

## MASTER CASH MANAGEMENT AGREEMENT

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Client (“Client”) identified in the Cash Management Authorization form (“Authorization”) has engaged BAC Community Bank (“Bank”) to perform the services (collectively, the “Services”) selected by Client in the Authorization. The Services are more specifically described in the following, as updated from time to time: (i) the Authorization; (ii) the service descriptions detailed in this Master Cash Management Agreement (“Master Agreement”), including any exhibits, and schedules to the same (“Service Description(s)”); and (iii) user guides, user manuals, set-up forms and other user materials, including online terms and information (collectively, “Supporting Documents”). The Master Agreement may include exhibits, appendices, schedules or similar materials, which form a part of the Master Agreement. The term “may,” when used in reference to action by Bank, is permissive and means that Bank reserves the right or is allowed, but not required, to take any action or inaction. Any reference to the Master Agreement shall be deemed to include the Master Cash Management Agreement, the Authorization, the respective Service Descriptions, and the Supporting Documents, unless otherwise stated. Unless otherwise agreed in writing, the Master Agreement, including the Service Descriptions and Supporting Documents, will be deemed accepted by Client upon provision by Bank for Services to Client.

The terms and conditions of the Master Agreement apply to the Services, and Client’s deposit accounts held at Bank which Client uses for transactions associated with the Services, in addition to the account deposit terms and conditions otherwise applicable to Client’s accounts with Bank. Unless otherwise provided, to the extent any provision of the Master Agreement conflicts with a Service Description, the provision of the Service Description will control. To the extent any term or provision of the Master Agreement conflicts directly with any term or provision of the applicable deposit account terms and conditions or the Supporting Documents, the provision of the Master Agreement (including any Service Description) will control. All transfers to and from an account will be subject to the terms and conditions applicable to the account as set forth in the deposit account terms and conditions governing the account, including but not limited to transfer limitations, as amended by the Master Agreement. Unless expressly provided otherwise, all references to time will be Pacific Time.

Service Descriptions attached to this Master Agreement include:

- Business Online Banking Service Description
- In Office Deposit Service Description
- Positive Pay Service Description
- Business Mobile Banking Terms and Conditions
- Terms and Conditions of the Bill Payment Service

## **1. Accounts**

An “Account” shall mean any deposit or loan account Client maintains with Bank and can include all accounts.

Bank may allow loans and lines of credit to be included in the Services, in which case, Client agrees that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. Bank may process transactions from loan accounts without regard to access limitations in any loan documentation or agreement.

## **2. Joint and Several Authority to Combine Funds**

If more than one party joins or participates in one or more Services, the contractual obligations shall be the independent obligations of each party, the obligations hereunder being joint and several. Each of such party agrees that there is no expectation of privacy between the parties that have joined and/or participated in the

Services. Each party that participates in one of more Services hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Services, and all other aspects of the performance hereof by the parties, have been duly authorized by law and by all necessary parties, including the account holder of each account, and that each party has obtained and shall maintain in its records and make available to Bank upon reasonable demand adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with such account holder's organizational documents and board resolutions or other written consents. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon each use of the Services and Bank's effecting each transfer and commingling of funds.

### **3. Senior Administrators; Authorized User**

Client shall designate employee(s) or other representative(s), in the manner requested by Bank, to exercise all rights, powers, and privileges in connection with the Services ("Senior Administrator(s)"). Client understands that Senior Administrator has the authority to grant access to the Services to other users.

Authorized User shall mean each employee or other representative designated by Client or a Senior Administrator to have access to and engage in Services on Client's behalf, including the Senior Administrator.

Senior Administrator shall mean the employee(s) or other representative(s) designated by Client in the manner requested by Bank to exercise all rights, powers, and privileges in connection with the Services and to otherwise exercise the powers and authorities granted to the Senior Administrator as provided in the Authorization and Master Agreement.

Client understands that the Senior Administrators designated by Client on the Authorization shall have the power and authority to act on Client's behalf with regard to all transfers, transactions, and other acts or activities permitted by the Services or Master Agreement. Without intending to limit such powers and authority, Client agrees that the Senior Administrator(s):

- (a) Shall serve as a contact for receipt of information relating to Client's use of the Services;
- (b) Shall have, or may obtain, access to each and every existing and future deposit or loan account in which Client has an interest;
- (c) With regard to such deposit or loan account, may affect or obtain any transfer, transaction, or other functionality of the Services;
- (d) With regard to such deposit or loan account, may enable or disable functions of the Services, including but not limited to:
  - (i) Account inquiry
  - (ii) Data Download
  - (iii) Stop Payment
  - (iv) Account to Account Funds Transfer
  - (v) Mobile Banking (access through a mobile device)
  - (vi) Mobile Deposit
  - (vii) In-Office Deposit
  - (viii) ACH Origination
  - (ix) Wire Transfer
  - (x) Positive Pay
  - (xi) Loan Advance
  - (xii) Bill Payment

- (e) May direct the Bank to grant access to any one or more existing or future deposit or loan account in which Client has an interest to an Authorized User of the Services;
- (f) May grant access to any one or more existing or future deposit or loan account in which Client has an interest to an Authorized User of the Services;
- (g) May remove or modify the powers and authority granted to an Authorized User of the Services.

Client hereby ratifies and confirms all acts and activities of each Senior Administrator in connection with the Services, including the Senior Administrator's granting of access to each Authorized User, and agrees that, all loss or liability in connection with the acts or omissions of the Senior Administrator or any Authorized User shall be borne solely by Client. Client will immediately notify the Bank when necessary to remove a Senior Administrator's access to the Services.

