

ACH Origination / Third-Party Sender Agreement

Third Party Sender's Name ("Third Party Sender")

U.S. Taxpayer Identification Number

Agreement Date

This ACH Origination/Third-Party Sender Agreement ("Agreement") is made by and between the Third-Party Sender and Banc of California ("Banc"). Third-Party Sender agrees to use Banc's online banking system ("System") to deliver Entry Data, as a result the submissions will also be subject to the terms of Banc's separate Treasury Management Services Disclosure, Banc Online Service Description, and Automated Clearing House (ACH) Service Description (collectively herein, "Service Agreement"). To the extent there are inconsistencies between the Service Agreement and this Agreement, this Agreement will control.

CUSTOMER'S ATTENTION IS 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 CUSTOMER WAIVES ANY RIGHT TO BRING OR PARTICIPATE IN ANY CLASS OR REPRESENTATIVE ACTION OR IN MASS ARBITRATION. CUSTOMER 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.

Third-Party Sender wishes to initiate credit and debit Entries on behalf of itself as well as on behalf of its clients by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("the Rules"). The Third-Party Sender agrees to comply with the Rules, the terms of this Agreement and any other agreements required by the Banc in conjunction with the services provided, and Banc is willing to act as an Originating Depository Financial Institution as that term is defined under the Rules with respect to such Entries. The Banc may limit the transactions initiated by the Third-Party Sender to specific Standard Entry Class codes ("SEC"). By executing this Agreement, Banc offers to and Third-Party Sender agrees to use Banc's ACH Services. This Agreement sets forth the terms and conditions pursuant to which Banc will provide to Third-Party Sender the ACH Services outlined herein ("Services"). In the event of inconsistency between a provision of Article 4A of the Uniform Commercial Code as in effect in the state of California (the "UCC") and this Agreement, the provisions of this Agreement shall prevail. Terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Service Agreements and the Rules.

Agreement

Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Banc and Third-Party Sender, intending to be legally bound, do hereby agree, as follows:

- 1. Compliance with Rules and Laws.** Third-Party Sender acknowledges it has obtained or has access to a copy of the Rules. The Rules may be purchased online at www.nacha.org under the publications tab. Third-Party Sender agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement, and any amendments to these Rules made from time to time. It shall be the responsibility of the Third-Party Sender that the origination of ACH transactions complies with U.S. law, including but not limited to sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It shall further be the responsibility of the Third-Party Sender to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC). Banc will charge the Third-Party Sender with any fines or penalties imposed by OFAC, NACHA or any organization, which are incurred as a result of non-compliance by the Originator or Third-Party Sender, as these terms are defined under the Rules or any agreements with Banc, and the Third-Party Sender agrees to fully reimburse and/or indemnify Banc for such charges or fines. The specific duties of the Third-Party Sender provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking. The duties of the Third-Party Sender set forth in the following paragraphs of this Agreement in no way limit the requirement of complying with the Rules.
- 2. Credit Approval.** In utilizing the Automated Clearing House Network in performance of this Agreement, Banc must make certain warranties on behalf of Third-Party Sender. Specifically, Banc is charged with assuring the financial soundness of Third-Party Sender to make the intended Entries. Banc must approve all ACH Agreements and may request financial information from Third-Party Sender and/or a separate credit agreement. Banc shall also be authorized to obtain a credit report(s) on Third-Party Sender in its sole discretion from time to time. Banc may also assign Third-Party Sender a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Third-Party Sender each day ("ACH Exposure Limit"). Third-Party Sender acknowledges that the ACH Exposure Limit is solely for the protection of Banc and its assets. Third-Party Sender understands that daily requests for Entries exceeding this amount are honored solely at the discretion of Banc. Requests not honored would be communicated to the Third-Party Sender or the Third-Party Sender's designated representative. Third-Party Sender shall perform a financial analysis of each Originator and establish and monitor an exposure limit for each Originator. Upon request, Third-Party Sender shall provide Banc a copy of the financial analysis and the exposure limit set for the Originator(s).
- 3. Security Interest.** To secure the payment and performance of Third-Party Sender's obligations set forth herein, except to the extent prohibited by applicable law, Third-Party Sender grants to Banc a security interest in and pledges and assigns to Banc all of Third-Party Sender's right, title, and interest in the following described property, whether now owned or hereafter existing or acquired and wherever located: (a) All monies, instruments, savings, checking and other accounts of Third-Party Sender (excluding IRA, Keogh, trust accounts and other accounts subject to tax penalties if so assigned) that are now or in the future in Banc's custody or control; (b) any other collateral described in any security instrument securing the obligations of Third-Party Sender to Banc under this Agreement or any other obligation of Third-Party Sender to Banc; and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.

