 Dignity Health Grant	School Screenings, Access to Care Children	10/7/2022	20000		Planned
COASTSIDE WOMENS CLUB	FY20 Coastside GO Grant	General Operations	10/19/2022		1	Research
Millbrae Community Foundation	MCF Community Program Grant	School Screenings, Access to Care Children	10/31/2022	5000		Research
Adobe Employee Community Fund	Adobe 2022		11/15/2022			Research
Sequoia Healthcare District	FY22-23 Sequoia Healthcare District Q	Access to Care, School Screenings, Seniors, General Operations, Outreach	1/3/2023	71400		Planned
Dental Trade Alliance	2023 RFP		1/18/2023	25000		Research
Oral Health Foundation of the Pierre Fauch	2021 RFP	Access to Care	3/15/2023	5000		Research
Sequoia Healthcare District	FY22-23 Sequoia Healthcare District Q	Access to Care, School Screenings, Seniors, General Operations, Outreach	4/4/2023	71400		Planned
Genentech	2023 Genentech Health Equity & Diversity in STEM Innovation Fund		6/1/2023			Research
<b>Totals</b>				<b>\$ 1,080,201</b>	<b>\$ 282,335</b>	<b>28</b>