#### **4. Multiple Clients Combined into Singular Cash Management Service**

Senior Administrators have the authority to direct the Bank to combine multiple clients into one Cash Management Service. For example, if a Senior Administrator has been authorized by client A through a Cash Management Authorization form and also has been authorized by Client B through a Cash Management Authorization form; then, the Senior Administrator can create a singular Cash Management Service with access to accounts owned by Client A and Client B.

#### **5. Security Procedures; Communications**

(a) Client and Bank may agree to certain procedures and security devices, which may include without limitation, codes, encryption, passwords, security tokens, and other security devices, systems and Software (referred to individually and collectively, "Security Device(s)") designed to verify the authenticity of information (including without limitation transaction information), instructions, orders (including without limitation payment orders) and other communications relating to a Service (each a "Communication"). The term "payment order(s)" includes payment orders, as defined in Division 11 of the California Commercial Code. In this regard, application of the procedures and Security Devices to authenticate a Communication will be collectively referred to as the "Security Procedures". If Bank takes any action not provided in the Security Procedures in connection with any Communication, such additional action shall not be deemed to become a mandatory part of the continuing Security Procedures. Client understands and agrees that Bank will use the Security Procedures to verify the authenticity of Communications and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of Communications, including discrepancies between account names and numbers.

(b) Before using a Service and before sending a Communication to Bank, Client will review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable method for verifying whether a Communication is that of Client. As part of the review, Client will consider the size, type, and frequency of Communications Client normally makes or anticipates making, along with such other factors as Client may deem relevant or appropriate.

- (i) *Commercially Reasonable Procedures.* If the size, type or frequency of Communications made by Client changes such that the Security Procedures in use by Client no longer provide a commercially reasonable method of providing security against unauthorized Communications, Client shall immediately notify Bank.
- (ii) *Supplemental Security Devices.* Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, challenge questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client's access to some or all of the Services may be limited. The term "Security Devices" will include any supplemental authentication tools that are offered by Bank and used by Client. Client's continued

- use of any modified Security Procedures will evidence Client's agreement that the modified Security Procedures are commercially reasonable for Client.
- (iii) *Client Responsible for Verified Communications, Even if Unauthorized.* If Bank acts on a Communication in compliance with the Security Procedures, then Client will be obligated on the Communication, and it will be treated as Client's Communication, whether or not authorized by Client.
  - (iv) *Client Responsible for Communications Actually Authorized.* Regardless of whether or not Bank complied with the Security Procedures, any Communication received by Bank will be treated as Client's and will bind Client if the Communication is delivered to Bank directly or indirectly by any Authorized User, or if Client would otherwise be legally bound by the Communication, regardless of whether the Communication was erroneous in any respect or that any loss would have been prevented if Bank had complied with the Security Procedures.

(c) Client will use and safeguard the Services, Security Devices, Security Procedures, Supporting Documents, and the Software (if applicable) in accordance with the Master Agreement. In connection with such safeguarding obligations, Client will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of any Service, Supporting Document, Security Device or Security Procedures. Without limiting the foregoing and to the extent any of the Services utilize an electronic interface, Client agrees to use and maintain at all times up-to-date anti-viral software, properly configured firewalls and otherwise to use commercial "best practices" to prevent Client's computers or other electronic interfaces from being compromised, including by virus, trojan horse or other malware. 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 the Services and any information contained therein, resulting from such wireless connectivity.

It is Client's responsibility to ensure that its Security Devices are used only by Client and only by Client's Authorized Users. Client agrees to protect the confidentiality of its Security Devices. FAILURE TO PROTECT SECURITY DEVICES MAY ALLOW AN UNAUTHORIZED PARTY TO:

- (i) USE THE SERVICES;
- (ii) CHANGE, VERIFY, OR SEND DATA;
- (iii) SEND INFORMATION TO, OR RECEIVE INFORMATION FROM, US AND OUR AFFILIATES;
- (iv) INITIATE AND PROCESS A TRANSACTION; OR
- (v) ACCESS YOUR ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA.

It is the Senior Administrator's responsibility to understand the security capabilities built into the Services and, as appropriate to Client's business and security needs, to assign and to restrict access to various applications only to those Authorized Users who have a need to know, keeping in mind the importance of separation of duties and only granting the minimum access required for each Authorized User to perform their specific duties as an important way of protecting the Clients. Examples of areas where Senior Administrators may apply controls around are: selecting Security Devices which may include authenticators, creating transaction limits for Authorized Users, configuring approval workflows for Authorized Users, configuring alerts and notifications, and modifying or disabling Authorized User access. Bank strongly encourages more than one Senior Administrator and/or the use of dual controls and/or segregation of duties (where more than one individual is involved with the initiation and approval of a transaction). It is Client's responsibility to ensure that Client's Senior Administrator properly configures the Services with such controls. Client agrees what the Bank is not liable for unauthorized or fraudulent transactions that could have been avoided if Client would have configured the Services with dual controls and/or segregation of duties.

(d) Client agrees to immediately notify Bank if Client knows or suspects that a Security Device or other information pertaining to the Security Procedures is stolen, compromised, or misused. Client acknowledges that Bank's ability to reverse fraudulent electronic transfers is extremely limited, and in many cases impossible. Client acknowledges that Bank is not an insurer of Client against losses associated with unauthorized activity associated with the Services and that Client has an independent responsibility to ensure the integrity and security of Client's systems and to determine whether Client should obtain appropriate insurance coverage to protect against unrecoverable losses.