- 4. Designation of Administrator.** In order to originate ACH Entries, Third-Party Sender must designate at least one Administrator. Administrator(s) shall be responsible for designating "Users" who Third-Party Sender authorizes to issue Entries on its behalf. For the purposes of this Agreement, the term "User" shall also include the Administrator. Banc shall be entitled to rely on the designations made by the Third-Party Sender's Administrator(s) and shall not be responsible for matching the names of the Third-Party Sender Users designated by the Administrator(s) to names or titles listed in Third-Party Sender's banking resolutions. Third-Party Sender agrees that any such online Entries shall comply with Banc's Security Procedures, which are subject to change without notice to Third-Party Sender. Although Banc is only required to act upon the instructions of the Users(s), Banc may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Third-Party Sender to sign checks on Third-Party Sender accounts. The signature cards establishing the authorized signatories for Third-Party Sender deposit accounts are hereby incorporated by reference and made a part hereof.
- 5. Transmission of Entries by Third-Party Sender.** Users shall initiate debit or credit Entries hereunder on behalf of and selected by Third-Party Sender in **Schedule A** hereunder. Banc shall be entitled to deem any person having knowledge of any Security Procedure, defined below in **Section 6** of this Agreement and permitted to initiate Entries under this Agreement, to be a User. Third-Party Sender may, from time to time, deliver data for Entries (Entry Data) to Banc; provided that Third-Party Sender has successfully completed any required implementation testing prior to commencement of the service. Third-Party Sender or Users shall transmit or deliver Entries to Banc in conformity the consent, formatting and other requirements of the Rules and any Banc Entry Data requirements made available to Third-Party Sender, as amended from time to time. Entries shall be transmitted to Banc's designated location not later than the time and the number of days prior to the Effective Date specified in the Processing Schedule attached hereto and made a part hereof as **Schedule B**. For the purposes of this Agreement, "Business Day" means Monday through Friday, excluding certain federal holidays. A federal holiday schedule is attached hereto as **Schedule G**. Entries received after the cut off time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Third-Party Sender to Banc on any one Business Day shall not exceed the limit set forth in **Schedule D** or as subsequently requested by Customer and approved by Banc. Third-Party Sender may not reinitiate Entries except as prescribed by the Rules.
- 6. Security Procedures.**
- a. Third-Party Sender shall comply with the "Security Procedures" ("Security Procedures") as provided in the Service Agreement and made a part hereof, and Third-Party Sender acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, user identification technology, token, certificate, or other element, means, or method of authentication or identification, as more particularly described in the Banc's required agreements used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the initiation of ACH Entries. Third-Party Sender authorizes Banc to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Third-Party Sender has notified Banc, according to notification procedures prescribed by Banc, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than User and until Banc has had a reasonable opportunity to act upon such notice. Third-Party Sender agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for Banc to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Third-Party Sender's deposit account maintained with Banc, and Third-Party Sender agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Third-Party Sender's written signature in authorizing Banc to execute such transaction. Third-Party Sender acknowledges and agrees that Third-Party Sender shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by Third-Party Sender Authorized Representatives, to the fullest extent allowed by law. Third-Party Sender further acknowledges and agrees that the Security Procedures are not designed to detect error in the transmission or content of communications or Entries initiated by Third-Party Sender and that Third-Party Sender bears the sole responsibility for detecting and preventing such error.
 - b. Third-Party Sender agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to User. Third-Party Sender agrees to instruct each User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. Upon the request of Banc, Third-Party Sender shall designate a system administrator to whom Banc may distribute Security Devices and with whom Banc may otherwise communicate regarding Security Procedures. Third-Party Sender's system administrator shall have responsibility to distribute Security Devices to User(s) and to ensure the proper implementation and use of the Security Procedures by User(s). Where Third-Party Sender has the ability to change or modify a Security Device from time to time (e.g., a password or PIN), Third-Party Sender agrees to change Security Devices frequently in order to ensure the security of the Security Device. Third-Party Sender agrees to notify Banc immediately, according to notification procedures prescribed by Banc, if Third-Party Sender believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than User or if Third-Party Sender believes that any ACH transaction or activity is unauthorized or in error. In the event of any actual or threatened breach of security, Banc may issue Third-Party Sender a new Security Device or establish new Security Procedures as soon as reasonably practicable, but Banc shall not be liable to Third-Party Sender or any third party for any delay in taking such actions.
 - c. Third-Party Sender agrees to notify Banc immediately, according to notification procedures prescribed by Banc, if the authority of any Administrator shall change or be revoked. Third-Party Sender shall recover and return to Banc any Security Devices in the possession of any User whose authority to have the Security Device has been revoked.

