



## Automated Sweep Service Agreement

Automated Sweep Service. Banc of California ("Banc") hereby offers the undersigned deposit account client(s) (each a "Customer") and Customer hereby accepts the automated sweep service subject to these terms and conditions (the "Automated Sweep Service"). Customer is responsible for all transfers to the fullest extent provided by law and as set forth in this Automated Sweep Service Agreement ("Agreement"). In the event this Agreement is entered among multiple Customers, Banc notifications to one Customer under this Agreement will be deemed notice to each Customer.

**THE PARTIES TO THIS AGREEMENT EXPRESSLY ACKNOWLEDGE THAT THE TRANSFERS CONDUCTED PURSUANT TO THIS AGREEMENT ARE EXCLUDED FROM COVERAGE UNDER THE ELECTRONIC FUND TRANSFER ACT OR ITS IMPLEMENTING REGULATION E TO THE EXTENT THE TRANSFERS ARE BETWEEN A CONSUMER'S ACCOUNTS AT BANC, FROM A CONSUMER'S ACCOUNT TO AN ACCOUNT OF A MEMBER OF THE CONSUMER'S FAMILY HELD AT BANC, OR BETWEEN A CONSUMER'S ACCOUNT AND AN ACCOUNT OF BANC. NOTWITHSTANDING THE FOREGOING, SECTION 1005.10(E) REGARDING THE PROHIBITION ON COMPULSORY USE SHALL APPLY TO THE EXTENT APPLICABLE UNDER REGULATION E. CUSTOMER'S LOAN ACCOUNT IS NOT A "DEPOSIT," AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE ACT AND IS NOT INSURED IN THE EVENT OF BANC FAILURE. FUNDS DRAWN FROM CUSTOMER'S LOAN ACCOUNT BECOME AN INSURED DEPOSIT WHEN THE DRAW AMOUNT IS ACTUALLY PROCESSED BY THE BANC. FUNDS TRANSFERRED FROM CUSTOMER'S DEPOSIT ACCOUNT TO MAKE A PAYMENT ON A LOAN ACCOUNT CEASE TO BE A DEPOSIT WHEN THE PAYMENT IS ACTUALLY PROCESSED BY BANC. ALTHOUGH THE PAYMENT IS NOT A DEPOSIT, IT REDUCES THE AMOUNT THE BORROWER OWES BANC ON THE LOAN ACCOUNT, PURSUANT TO THE BORROWER'S LOAN AGREEMENT WITH BANC.**

**YOUR ATTENTION IS ALSO DRAWN TO THE ARBITRATION AGREEMENT, VENUE AND APPLICABLE LAW PROVISIONS WITHIN THE DEPOSIT ACCOUNT AGREEMENT AND DISCLOSURE UNDER WHICH MOST CLAIMS MUST BE RESOLVED BY ARBITRATION, AND NOT BY A COURT, JUDGE, OR JURY, AND YOU WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN ANY CLASS OR REPRESENTATIVE ACTION OR IN MASS ARBITRATION. YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT BY FOLLOWING THE PROCEDURE SET OUT IN THE ARBITRATION AGREEMENT WITHIN 30 DAYS OF SIGNING YOUR SIGNATURE CARD.**

1. Deposit/Loan Account. Banc reserves the right to determine which deposit and loan accounts are eligible for the Automated Sweep Service. The deposit and loan accounts subject to this Agreement are identified in Schedule A (collectively, "Accounts"), including the Primary Deposit Account, the Deposit Sub-Accounts, the Loan Payment Source Account, and the Loan Account, each as applicable.

2. Additional Definitions.

*"Business Day"* means Monday through Friday, excluding holidays Banc chooses to observe.

*"Deposit Account Balance"* means the available balance in the Deposit Account.

*"Deposit Account(s)"* means the Deposit Account(s), including the "Deposit Sub-Account(s)" and "Primary Deposit Account(s)," as applicable, each as identified in Schedule A.

*"Deposit Sub-Account(s)"* means the Deposit Sub-Account(s), as applicable, identified in Schedule A.

*"Loan Account"* means the Loan Account, as applicable, identified in Schedule A.

*"Loan Payment Source Account"* means the Loan Payment Source Account, as applicable, identified in Schedule A.

*"Primary Deposit Account(s)"* means the Primary Deposit Account(s), as applicable, identified in Schedule A.