(e) If Client becomes aware of the unauthorized use of the Service, or suspect that an unauthorized use of the Services may have occurred, Client shall immediately notify the Bank of the unauthorized use or the suspected unauthorized use by phone, followed by written communication within 2 business days thereafter. Upon oral receipt of notice of unauthorized use or suspected unauthorized use, the Bank shall suspend Client's Authorized User's access to Services until secure access can be established. In the event the Bank obtains actual knowledge of unauthorized use of the Services, the Bank shall notify Client within a reasonable time of obtaining actual knowledge. However, in no event shall the Bank have a duty or obligation to monitor Client's use of the Services for unauthorized use.

(f) Client assumes all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to its employees. Client agrees to limit disclosures of Security Devices to those employees or agents it will authorize to access the Services on Client's behalf, or who have a specific need to know. Client agrees to follow all requirements and guidance that may be outlined in the Service Descriptions or Supporting Documents provided or made available to Client, including but not limited to password change policies and practices. Without limiting the foregoing, Client further agrees to require Authorized Users to create new passwords at reasonably frequent periods, based on Client's assessment of the security requirements appropriate for the Services utilized by Client. Client agrees to promptly change security codes and level of authority, as applicable, in the event of any change in personnel or when reasonably prudent to do so.

(g) Bank is not obliged to act on a Communication that is not transmitted in accordance with the Security Procedures. Bank may act on an incomplete Communication at its sole discretion, including but not limited to, if in Bank's reasonable opinion, it contains sufficient information. Bank has no duty to discover, and shall not be liable for, errors or omissions made by Client or the duplication of any Communication by Client.

(h) Bank may act on a Communication by reference to the account number only, even if the name on the account is also provided and even if the account number does not actually correspond to the name. If an intermediary bank or a beneficiary's bank is identified on a Communication by both name and identifying number, Bank and other financial institutions may rely on the number even if the name and the number are not consistent or identify different parties.

(i) Bank may delay or refuse to execute any Communication or process any requested Service. Bank may do so for any reason or for no reason. Bank may provide notice to Client of such delay or refusal, but is not obligated to do so. Bank may delay or refuse processing of a Communication, for example, if: (i) processing would or may exceed the available funds in Client's affected account; (ii) the Communication is not authenticated to Bank's satisfaction or Bank believes the Communication may not have been authorized by Client; (iii) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (iv) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (v) processing would or may cause a violation of any laws or rules applicable to Client or to Bank; (vi) for any reason determined by Bank in its sole discretion; or (vii) for any other reason under the Master Agreement. In addition, Bank shall be excused from failing to transmit or delay a transmittal of a transaction or Communication if such transmittal would result in Bank having exceeded any limitation upon Bank's intra-day net funds position established pursuant to present or future Federal Reserve Board ("FRB") guidelines or in Bank's reasonable judgment 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. Client agrees that Bank will have no liability to Client or to any other person



for any loss, damage or other harm caused by or arising out of any such delay or refusal. Bank's acceptance of one or more late or nonconforming payment orders or other funds transfers shall not be deemed the Bank's agreement to accept such orders on an ongoing basis, and Bank may discontinue accepting such payment orders or other funds transfers without prior notice to Client.

(j) If Client informs Bank that it wishes to recall, cancel or amend a Communication after it has been received by Bank, Bank may, but will not be required to, use its reasonable efforts to assist Client to do so; however, Bank shall not be liable for any loss, cost or expense suffered by Client if Bank does not, or is unable to, amend, cancel or recall a Communication. Client hereby agrees to indemnify Bank against any loss, liability, claim or expenses (including legal fees) it may incur in connection with assisting Client to recall, cancel or amend a Communication, and Client agrees to immediately reimburse Bank for any monies paid by Bank associated with such losses, liability, claims or expenses incurred by Bank.

(k) Client assumes the sole responsibility for providing Bank with accurate Communications in the form and format that Bank requires. Bank is not responsible for confirming Communications or for failing to detect and reject duplicate Communications. If Client provides Bank with a Communication that is incorrect in any way, Client agrees that Bank may charge Client's accounts for any transactions related to the Communication 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 or other Communications.

(l) If the identity of a Senior Administrator changes, Client will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a notice or other communication to act on it.

(m) Bank's internal compliance, fraud control and other Bank procedures are for the benefit of Bank and create no duty to Client. Bank has no duty or obligation under this Master Agreement to inform Client if Bank is suspicious of activity, including possible breach of security by Client's Senior Administrator, Authorized User(s) or unauthorized disclosure or use of Security Devices.

## **6. Fraud Prevention**

Client understands the importance of its role in preventing misuse of Client's accounts through the Services and Client agrees to promptly examine its periodic statement for each of Client's accounts as soon as the statement is received or the statement becomes available. The Bank strongly recommends daily review of all account activity, including reviewing check images online. Client agrees to protect the confidentiality of its account and account number, and personal identification information, such as driver's license number, taxpayer identification number, and social security number. Client understands that personal identification information alone, or together with information related to its account(s), may allow unauthorized access to Client's account(s). Passwords and user names are intended to provide security against unauthorized entry and access to Client's account(s). Notwithstanding Bank's efforts to ensure that the system is secure, Client acknowledges that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. Bank cannot and does not warrant that all data transfers utilizing the Services, or email transmitted to and from Bank, will not be monitored or read by others. Client shall be solely responsible for establishing, maintaining and following such security protocols as it deems necessary to ensure that data transmitted directly to Bank are intact, secure and confidential until received by Bank.