- d. Banc reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in Banc's discretion. Banc will endeavor to give Third-Party Sender reasonable notice of any change in Security Procedures; provided that Banc may make any change in Security Procedures without advance notice to Third-Party Sender if Banc, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of Banc's systems and assets. Third-Party Sender's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Third-Party Sender's agreement to the change and Third-Party Sender's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

7. Physical and Electronic Security.

- a. Third-Party Sender is responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Third-Party Sender's possession or under Third-Party Sender's control. Without limiting the generality of the foregoing, Third-Party Sender specifically acknowledges and agrees that as part of the foregoing obligation Third-Party Sender shall comply with the security requirements applicable to Entries, whether under the Rules or under relevant law, rule or regulation. Banc is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at Third-Party Sender's own discretion and risk, and Banc is not responsible for any damage to Third-Party Sender's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. Third-Party Sender is responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Third-Party Sender's operating systems, and for protecting, securing, and backing up any data and information stored in or on Third-Party Sender's operating systems. Banc is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Third-Party Sender's operating systems or accessed through an Internet connection.
- b. Third-Party Sender acknowledges and agrees that it is its responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). Third-Party Sender agrees to educate User, agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. In the event Third-Party Sender receives an e-mail or other electronic communication that Third-Party Sender believes, or has reason to believe, is fraudulent, Third-Party Sender agrees that neither Third-Party Sender, nor its User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail. Third-Party Sender agrees that Banc is not responsible for any losses, injuries, or harm incurred by Third-Party Sender as a result of any electronic, e-mail, or internet fraud.
- c. In the event of a breach of the Security Procedures, Third-Party Sender agrees to assist Banc in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing Banc or Banc's agent access to Third-Party Sender's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Third-Party Sender further agrees to provide to Banc any analysis of such equipment, device, or software or any report of such analysis performed by Third-Party Sender, Third-Party Sender's agents, law enforcement agencies, or any other third party. Failure of Third-Party Sender to assist Banc shall be an admission by Third-Party Sender that the breach of the Security Procedures was caused by a person who obtained access to transmitting facilities of Third-Party Sender or who obtained information facilitating the breach of the Security Procedures from Third-Party Sender and not from a source controlled by Banc.

8. International ACH Transactions ("IAT"). Third-Party Sender shall not initiate any IAT Entries.

9. Credit and Debit Entries; Records Retention. Third-Party Sender shall obtain an authorization ("Authorization Agreement") as required by the Rules from the receiver whose account will be debited or credited as the result of a debit Entry ("Receiver") initiated by Third-Party Sender. A sample of a debit and credit Authorization Agreement is attached hereto as **Schedule D**. Provider shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, Third-Party Sender shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

10. Processing, Transmittal and Settlement by Banc. Except as otherwise provided for in this Agreement and if Banc elects to accept Entries, Banc shall:

- a. (i) use commercially reasonable efforts to comply with the instructions of Third-Party Sender; (ii) process Entries received from Third-Party Sender to conform with the file specifications set forth in the Rules; (iii) transmit such Entries as an Originating Depository Financial Institution to the ACH processor selected by Banc; (iv) settle for such Entries as provided in the Rules; and (v) in the case of a credit Entry received for credit to an account with Banc ("On-Us Entry"), Banc shall credit the Receiver's account in the amount of such credit Entry on the date ("Effective Date") contained in such credit Entry provided such credit Entry is received by Banc at the time and in the form prescribed by Banc in this Agreement.
- b. transmit such Entries to the ACH processor by the deposit deadline of the ACH processor, provided:
 - (i) such Entries are completely received by Banc's cut-off time in the manner or at the location specified by Banc to Third-Party Sender from time to time;
 - (ii) the Effective Entry Date satisfies the criteria provided by Banc to Third-Party Sender; and
 - (iii) the ACH processor is open for business on such Business Day.

Third-Party Sender agrees that the ACH processor selected by Banc shall be considered to have been selected by and designated by Third-Party Sender.

- 11. Recording and Use of Communications.** Third-Party Sender and Banc agree that all telephone conversations or data transmissions between it and/or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. Banc shall not be obligated to make such recordings.
- 12. Payment for Credit for Credit Entries and Returned Debit Entries.** Third-Party Sender agrees to pay Banc for all credit Entries issued by Third-Party Sender or User(s), or credit Entries otherwise made effective against Third-Party Sender. Third-Party Sender shall make payment at such time on the date of transmittal by Banc of such credit Entries as Banc, in its discretion, may determine ("Payment Date"), and the amount of each On-Us Entry at such time on the Effective Entry Date of such credit Entry as Banc, in its discretion, may determine. Third-Party Sender shall pay Banc for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by Banc. Payment shall be made by Third-Party Sender to Banc in any manner specified by Banc. Notwithstanding the foregoing, Banc is hereby authorized to any charge account(s) ("Authorized Account(s)") designated in the **Business Enrollment Form** or the **Business Online Change to Existing Form**, as payment for credit Entries issued by Third-Party Sender or returned or dishonored debit Entries. In any event, including but not limited to instances when the Authorized Account(s) does not have sufficient available funds on the Payment Date, Banc is hereby authorized to charge any account maintained by Third-Party Sender with Banc as payment for credit Entries issued by Third-Party Sender or returned or dishonored debit Entries. Third-Party Sender shall maintain sufficient collected funds in Third-Party Sender's account(s) to settle for the credit Entries on the Payment Date. In the event that no Third-Party Sender account has collected funds sufficient on the Payment Date to cover the total amount of all Entries to be paid on such Payment Date, Banc shall process the Entries and the total amount of the insufficiency advanced by Banc on behalf of Third-Party Sender shall be immediately due and payable by Third-Party Sender to Banc without any further demand from Banc. If Banc elects to overdraw the Third-Party Sender's or any Originator's account on one or more occasions, it shall not be considered a waiver of Banc's rights to refuse to do so at any other time, nor shall it be construed as an agreement by Banc to overdraw the Third-Party Sender's or Originator's accounts.