*"Target Balance"* means the target balance dollar amount identified for each Deposit Account in Schedule A, as applicable.

3. Automatic Sweeps/Payment Authorizations. Sweep authorization options are detailed below and specifically selected in Schedule A

A. Automatic Deposit Account Sweeps.

*Based on Standing Incremental Amounts.* Authorizes Banc to automatically transfer funds between Deposit Accounts based on the scheduled increments identified in Schedule A.

*Minimum/Maximum Balance Sweeps.* Authorizes the Banc each business day to automatically transfer the Deposit Account Balance as needed to maintain the “maximum balance” and “minimum balance” Target Balances reflected for the designated Deposit Accounts, as identified in Schedule A.

*Deposit Sub-Account Target Balance.* Authorizes Banc each business day to automatically transfer the Deposit Account Balance in excess of the Target Balance for each Deposit Sub-Account to the Primary Deposit Account. To the extent the Deposit Account Balance in any Deposit Sub-Account would fall below the Target Balance on any business day, Customer hereby authorizes Banc to automatically transfer funds from the Primary Deposit Account to the Deposit Sub-Accounts, as needed, to maintain the Target Balance in each Deposit Sub-Account. Unless otherwise agreed to by Banc, if at any time there is a Deposit Account Balance in the Primary Deposit Account to transfer to some, but not all Deposit Sub-Accounts, as needed to maintain the Deposit Sub-Account Target Balances, funds will be transferred to the Deposit Sub-Accounts in the descending order (for example, from A to C, as applicable).

B. Automatic Loan Advances.

*Based on Standing Incremental Amount.* Authorizes Banc to process loan advances for deposit to the Primary Deposit Account from the Loan Account based on the scheduled increments identified in Schedule A.

*To Maintain Primary Deposit Account Target Balance.* Authorizes Banc each business day to automatically advance funds from the Loan Account to maintain the Target Balance in the Primary Deposit Account. This advance will only occur to the extent there are sufficient funds, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the Loan Account. Customer agrees that this Automated Sweep Service allows partial draws against the Loan Account to make a deposit to the Primary Deposit Account. This means that there will still be an advance against the Loan Account even if the entire amount needed to maintain the Target Balance is not available on the Loan Account. The amount drawn on the Loan Account in such instance will only be the amount available on the Loan Account. Notwithstanding the foregoing, nothing in this Agreement will require Banc to honor items or other debit transactions against the Primary Deposit Account when there are insufficient funds to cover the full amount of such transactions (including but not limited to insufficient available funds from the Loan Account).

C. Automatic Loan Payments.

*Automatic Loan Payment Sweep.* To the extent there is a Deposit Account Balance in excess of the Target Balance in the Loan Payment Source Account, authorizes Banc to automatically transfer funds from the Loan Payment Source Account to pay the Loan Account in the amount and schedule identified in the Schedule A. Unless otherwise expressly agreed to by Banc, funds swept from the designated Loan Payment Source Account to reduce the outstanding balance on the Loan Account will be applied as unscheduled reductions of principal and as such will not satisfy the installment obligations under the payment schedule for the Loan Account or pay accrued interest.

4. Customer Rights. Subject to the terms of this Agreement, the Banc hereby grants Customer a non-exclusive, non-transferable right to access and use the Automated Sweep Service in connection with Customer's use of the Automated Sweep Service. Without limiting the generality of the foregoing, Customer agrees not to (a) make the Automated Sweep Service available or allow use of the Automated Sweep Service in a computer bureau service business, or on a timesharing basis, or (b) otherwise disclose or allow use of the Automated Sweep Service by or for the benefit of any third party.

5. Account Transfer Limitations. All transfers between the Deposit Accounts will be subject to applicable terms and conditions in the Deposit Account Agreement and Disclosure, including but not limited to transfer limitations. In addition, there may be other transfer limits addressed in Schedule A.

6. Insufficient Funds. The Automated Sweep Service sweeps funds from the Accounts only when there are available funds. Availability of funds for purposes of the Automated Sweep Service from the Deposit Accounts will be determined in accordance with Banc's then funds availability. Availability of funds for purposes of the Automated Sweep Service from the Loan Account will be determined in accordance with the underlying Loan Account terms and conditions. If a

hold is placed on funds in an Account they may not be “available” pursuant to this Agreement. The ledger balance may not mirror the “available balance” for purposes of the Automated Sweep Service, as a result, the amount swept may result in a remaining ledger balance in the Deposit Account.