## **7. Release of Information**

As a condition of using the Services, Client acknowledges that account related information will be made available to any Authorized User. Client hereby waives all rights associated directly or indirectly with the rights to financial privacy and with the dissemination of financial information with respect to such persons.

## **8. Availability of Services in General**

Except as otherwise provided in the Service Descriptions, Services shall be available to Client 7 am to 7 pm seven days a week. Services may not be available occasionally due to emergency, circumstances beyond the Bank's

control, or scheduled maintenance.

**9. Cut-off Hours**

A number of Bank's Services are subject to processing cutoff hours. The cutoff hours applicable to each Service are reflected in the Service Descriptions and Supporting Documents. Communications received after the cutoff hour or on a non-business day may, in Bank's discretion, be deemed received as of the next business day. Alternatively, some Services may require Client to resubmit a Communication when it is received after the cutoff hour or on a non-business day.

**10. Service Limitations**

Client acknowledges that the Services may be subject to system and other limitations, including Bank imposed limitations. Client agrees not to exceed or otherwise violate any Service limitations, including dollar, frequency, activity or other limits.

**11. Delayed Processing**

In addition to any allowances provided to Bank in any other agreement Bank has with Client, Client agrees that Bank may delay posting of an inbound credit to Client's account(s) held at Bank, or delay the processing of an outbound transaction from Client's account(s) held at Bank, when the delay is due to a suspicion that the transaction may be in violation of applicable Law, Rule or Act, or the transaction is otherwise under review by Bank.

**12. Software and Equipment**

The Service Description and/or Supporting Documents for each Service shall describe the various means by which Client may communicate with Bank in connection with such Service. Those means may include, without limitation, the use of computer software ("Software") licensed or sublicensed by Bank to Client ("License") or the use of an Internet connection. To the extent any of the Services involve Bank having granted Client Software License usage rights, such grant shall be a non-exclusive, non-transferable right to access and use the Service in connection with Client's own business operations in accordance with the Supporting Documents. Client agrees to comply with the terms of any Software License(s) provided to Client in connection with the Services. Client may not transfer, distribute, copy, reverse engineer, decompile, modify or alter such Software. Unless otherwise agreed by Bank in writing, the computer programs, Service Descriptions, Security Procedures, equipment, Software, and systems provided by Bank to Client in connection with the Services represent Bank's proprietary property, including intellectual property, and must be returned to Bank upon request. Client acknowledges and agrees that the Software and content used by Bank in the operation and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and related to the technology, Software, content, designs, graphics, and trademarks included 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 the Master Agreement or otherwise.

Unless otherwise provided in the Master Agreement, Client is responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems, computers, and software (collectively "Equipment"). Client agrees to use Equipment that is compatible with Bank's programs, systems, and equipment, which Bank may change from time to time. Bank assumes no responsibility for the defects or incompatibility of any Equipment 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 BY



BANK TO CLIENT OR OTHERWISE USED BY CLIENT. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND CLIENT HEREBY WAIVES AND RELEASES BANK FROM ALL SUCH WARRANTIES.

Bank is not responsible for equipment failure or malfunction of Client's equipment, any computer virus that may affect Client's equipment or other problems that may occur, directly or indirectly from Client's use of Services.

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 use best efforts to repair or replace the defective Software or equipment that Bank provided to Client.

To the extent Bank provides equipment in conjunction with any of the Services, Bank may require Client to identify the location(s) where such equipment will be maintained and Client agrees not to relocate the equipment without Bank's prior written approval. Any equipment provided by Bank to Client will be on a licensee bases and Client will obtain no ownership interest in the equipment, absent written agreement between Bank and Client otherwise. Such license will be revocable by Bank at any time, and at Bank's discretion. If the license is revoked for any reason, Client agrees to return all Bank provided equipment, as directed by Bank, at Client's sole cost and expense.

### **13. Statements and Notices**

Except as expressly provided otherwise in the Master Agreement, Bank will provide Client statements, notices, and other information regarding its account(s) or Services (collectively "Account Related Information") through mail, electronically, through Services, or by other means available. If through mail or electronically, this information will be sent to the postal address or electronic address ("E-Address") of the owner of the applicable account as reflected in Bank's records, unless a different postal or electronic address has been specified in accordance with procedures Bank may establish from time to time. The E-Address may be an e-mail address, other Internet address, text messaging number, or other electronic access address provided to Bank in accordance with the Master Agreement. Alternatively, the information may be made available through business online banking services.

Account Related Information held for pick-up or posted on Bank's Website will be deemed to be delivered to Client at the time Bank makes the information available for pick-up or sends notice that information is posted on Bank's Website, as applicable. The person receiving the notice is responsible for providing copies of all Account Related Information to all joint owners, delegates, or other persons with access to the applicable account(s) or Services. Bank reserves the right at all times to communicate all Account Related Information to Client through the U.S. Postal Service or overnight courier, at Bank's sole option.

Unless otherwise required by applicable law, if Bank is required to provide Client with information in writing, Bank may, at its option, send the information electronically either:

- (a) to Client's E-Address;
- (b) to Client's secure mailbox connected with Services, and sending Client a notice to its postal address or E-Address (either separately or as part of an account statement) telling Client that the information has been posted and providing instructions on how to view it;
- (c) to Client's Services for specific functions that Client has chosen to utilize (for example, paperless statements); or
- (d) to the extent permitted by law, by posting the information to Bank's Website.