Third-Party Sender agrees that Banc may require Third-Party Sender to pre-fund Third-Party Sender's Account so that sufficient funds are maintained in Third-Party Sender's account on the date that Third-Party Sender transmits a file containing credit Entries to Banc.
- 13. On-Us Entries.** Except as provided in Section 14, Rejection of Entries, or in the case of an Entry received for credit to an On-Us Entry, Banc shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 10 b) (i), (ii), and (iii) are met. If any of those requirements are not met, Banc shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.
- 14. Rejection of Entries.** Third-Party Sender agrees that Banc has no obligation to accept Entries and therefore may reject any Entry issued by Third-Party Sender. Banc has no obligation to notify Third-Party Sender of the rejection of an Entry but Banc may do so at its option. Banc shall have no liability to Third-Party Sender for rejection of an Entry and shall not be liable to pay interest to Third-Party Sender even if the amount of Third-Party Sender's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Third-Party Sender or the Banc has otherwise received full payment from Third-Party Sender.
- 15. Cancellation or Amendment of Entry by Third-Party Sender.** Third-Party Sender shall have no right to cancel or amend any Entry after its receipt by Banc. However, Banc may, at its option, accept a cancellation or amendment by Third-Party Sender. If Banc accepts a cancellation or amendment of an Entry, Third-Party Sender must issue the cancellation or amendment in accordance with the Banc's Security Procedure and Banc shall use reasonable efforts to act on the request by Third-Party Sender for cancellation of an Entry prior to transmitting it to the ACH processor or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but Banc shall have no liability if such cancellation is not effected. The Third-Party Sender shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry. If Banc accepts a cancellation or amendment of an Entry, Third-Party Sender hereby agrees to indemnify, defend all claims and hold Banc harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Banc as the result of its acceptance of the cancellation or amendment.
- 16. Reversals of Entries.** (a) General Procedure. Upon proper and timely request by the Third-Party Sender, Banc may use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; and (ii) be accompanied by a Reversal/Cancellation Request form, and comply with all of the Rules. In addition, if the Third-Party Sender requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Third-Party Sender Account an amount equal to that Entry or File. The Third-Party Sender shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry. (b) No Liability: Reimbursement to Banc. Under no circumstances shall Banc be liable for interest or related losses if the requested reversal of an Entry is not effected. The Third-Party Sender shall reimburse Banc for any expenses, losses or damages it incurs in effecting or attempting to effect the Third-Party Sender's request for reversal of an Entry.
- 17. Obligations of Third-Party Sender as a Third-Party Sender under the Rules.** Except for any Entry initiated by Third-Party Sender as an Originator, in addition to any other duties, responsibilities, warranties, representations and liabilities under this Agreement, for each and every Entry transmitted by Third-Party Sender to Banc, Third-Party Sender represents and warrants to Banc and agrees that Third-Party Sender shall: (i) perform all of the duties, including, but not limited to, the duty to identify Originators and, upon

request of Banc, provide the identity of the Originators to Banc; (ii) assume all of the responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (iii) make all of the warranties, including, but not limited to, the warranties of ODFIs and the warranty that Originators have agreed to assume the responsibilities of Originators under the Rules; (iv) make all of the representations; (v) assume all of the liabilities, including, but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator; or a Third-Party Sender in accordance with the Rules; and (vi) conduct, or have conducted, an audit of its compliance with the Rules in accordance with Appendix Eight of the Rules.

- 18. Relationship with Originators.** Third-Party Sender agrees and acknowledges that as of the execution of this Agreement, Banc may maintain a separate contractual relationship with any of the Originators for which Third-Party Sender intends to transmit Entries. Subject to Banc's right of approval, Third-Party Sender may from time to time agree to process Entries for new Originators. Banc reserves the right to terminate its agreement to process any Entries created for the benefit of any Originator unless and until such Originator enters into a separate contractual relationship with Banc on terms satisfactory to Banc. In the event Banc enters into a separate contractual relationship with any Originator for which Third-Party Sender had been transmitting Entries, Third-Party Sender will at such time be deemed a Third Party Service Provider for the purposes of this Agreement and the Rules.
- 19. Error Detection.** Banc has no obligation to discover and shall not be liable to Third-Party Sender for errors made by Third-Party Sender, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Banc shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Third-Party Sender. Notwithstanding the foregoing, if the Third-Party Sender discovers that any Entry it has initiated was in error, it shall notify Banc of such error. If such notice is received no later than four (4) hours prior to the ACH receiving deadline, Banc may utilize reasonable efforts to initiate an adjusting Entry or stop payment of any "On-Us" credit Entry within the time limits provided by the Rules. In the event that Third-Party Sender make an error or issue a duplicate Entry, Third-Party Sender shall indemnify, defend all claims, and hold Banc harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Banc as result of the error or issuance of duplicate Entries.
- 20. Prohibited Transactions; Nested TPSs.** Third-Party Sender agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Third-Party Sender is bound, (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, (d) to engage in any activity or business that would result in Third-Party Sender being or becoming a "money service business" as defined in the Bank Secrecy Act and its implementing regulations, or (e) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. Without limiting the foregoing, Third-Party Sender further acknowledges and agrees that Banc expressly prohibits Third-Party Sender from transmitting Entries on behalf of any "Nested Third-Party Sender," as defined in the Rules. Third-Party Sender acknowledges and agrees that Banc has no obligation to monitor Third-Party Sender's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Banc reserves the right to decline to execute any transaction or activity that Banc believes violates the terms of this Agreement. From time to time Banc may request information from Third-Party Sender in order to evaluate Third-Party Sender's audit procedures sufficient to demonstrate compliance with the prohibitions under this Agreement. Third-Party Sender agrees to provide the requested information upon request by Banc, in the form required by Banc.
- 21. Prenotification.** Third-Party Sender, at its option, may send prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Banc in the format and on the medium provided in the media format section of such Rules. If Third-Party Sender receive notice that such prenotification has been rejected by an RDFI within the prescribed period, or that an RDFI will not receive Entries without having first received a copy of the Authorization signed by its customer, Third-Party Sender will not initiate any corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.
- 22. Notice of Reject and Returned Entries and Notifications of Change.** Banc shall notify Third-Party Sender by e-mail, facsimile transmission mail, or other means of the receipt of a returned Entry from the ACH Operator. Banc shall have no obligation to retransmit a returned Entry to the ACH Operator if Banc complied with the terms of this Agreement with respect to the original Entry. Third-Party Sender shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one business day after the business day of receiving such notification from Banc.