7. Processing Sweeps. Customer agrees and acknowledges that: (i) The sweeps pursuant to this Agreement are not done on a real time basis; (ii) Banc may look at the applicable end of day Deposit Account Balance in the Deposit Accounts to determine whether a sweep will occur; and (iii) Although the sweeps will be completed with Banc’s normal processing procedures, the processing may occur after Banc is closed. If an automated transfer, advance or payment would occur on a day that is not a business day, then the transaction may be, in Banc’s discretion, processed on the next business day.

8. Provisional Credit. Customer acknowledges Section 11405 of the California Commercial Code which provides 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. Customer agrees that when Banc provides credit for funds swept under this Agreement, it is provisional until Banc receives final settlement for the payment order. Banc may delay availability of provisional funds at its discretion. If Banc does not receive final settlement, Customer must return the funds previously credited to Customer’s account to Banc, and the person who sent the payment order will not be treated as having paid Customer.

9. Reversals. At any time, or from time to time, Banc may reverse any transfer or credit made to or from any Account for any reason or for no reason. Banc may provide notice to Customer but is not obligated to do so. Banc may reverse any transfer or credit, for example, if Banc determines in its sole discretion that to do so may assist Banc in the avoidance of any loss, liability, or to correct any error, or to cover any overdraft that might arise in an Account.

10. Reconciliation. Transfers made pursuant to this Agreement will be reflected in the periodic statement(s) for the impacted Account(s). Banc will not provide next day notice of transfers under this Agreement. Customer agrees it will inspect all information made available by Banc in connection with the Automated Sweep Services. Customer further agrees to promptly, by telephone and in writing, notify Banc of any errors in such information or any discrepancies between its records and the information, statements or confirmations of transactions made available by Banc, including but not limited to any erroneous or unauthorized transactions. To the extent not expressly prohibited by applicable law, if a Customer fails to promptly notify Banc of any such error or discrepancy, in any case no more than 15 days from the earlier of the mailing date of the information or the date on which such information is made available to said Customer, then the Customer agrees that Banc will not be liable for any losses resulting from Customer’s failure to give such notice or any resulting loss of interest relating to any transactions. Without limiting the foregoing: (i) if a Customer fails to notify Banc of any such error or discrepancy within one year of the date on which such information is made available to said Customer, then all Customers shall be precluded from asserting such error or discrepancy against Banc; and (ii) Banc reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of said one year period.

11. Compliance with Law. Customer shall comply with all laws, rules, and regulations applicable to Customer, to Customer’s business and operations (as applicable), and to Customer’s use of the Automated Sweep Service, including without limitation, the prohibitions applicable to illegal Internet gambling as well as the Office of Foreign Assets Control sanctions and regulations.

12. Customer’s Records. The Agreement and the Automated Sweep Service are not intended to relieve Customer of any obligation imposed by law or contract regarding the maintenance of records or from employing adequate audit, accounting and review practices. Except as otherwise stated in the Agreement, Customer agrees to retain and provide to Banc, upon request, all information necessary to remake or reconstruct any transmission until one year following receipt by Banc of the transmission affecting an account.

13. Customer Acknowledgements. Customer acknowledges and agrees that:

- A. Banc did not, at any time, solicit Customer for activation of the Automated Sweep Service and Banc is providing the same as an accommodation to Customer and at the express request of Customer;
- B. Customer and not Banc is responsible for reviewing and understanding any negative impact on Customer that may arise due to Customer’s use or allowance of the Automated Sweep Service (for example, loss of any insurance coverage, increased possibility of liability for obligations or actions of other Customers in insolvency or otherwise, and increased losses due to unauthorized transactions);

- C. Customer should consult with their legal counsel and accountant prior to signing up for the Automated Sweep Service; and
- D. Customer accepts all risks associated with the use of the Automated Sweep Service.