If there is more than one owner on Client's account(s), Bank may send Account Related Information to any one of them. Client assumes the risk of loss in the mail or otherwise in transit. Any notice or Account Related Information Bank sends Client will be effective the date mailed, sent electronically or otherwise made available to Client.

Client agrees that Bank may satisfy its obligation to provide Client with an annual copy of Bank's Privacy Policy by

keeping it available for review on Bank's Website.

Unless otherwise prohibited by the laws governing Client's account(s) or Services, this paragraph applies if two or more Account Related Information documents are returned or in the case of electronic notifications, the notice is returned as undeliverable. This means Bank may discontinue sending Account Related Information to Client until a valid postal or E-Address is provided to Bank. Additionally, Bank may, at its sole option:

- (a) destroy Account Related Information that is sent to Client and returned to Bank as undeliverable;
- (b) hold the Account Related Information for Client's account(s) for Client to pick-up; or
- (c) discontinue sending the Account Related Information through the delivery channel generating returns and utilize an alternative delivery channel.

Client agrees to notify Bank immediately in the event of a change to Client's postal address or E-Address. Address changes may be initiated:

- (a) at Client's request. Client may instruct Bank to change the postal address or E-Address to which we send notices or Account Related Information concerning Client's account at any time;
- (b) if Bank receives an address change notice from the U.S. Postal Service; or
- (c) if Bank receives information from another party in the business of providing correct address information that the address in Bank's records no longer corresponds to Client's address.

Bank may act on any instruction purportedly made on Client's behalf within a reasonable time after Bank received such instruction. Unless Client instructs Bank otherwise, Bank may in its sole discretion change the postal or E-Address only for the account(s) Client specifies or for all or some of Client's other account(s) with Bank.

The Bank shall be entitled to rely on any written communication believed by the Bank, in good faith, to be genuine and to have been signed by an Authorized User, and any such communication shall be deemed to have been signed by such person.

#### **14. Reconciliation**

Client will inspect all information made available by Bank in connection with the Services. Client agrees to promptly, by telephone and in writing, notify Bank of any errors in such information or any discrepancies between its records and the information, statements or confirmations of transactions made available by Bank.

#### **15. Provisional Credit**

Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. 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.

#### **16. Positive Pay Service**

Bank's positive pay service is available to all business customers. Positive Pay can be extremely helpful in preventing fraudulent checks and ACH debits from being charged against Clients account(s). If Client chooses not

to use Bank's positive pay service, Client agree to assume a heightened degree of responsibility for safeguarding its checks, supervising persons who have access to Client's checks and statements, reviewing all checks and statements, immediately reporting any unauthorized check or ACH debit involving Client's account. If Client does not enroll for the Positive Pay service and a fraudulent check or ACH debit loss occurs, despite Bank's exercise of good faith and ordinary care, Client agrees to assume responsibility for the loss to the extent that it could have been prevented by Client's use of the positive pay service.

#### **17. Signature Verification**

Any requirement of verifying two or more signatures on checks, if such a requirement exists, does not apply to electronic or telephone transfers and Client releases Bank from liability when making these kinds of transfers. Authorized Users are authorized by Client to individually make electronic or telephone transfers, even though that person's authority to transfer or withdraw funds from Client's account(s) by some other means (e.g. by check) must be exercised jointly with one or more other persons or even though Authorized User is not a signer on the account. This provision controls and takes precedence over any conflicting provision in any other agreement Client has with Bank.

#### **18. Client Representations**

Client represents and warrants to Bank that:

- (a) It is duly organized and validly existing, and is in good standing in every jurisdiction where required;
- (b) Client's execution, delivery, and performance of this Master Agreement and the transactions contemplated herein have been duly authorized by all necessary action and do not: (i) violate any provision of any applicable law, rule or regulation (including but not limited to any licensing requirement(s) or of Client's charter or bylaws or other governing documents, as applicable), or (ii) result in the breach of, constitute a default under, or require any consent under any agreement or instrument to which Client is a party or by which Client is bound;
- (c) The individuals executing and delivering the Master Agreement and the Authorization for and on behalf of Client, are duly authorized to do so;
- (d) Any Communication or authorization required in connection with the Master Agreement and each Service Description has been provided by an Authorized User. Bank may rely upon the authority of each Authorized User for purposes of the Master Agreement and Service Descriptions until Bank has received written notice acceptable to Bank of any change of persons designated by Client as an Authorized User, and Bank has had a reasonable time to act thereon (after which time Bank shall rely upon the change);
- (e) Any act required by any relevant governmental or other authority in connection with the Master Agreement has been or will be done (and will be renewed if necessary);
- (f) Client's performance under the Master Agreement and use of the Services will not violate any applicable law, regulation or other requirement;
- (g) The Master Agreement is a legal, valid, and binding obligation;
- (h) Client is not, and agrees not to take any action that would result in Client being deemed or treated as, a money service business or cannabis related business under any applicable state or federal law, except to the extent that Client has specifically and in writing previously informed Bank that Client is a money service business or cannabis related business;
- (j) Client agrees that it shall be deemed to make and renew each representation and warranty made in this Section on and as of each day on which it uses the Services. Client will inform Bank in writing immediately upon Client becoming aware of facts or circumstances that cause (or with the passage of time would result in) any representation or warranty given by Client to cease to be true and correct. Client will provide such information or documentation as Bank may request from time to time to demonstrate compliance by Client with Client's representations and warranties, or other obligations of Client under this Master Agreement.