Banc shall provide Third-Party Sender all information, as required by the Rules, with respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry received by Banc relating to Entries transmitted by Third-Party Sender. Banc must provide such information to Third-Party Sender within two banking days of the Settlement Date of each NOC or Corrected NOC Entry. Third-Party Sender shall ensure that changes requested by the NOC or Corrected NOC are made within three (3) banking days of Third-Party Sender's receipt of the NOC information from Banc or prior to initiating another Entry to the Receiver's account, whichever is later, or issue a Refused Notification of Change.

- 23. Notice of Improper Entries.** Banc shall provide Third-Party Sender with a periodic statement reflecting the total of each File transmitted by Banc or credited to a Receiver's account maintained with Banc. Third-Party Sender shall examine the periodic statement and notify the Banc of any unauthorized or erroneous Entries within a responsible time, not exceeding fourteen (14) days from the date that the periodic statement is made available to Third-Party Sender. If the Third-Party Sender fails to deliver such notice, the Third-Party Sender may not assert against the Banc any claim for interest on the amount of the Entries for the period prior to the date that such notice is delivered. If the Third-Party Sender fails to deliver notice to the Banc of any unauthorized or erroneous Entries within one (1) year from the Banc's issuance of any advice or statement reflecting such Entries, Third-Party Sender is precluded from asserting that the Banc is not entitled to retain the principal amount of the unauthorized or erroneous debit of Third-Party Sender's account(s).