14. Customer Representations and Warranties. Customer individually represent and warrant to Banc that it is the true owner of all funds in the Deposit Accounts associated with their name on Schedule A, and as follows:

- A. Customer has all requisite power and authority to request and authorize the automated transfers provided under this Agreement;
- B. Any transfers conducted pursuant to this Agreement will not be in violation of any state or federal law (including, but not limited to, California Corporations Code Section 2253, which prohibits making any dividend or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers);
- C. Except as otherwise specifically disclosed in writing to Banc, Customer is not now engaged, and will not during the term of the Agreement engage, in any business that would result in Customer being or becoming a “money service business” as defined in the federal Bank Secrecy Act and its implementing regulations; and
- D. All corporate or other business formalities, as applicable, have been and will be followed with respect to each transfer of funds, including, but not limited to, proper authorization of all requests and transfers and record keeping requirements with respect to them.

Customer agrees to notify Banc immediately if any representation or warranty made above cease to be true.

15. Banc Liability. Except to the extent limited by applicable law, Banc will not be liable for loss, damage, harm or expense (“Loss”) from: (a) any inaccuracy, act or failure to act of any person not within Banc’s reasonable control; or (b) Customer’s negligence or breach of this Agreement. Banc’s maximum liability will never exceed the amount of actual damages proven by Customer. Banc’s liability will be reduced: (i) by the amount of the Loss that is caused by Customer’s own negligence or lack of care; (ii) to the extent that damages could have been avoided by Customer’s exercise of ordinary care; and (iii) by any Loss recovery that Customer obtains from third parties (apportioned in accordance with this provision). Banc will not be liable for any loss that is caused in part by Customer’s negligence if Banc acted with ordinary care. Except if specifically imposed by statute that cannot be waived between parties, BANC ARE NOT LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, such as Loss or damage from subsequent wrongful dishonor from Banc’s acts or omissions, even if Banc is aware of the possibility of the same. Customer agrees to cooperate with Banc in any loss recovery efforts Banc undertakes to reduce any loss or liability that arises in connection with Automated Sweep Services. Customer acknowledges that Automated Sweep Service fees have been established in contemplation of: (A) these limitations on Banc’s liability; and (B) Customer’s agreement to assist Banc in any loss recovery effort.

16. Indemnification. Customer agrees to indemnify and hold Banc, 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 Customer, or any person acting on Customer’s behalf in connection with Customer’s use of the Automated Sweep Services, including without limitation (A) the breach by Customer of any provision, representation or warranty of the Agreement, (B) the negligence or misconduct (whether by act or omission) of Customer or its clients or any third party on behalf of Customer, (C) any misuse of the Automated Sweep Services by Customer, or any third party within the control, or on behalf, of Customer, or (D) the failure by Customer to comply with applicable state and federal laws and regulations; (ii) any act or omission of Banc that is in accordance with the Agreement or instructions from Customer; (iii) any claim by any third party claiming that such third party incurred loss due to the Automated Sweep Service; or (iv) any claims, loss or damage resulting from Customer’s breach of, or failure to perform in accordance with, the terms of the Agreement. To the extent the Agreement is entered with multiple Customers then Customer indemnification obligations under the Agreement shall be met by each Customer jointly and severally with each other Customer. All indemnification obligations under the Agreement will survive termination of the Agreement.

17. Delay; Refusal; Adverse Event. Banc may delay or refuse to process any transfer and may do so for any reason or for no reason. In addition, Customer agrees that Banc may impose restrictions on the Automated Sweep Service, with or without cause, at any time and either with notice or without notice to Customer. Without limiting the foregoing,

if an Adverse Event occurs, then Banc may (but is not obligated to) take any one or more of the following actions in connection with one or more (including possibly all) Customer Accounts: (i) terminate or close Customer Accounts; (ii) restrict or terminate the Automated Sweep Service in connection with Customer Accounts; (iii) delay availability of funds on deposit in any one (and up to all) Customer Accounts; (iv) reverse sweeps and/or freeze funds in any one (and up to all) Customer Accounts and hold them pending instructions acceptable to Banc; (v) interplead funds in Customer Accounts with any court, whether or not the court later determines that interpleader is or is not an authorized action by Banc; and (vi) take any other action to protect Banc against cost, harm, inconvenience, litigation or otherwise as it sees fit in Banc's sole discretion.

For the purpose of this Agreement, "Adverse Event" means: (A) if any Customer Account is subject to levy, attachment or other legal process; (B) if Customer is the subject of voluntary or involuntary bankruptcy proceedings, or any other action for relief of creditors generally; (C) if Customer disputes any funds transfer, or the authority of Banc to act or not to act, or the legitimacy of any action taken by Banc, in connection with the Automated Sweep Service performed in reliance on this Agreement; (D) any third party asserts an interest in Customer's Account, whether or not the interest is later held to be valid; or (E) any other action or inaction deemed by Banc to present risk to Banc.