**19. Client Conduct**

Client agrees not to use the Services or the content or information in any way that would: (a) infringe any copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent 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 its affiliates or service providers, or cause Bank to lose (in whole or in part) the services of any of its 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 Services in such a manner as to gain unauthorized entry or access to the computer systems of others. Without limiting the generality of the foregoing, Client agrees not to: (i) make the Services available, or allow use of the Services, in a computer bureau service business, or on a timesharing basis; or (ii) otherwise disclose or allow use of the Services by or for the benefit of any third party.

**20. Compliance**

Client agrees to comply with all state and federal laws, rules, and regulations, as may be amended from time to time, applicable to Client and to its use of the Services (collectively, "Laws"), including the operating rules of all systems and networks, as may be amended from time to time, used to provide Services to Client (collectively, "Rules"), and to promptly provide evidence reasonably satisfactory to Bank of the same if requested by Bank. Without limitation, Client agrees and acknowledges that the Services may not be used by Client in violation of, and must comply with, the Laws and Rules, including sanctions laws administered by the Office of Foreign Asset Controls. Client agrees that the Services will not be used to facilitate any illegal activity, including but not limited to illegal Internet gambling. Client acknowledges and agrees that the Software used to access the Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations, as may be amended from time to time (collectively, "Acts").

Nothing in the Master Agreement relieves Client of any obligation Client may have under the Laws, Rules or Acts. If the Master Agreement is in conflict with the Laws, Rules or Acts, as may be amended from time to time, then the Master Agreement is deemed modified only to the extent necessary to allow or require Client to comply with the Laws, Rules, and Acts. 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 Laws, Rules, and Acts, including any changes to them. Bank is not obligated to provide information, updates or notice of or regarding the Laws, Rules, or Acts 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 Laws, Rules or Acts to Client, Bank is not responsible for the accuracy of the same and may discontinue doing so at any time.

**21. Fines or Penalties**

Client will reimburse Bank for any fines or penalties (and any associated costs, including reasonable attorneys' fees and costs) imposed on or assessed against Bank by any Federal Reserve Bank, any network operator, any state or federal regulatory agency or other US or foreign governmental body, or any clearinghouse or other third party having oversight or rulemaking authority over transactions facilitated using the Services, when the fine, penalty or other expense is caused by or related to Client's data or use of the Services. Such amounts shall be immediately due and payable by Client. Client's obligation to pay Bank remains immediately due and payable whether or not the fine or penalty was imposed or assessed in accordance with any requirements of the Rules or Laws or any laws applicable to any party other than Bank and notwithstanding Bank or Client may have a claim against another for breach of the same.

## **22. Limitation on Liability; Indemnification**

Bank's duties and responsibilities shall be limited to those set forth in the Master Agreement. In no event shall Bank be liable for, even if Bank, or representatives thereof, are advised of the possibility of such damages, losses or expenses: (a) any punitive, indirect, consequential or special damages or lost profits, even if Bank has been advised of the possibility of such damages; (b) the acts or omissions of a financial institution, contractor, vendor, processor, third-party servicer or vendor used by Client or Bank, or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (c) Client negligence or breach of any agreement with Bank; (d) any loss, cost, expense, or damage to Client in connection with any communication connection, Software, or any technical computer service, including Software installation or de-installation performed by Bank or Client or any third party designated by Bank or Client, or Client's or Bank's use thereof; (e) any ambiguity, inaccuracy or omission in any instruction or information provided to Bank; (f) the application of any government or funds-transfer system rule, guideline, policy or regulation; (g) the lack of available funds in Client's account to complete a transaction; (h) Bank's inability to confirm to its satisfaction the authority of any person to act on Client's behalf; (i) Client's failure to follow any applicable software manufacturer's recommendations or Bank's Services instructions; (j) any Internet sites related to the Services or maintained or operated by Bank or the use thereof or the inability to use such sites by any party, or in connection with any failure or performance, error, omission, interruption, defect, delaying in operation or transmission, computer virus or line or system failure; or (k) failing to transmit, or delaying the transmission of, any transaction, if such transmittal would result in Bank having exceeded any limitation upon its intra-day net funds position established pursuant to present or future FRB guidelines or in Bank 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; or (l) any failure to perform any of its obligations under the Master Agreement if such performance would result in Bank 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 Bank's sole discretion. There may be other exceptions to Bank's liability, as stated in Client's account or other service agreements with Bank. Without limiting the foregoing, Bank will not be responsible for determining the compatibility of any installed Software with other system components or for any failure of any technical servicing or Software installation to provide access to the particular Service which the technical servicing or Software installation was intended to make available.

Bank's liability and Client's sole remedy for any cause not otherwise excluded herein and regardless of what form of action will be limited to actual direct damages sustained by Client, but in any event only to the extent that such damages resulted from Bank's gross negligence or willful misconduct, will not exceed the lesser of: (i) two (2) times the average monthly charge for the Services in question for the three months immediately preceding the cost or loss; or (ii) \$3,000. Any claim, action or proceeding by Client to enforce the terms of the Master Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs. 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 Services fees have been established in contemplation of: (i) these limitations on Bank's liability, (ii) Client's agreement to review statements, confirmations, and notices promptly and to notify Bank immediately of any discrepancies or problems; and (iii) Client's agreement to assist Bank in any loss recovery effort.

Subject to the foregoing limitations, Bank's liability for loss of interest, if any, resulting from Bank's error or delay shall be calculated by using a rate equal to the Bank's savings account rate for the period involved. At Bank's option, payment of such interest resulting from or arising out of any claim of any person that Bank is responsible for any of Client's or any third party's acts or omissions, may be made by crediting any of Client's account(s).