- 24. Provisional Settlement.** Third-Party Sender shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and Third-Party Sender acknowledges that it has received notice of that Rule and or the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Third-Party Sender shall not be deemed to have paid the Receiver the amount of the Entry.
- 25. Identification of Receiver/RDFI.** If Third-Party Sender identifies the Receiver of an Entry by account number or identifying number, or by name and account number or identifying number, Third-Party Sender acknowledges that payment of the proceeds of the Entry to the Receiver shall be made by the RDFI, or by Banc in case of an On-Us Entry, on the basis of the identifying or account number even if it identifies a person different from the named Receiver. Third-Party Sender further acknowledges and agrees that, if an Entry describes the RDFI inconsistently by name and identifying number, payment of the related Entry may be made solely on the basis of the identifying number supplied by Third-Party Sender even if the identifying number identifies a person different from the named RDFI.
- 26. Third-Party Sender Representations and Warranties; Indemnity.** With respect to each and every Entry transmitted by Third-Party Sender, Third-Party Sender represent and warrant to Banc and agree that (a) each person or entity shown as the Receiver on an Entry received by Banc from Third-Party Sender has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting or debiting by Banc as provided herein, (c) Entries transmitted to Banc by Third-Party Sender are limited to those types of credit and debit Entries set forth in **Schedule A**, (d) Third-Party Sender shall perform their obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered by FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, and (e) Third-Party Sender shall be bound by and comply with the provision of the Rules (among other provisions of the *Rules*) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Third-Party Sender specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Third-Party Sender shall not be deemed to have paid the Receiver the amount of the Entry. Third-Party Sender shall defend, indemnify, and hold harmless Banc, and its officers, directors, agents, and employees, from and against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and costs) resulting from or arising out of (aa) any breach of any of the foregoing warranties, representations, or agreements, representations or warranties of the Third-Party Sender contained in this Agreement; or (bb) any act or omission of the Third-Party Sender or any other person acting on the Third-Party Sender's behalf. Each of Third-Party Sender's indemnification obligations under this Agreement will survive termination of this Agreement.
- 27. Additional Third-Party Sender Warranties for Selected Standard Entry Classes.** NACHA, in its role of ensuring the safety, security, and viability of the ACH network has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Third-Party Sender of such Entries Third-Party Sender hereby warrant to Banc that for each such ACH Entry submitted for processing, Third-Party Sender have obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Third-Party Sender indemnifies and holds Banc harmless from any liability arising out of Third-Party Sender's breach of these warranties.
- 28. Financial Information and Audit.**
- a. Third Party Sender. Banc may from time to time request information from Third-Party Sender in order to evaluate a continuation of the Service to be provided by Banc hereunder and/or adjustment of any limits set by this Agreement. Third-Party Sender agrees to provide the requested financial information immediately upon request by Banc, in the form required by Banc. Third-Party Sender authorizes Banc to investigate or reinvestigate at any time any information provided by Third-Party Sender in connection with this Agreement or the Service. Upon request by Banc, Third-Party Sender hereby authorizes Banc to enter Third-Party Sender's business premises for the purpose of ensuring that Third-Party Sender is in compliance with this Agreement. Third-Party Sender hereby acknowledges and agrees that Banc shall have the right to mandate specific internal controls at Third-Party Sender's location(s) and Third-Party Sender shall comply with any such mandate. In addition, Third-Party Sender hereby agrees to allow Banc to review available reports of independent audits performed at the Third-Party Sender location related to information technology, the Service and any associated operational processes. Third-Party Sender agrees to, complete a self-assessment of Third-Party Sender's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by an audit firm in an audit of Third-Party Sender. If Third-Party Sender refuse to provide the requested financial information, or if Banc concludes, in its sole discretion, that the risk of Third-Party Sender is unacceptable, if Third-Party Sender violate this Agreement or the Rules, or if Third-Party Sender refuses to give Banc access to Third-Party Sender's premises, Banc may terminate the Service and this Agreement according to the provisions hereof.
 - b. Originator. Upon reasonable notice to Third-Party Sender from Banc, Third-Party Sender shall cause any Originator for which Third-Party Sender is transmitting Entries to permit Banc to inspect Originator's books and records and to make on-site visits to any and all Originator's locations with regard to all information deemed by Banc to be necessary or pertinent to Third-Party Sender's use, for the benefit of such Originator, of the ACH services provided by Banc under this Agreement. Information subject to Banc's right of inspection shall include all information maintained by such Originator's policies, procedures, processes, and business, accounting, and operations practices, as well as such Originator's customers, clients, vendors and processors if,

in the opinion of Banc, such Originator's relationship with such parties is materially related to Third-Party Sender's ACH transaction activity, conducted for the benefit of such Originator, conducted through Banc under this Agreement. Physical site visits may be conducted to ensure notification and communication processes and disclosure requirements are being followed with respect to those addressed in the Rules. At least **annually**, Third-Party Sender shall cause each Originator for which Third-Party Sender transmits Entries to Banc to provide information in form and content satisfactory to Third-Party Sender of such Originator's financial condition, operational capabilities, physical security, and internal audit procedures sufficient to demonstrate compliance under the Rules in an accurate and timely manner.