18. Recalls, Cancellations, or Amendments. If Customer informs Banc that it wishes to recall, cancel or amend a transfer under this Agreement after it has been processed, Banc may, but will not be required to, use its reasonable efforts to do so, but shall not be liable for any loss, cost or expense suffered by Customer if Banc does not, or is unable to, amend, cancel or recall the transfer. Customer hereby agrees to indemnify Banc against any loss, liability, claim or expense (including legal fees) Banc may incur in connection with assisting Customer to recall, cancel or amend any transfer.

19. Inconsistencies. If a "beneficiary" (as defined in Division 11 of the California Commercial Code) of a transfer under this Agreement is identified by both name and identifying or account number, payment may be made by Banc based on the identifying or account number even if the name and the number are not consistent or identify different parties. It is Customer's responsibility to ensure that all names and identifying or account numbers match and are correct.

20. Noncompliance with Borrowing Base. This paragraph is applicable if the promissory note or other loan document for Customer's Loan Account provides that the Loan Account is tied to a borrowing base of eligible receivables. At any time that Customer is not in compliance with the borrowing-base requirement, Banc may reverse any sweep transaction that constitutes an advance on the Loan Account.

21. Fees. Customer agrees to pay Banc the fees prescribed in Banc's current fee schedule as amended by Banc from time to time, a copy of which is available upon request. Customer agrees that Banc may without prior notice or demand automatically debit any account maintained by Customer with Banc in the amount of such fees.

22. Amendments. Banc may amend, add, delete, or change the terms of the Agreement, including but not limited to the fees. Banc may make such amendments, additions, changes, or deletions, at any time and at Banc's sole discretion. If Banc deems it reasonably practicable to do so and if the change adversely affects Customer's usage of the Automated Sweep Service, Banc may notify Customer of the change in advance. Otherwise, Banc will notify Customer of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically. Customer's continued use of the Automated Sweep Service will evidence Customer's consent to any amendments, including additions, changes or deletions.

23. Force Majeure. Notwithstanding any other provisions of the Agreement, Banc 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, pandemic, 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 Banc's control. In addition, Banc 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 Banc is required to act, as shall be determined in Banc's sole discretion.

24. Termination. Customer may terminate some or all of the Automated Sweep Services, with or without cause, upon 30 days prior written notice to Banc. Banc may terminate, suspend or restrict some or all access to the Automated



Sweep Services, with or without cause, at any time immediately upon notice to Customer. Any termination will not affect any obligations of Customer arising prior to termination.

25. Inapplicable Restrictions. Except to the extent otherwise provided in this Agreement, Customer understands that transfers provided under this Agreement will occur without regard to any withdrawal or access restrictions otherwise applicable to the Accounts. Customer agrees that any arrangements with Banc to restrict access to the Accounts do not impact Banc's ability to sweep funds, or make advances and payments as provided in this Automated Sweep Service Agreement.

26. Headings. Headings are for reference only and are not part of the Agreement.

27. Successors and Assigns. The Agreement is binding upon and shall inure to the benefit of Banc and Customer and their respective successors and assigns. However, in all cases the applicability of the Agreement to Customer's successors and assigns must be approved in an advance writing by Banc.

28. Severability. Even if a provision of the Agreement is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the other provisions of the Agreement will not be affected or impaired by such holding.

Agreed To and Accepted \_\_\_\_\_ ("Effective Date")

**CUSTOMER:**

**IF CHECKED: (I) EXECUTED AS DULY APPOINTED REPRESENTATIVE, AGREED TO AND ACCEPTED BY AND ON BEHALF OF EACH CUSTOMER LISTED IN SCHEDULE A, AS AMENDED FROM TIME TO TIME; AND (II) RATIFIES EACH CUSTOMER'S ACCEPTANCE OF THE SEPARATE MULTIPLE-ENTITY ACCESS, AGENCY, AND JOINDER AGREEMENT AND MULTIPLE-ENTITY ACCESS AUTHORIZATION (EXCEPTION REQUEST), AS APPLICABLE.**

\_\_\_\_\_  
By: [ACCEPTANCE ON FILE] \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANC OF CALIFORNIA**

By: [ACCEPTANCE ON FILE] \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_