Client agrees to indemnify and hold Bank, its affiliates, licensors, processors, third-party contractors and vendors, and their respective directors, officers, shareholders, employees and agents, harmless from and against any and all claims, loss or damage of any nature whatsoever (including but not limited to attorneys' fees and court costs)



arising directly or indirectly out of: (i) the wrongful acts or omissions of Client, or any person acting on Client's behalf in connection with Client's use of the Services, including without limitation (1) the breach by Client of any provision, representation or warranty of the Master Agreement, (2) the negligence or misconduct (whether by act or omission) of Client or its clients or any third party on behalf of Client, (3) any misuse of the Services by Client, or any third party within the control, or on behalf, of Client, (4) the failure by Client to comply with applicable state and federal laws and regulations, or (5) any fine, penalty or sanction imposed on Bank by any clearing house, or any governmental entity, arising out of or connected with the Services; (ii) any act or omission of Bank that is in accordance with the Master Agreement or instructions from Client; (iii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an image or Communication to Bank; (iv) any loss or corruption of data in transit from Client to Bank; (v) any claim by any third party claiming that such third party incurred loss due to the Service; or (vi) any claims, loss or damage resulting from Client's breach of, or failure to perform in accordance with, the terms of the Master Agreement. This indemnity will survive the termination of the Master Agreement. Client agrees that it will not assert any claims against Bank based on theories of negligence, gross negligence, strict liability, misrepresentation, or fraud based on or relating to any Communication, connection, Software or Client's possession or use thereof or any technical computer service including, but not limited to, Software installation or de-installation performed by Bank.

### **23. Exclusion of Warranties**

CLIENT ACKNOWLEDGES THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. BANK IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM CLIENT'S USE OF THE SERVICES. BANK MAKES NO, AND EXPRESSLY DISCLAIMS ALL, WARRANTIES (EXPRESS OR IMPLIED) REGARDING CLIENT'S USE OF THE SERVICES AND THE EQUIPMENT, INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BANK DISCLAIMS ANY WARRANTIES REGARDING ANY SOFTWARE, ANY COMMUNICATION CONNECTION, THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICES AND THE EQUIPMENT, INCLUDING ANY WARRANTY THAT THE SERVICES AND THE EQUIPMENT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. CLIENT ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, TRANSMISSION ERROR, AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING THE SERVICES AND ASSUMES ALL RISKS RELATING TO THE FOREGOING.

### **24. Governing Law and Venue**

Except to the extent federal law controls, disputes concerning the acceptance and handling of ACH transactions by Bank, will be governed by the internal laws of the State of New York as provided by the rules of Nacha-The Electronic Payments Association. Except to the extent that the federal law controls, all other controversies will be resolved in accordance with the internal laws of the State of California.

Venue for any action arising under or relating to the Master Agreement shall be Stockton, San Joaquin County, California.

### **25. Alternative Dispute Resolution**

The parties hereto agree that any dispute or controversy arising out of or relating to the Master Agreement, or to the interpretation, performance or breach of the Master Agreement shall be resolved by the parties themselves. If the parties are unable or unwilling to resolve such dispute or controversy themselves, then any action, dispute, claim or controversy between or among the parties shall be heard and resolved by a judicial referee under judicial reference as provided in California Code of Civil Procedure Sections 638 et seq. for the hearing and determination of any and all of the issues, whether of fact or of law, without a jury. The referee shall be a former judge or attorney with more than ten years of experience in the area of financial transactions. The parties agree to the appointment of one referee and shall use their best efforts to agree on the selection of the referee. If the parties are unable to



agree on the referee within ten (10) calendar days after a written request to do so by either party, then each party shall submit the name of a referee to the other party and the two referees named by the parties shall appoint a third referee to hear and determine any and all issues. The referee shall be requested to set the matter for hearing within sixty (60) days after the date of selection of the referee and try any and all issues of law or fact and report a statement of decision upon them, if possible, within ninety (90) days of the first date a party first provides notice that a controversy, dispute or claim exists under the Master Agreement. Any decision rendered by the referee will be final, binding and conclusive and judgment shall be entered pursuant to CCP 644 in any court in the State of California having jurisdiction. No provision of, nor the exercise of any rights under this alternative dispute resolution provision shall limit the right of any party to employ other remedies, including, without limitation, (a) exercising self-help remedies, including setoff rights; (b) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the dispute to judicial reference nor render inapplicable the compulsory alternative dispute resolution provisions hereof. THE PARTIES HEREBY ACKNOWLEDGE THAT THIS PROVISION FOR JUDICIAL REFERENCE REPLACES ANY AND ALL RIGHTS TO A TRIAL BY JURY FOR ALL CIVIL ACTIONS OR PROCEEDINGS INVOLVING A DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENTS.

**26. Attorneys' Fees and Expenses**

In the event of a lawsuit or an arbitration or reference proceeding, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or proceeding, as determined by the court, arbitrator or referee.

**27. Cooperation in Loss Recovery Efforts**

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

**28. Business Days**

For the Purpose of the Master Agreement, Bank's business days are Monday through Friday, excluding Saturdays, Sundays, bank holidays, and any other day that Bank chooses to be closed.

**29. Notices to Bank**

Any written notice required or permitted to be given to Bank hereunder shall be given by: (a) registered or certified mail, return receipt requested, postage prepaid or (b) nationally recognized overnight courier service. Notices will be addressed to:

BAC Community Bank  
P.O. Box 1140  
Stockton, CA 95201-1140

Attn: Customer Service Department

Any notice Client sends Bank will not be effective until Bank actually receives the notice and has a reasonable opportunity to act on it.

### **30. Confidential Information**

Confidential Information means any information obtained by Client or disclosed or made available to Client (whether in writing, verbally or by observation of objects or processes) from or by Bank. Confidential Information does not include information that:

- (a) Is or becomes generally available to the public other than as a result of a disclosure by Client;
- (b) Was in Client's possession before the time of disclosure;
- (c) Becomes available to Client on a non-confidential basis from another source, provided that Client has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or
- (d) Is independently developed by Client without reference to or use of any other Confidential Information.

Client shall not use or disclose any Confidential Information other than in furtherance of the performance of its obligations under the Master Agreement. Such disclosures shall be limited to:

- (a) Client's employees or agents, provided that:
  - 1. All such employees and agents have given Client their express written agreement to maintain the Confidential Information in confidence, which written agreement shall expressly provide that Bank is a third party beneficiary of the confidentiality agreement; and
  - 2. The employee or agent has a need to know the information.
- (b) In response to a subpoena or other court order, provided that Bank shall have been given immediate notice of the subpoena or order and that the disclosure shall not be made prior to the time stated in the subpoena or order or after the Bank has furnished Client with evidence that such objecting party is seeking or has obtained a contrary court order restricting or quashing the subpoena or order.
- (c) Client shall immediately notify Bank upon discovery of any breach of the Master Agreement or of any unauthorized use or disclosure of confidential information.

### **31. Records**

All electronic media, payment orders, security procedures and records used by Bank for transactions contemplated by the Master Agreement shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Client's request. Any expenses incurred by Bank in making any such information available to Client shall be paid by Client.

Bank's records shall be deemed conclusive evidence of a Communication.

Client agrees to fully and promptly comply and cooperate with any requests for information or documentation made at any time by Bank, its auditors, or its regulators.

The Bank has the right to audit Client's compliance with the Master Agreement and the ACH rules of Nacha-The Electronic Payments Association and Client agrees to fully and promptly cooperate with such audit.

### **32. Recording and Use of Communications**

Client and Bank agree that all telephone conversations or data transmissions between Client and Client's Authorized Users and Bank and/or Bank's agents made in connection with the Master Agreement may be

electronically recorded and retained by either party by use of any reasonable means.

**33. Force Majeure**

Notwithstanding any other provisions of the Master Agreement, 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 Master 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, pandemic, epidemic, viral outbreak, terrorism, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in Bank's control.

**34. Term**

This Master Agreement shall be effective on the Effective Date and shall remain in full effect until the term(s) of all the Service Descriptions expire or such Service Descriptions terminate.

**35. Termination**

- (a) In addition to termination rights set forth in any Service Description: Client may, upon written notice to Bank, terminate any Service Description if Bank materially breaches its obligations under that Service Description or under the Master Agreement with respect to that Service Description and the breach remains uncured for a period of thirty (30) days after notice thereof;
- (b) Bank may, upon written notice to Client, terminate any Service Description if the Client materially breaches its obligations under that Service Description or under the Master Agreement with respect to that Service Description and the breach remains uncured for a period of thirty (30) days after notice thereof; provided that during such (30) day cure period, Bank may suspend Services pursuant to that Service Description if Bank, in its absolute discretion, determines that continuing to provide Services would or might expose Bank to potential losses or violations of Laws, Rules and Regulations.
- (c) If any service charge remains unpaid by Client days after due and Client fails to cure such payment failure within 30 days following receipt of written notice from Bank, we may terminate (a) the Service Description and/or Client's access to and use of Services to which the payment failure relates or (b) all Service Descriptions if the unpaid amounts constitute a material portion of annual charges due under the Service Descriptions.
- (d) Either party may terminate the Master Agreement upon written notice to the other party if the other party commits an act of bankruptcy or becomes the subject of any proceeding under the Bankruptcy code or becomes insolvent or if any substantial part of the other party's property becomes subject to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency, and such proceeding is not dismissed within 60 days of receipt of written notice from the terminating party.

Regardless of the reason for termination, such termination shall not affect any obligations arising prior to termination, including any financial obligation of Client's arising out of a transaction initiated by Client prior to termination.

**36. Final Agreement; Amendments**

The Master Agreement constitutes the final and complete agreement between Bank and Client with respect to the Services, and supersedes all other oral or written agreements, understandings, and representations pertaining to the subject matter hereto. Bank may amend, add, delete or change the terms of the Master Agreement, including but not limited to the terms of any Service Description, and the applicable fees. Bank may make such

amendments, additions, changes or deletions, at any time and at Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Client's usage of the Services, Bank may notify Client of the change in advance. Otherwise, Bank will notify Client of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically. Client's continued use of the Services will evidence Client's consent to any amendments, including additions, changes or deletions.

**37. Severability**

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

**38. Headings**

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

**39. Waiver**

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

No waiver by either party shall be considered a continuing waiver or a waiver of any other right. In order to be valid, waivers must be in writing and executed by the party granting the waiver.

**40. Assignment**

Client may not assign the Master Agreement or any of the rights or duties hereunder to any party without Bank's prior written consent.

**41. Binding Agreement**

The Master Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. The Master Agreement is not for the benefit of any other party, and no other party shall have any right against Bank or Client hereunder.