- 29. Limitation of Liability.** (a) In the performance of the services required by this Agreement, Banc shall be entitled to rely solely on the information, representations, and warranties provided by Third-Party Sender pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Banc shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its gross negligence or willful misconduct in performing those services. Banc shall not be responsible for Third-Party Sender's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any entry received from Third-Party Sender) or those of any other person, including without limitation, any federal reserve bank, ACH operator or transmission or communications facility, any receiver of RDFI (including, without limitation, the return of any entry by such receiver or RDFI), and no such person be deemed Banc's agent. Third-Party Sender agrees to indemnify Banc against any loss, liability or expense (including attorney's fees and costs) resulting from or arising out of any claim of any person that the Banc is responsible for any act or omission of Third-Party Sender or any other person described in this Section 29(a), including claims by a consumer under Federal Reserve Board Regulation E. (b) Banc shall be liable only for Third-Party Sender's actual damages due to claims arising solely from Banc's obligations to Third-Party Sender with respect to entries transmitted pursuant to this Agreement; in no event shall Banc be liable for any consequential, special, incidental, punitive or indirect loss or damage which Third-Party Sender may incur or suffer in connection with this Agreement whether or not the likelihood of such damages was known or contemplated by Banc and regardless of the legal or equitable theory of liability which Third-Party Sender may assert, including without limitation, loss or damage from subsequent wrongful dishonor resulting from Banc's acts or omissions pursuant to this Agreement. (c) Without limiting the generality of the foregoing provisions, Banc shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Banc's control. In addition, Banc shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in Banc's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Banc's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S governmental regulatory authority. (d) Subject to the foregoing limitations, Banc's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average federal funds rate at the Federal Reserve Bank of New York for the period involved. At Banc's option, payment of such interest may be made by crediting the account.
- 30. Data Retention.** Third-Party Sender shall retain data on file adequate to permit remaking of Entries for three (3) days following the date of their transmittal by Banc as provided herein, and shall provide such data to Banc upon its request. Without limiting the generality of the foregoing provisions, Third-Party Sender specifically agrees to be bound by and comply with all applicable provisions of the Rules regarding the retention of documents or any record, including, without limitation, Third-Party Sender's responsibilities to retain all items, source documents, and records of authorization in accordance with the Rules.
- 31. Force Majeure.** Third-Party Sender acknowledges and agrees that Banc shall not be responsible or liable for any loss or damage as the result of delays or the failure of Banc to perform any obligation under this agreement caused by acts of God, acts of other parties, acts of civil or military authorities, fires, strikes, floods, changes in laws or regulations, interruption of communication or computer facilities, suspension of payments by another Banc, war, emergency conditions, or other circumstances beyond the control of Banc.
- 32. Reimbursement.** Any reimbursement by Banc for any liability hereunder may be made either directly to Third-Party Sender or by adjustment of the aggregate ledger and collected balances of Third-Party Sender's accounts.
- 33. Interest Calculations.** Any interest payments due by either party pursuant to Article 4A of the Uniform Commercial Code shall be calculated at an annual rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved.
- 34. Third-Party Sender as Receiver.** If Third-Party Sender is the Receiver of an Entry or other funds transfer, and Banc does not receive final settlement for any payment made to Third-Party Sender by Banc, Third-Party Sender acknowledges and agrees that Third-Party Sender is obligated to Banc for the amount of the payment order and Banc is authorized to charge Third-Party Sender's account(s) for any amount paid to Third-Party Sender. If Banc credits Third-Party Sender's account for an Entry or other funds transfer naming Third-Party Sender as the Receiver, such credit Entry to Third-Party Sender's account is provisional until Banc receives final settlement. Banc has no obligation to notify Third-Party Sender of receipt of a funds transfer naming Third-Party Sender as the Receiver even if payment for the funds transfer to Third-Party Sender is made by credit to Third-Party Sender's account or the payment order directs payment to an account. Demand by Third-Party Sender for payment of a payment order for which Banc is obligated to pay Third-Party Sender must be made in writing and delivered to Banc at the location designated in the Treasury Management Services Disclosure. Issuance of a check by Third-Party Sender on the account to which payment was made shall not constitute notice under this section.

35. **Media and Records.** All media, Entries, security procedures and related records used by Banc for transactions contemplated by this Agreement shall be and remain Banc's property. Banc may, at its sole discretion, make available such information upon Third-Party Sender's request. Any expenses incurred by Banc in making such information available to Third-Party Sender shall be paid by Third-Party Sender.
36. **Cooperation in Loss Recovery Efforts.** In the event of any damages for which Banc or Third-Party Sender may be liable to each other or to a third party pursuant to the services provided under this Agreement, Banc, Third-Party Sender 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.
37. **Deposit Account Agreement.** The terms of the Banc's Deposit Account Agreement and Disclosure are hereby incorporated herein by reference. This Agreement shall control over any inconsistent terms contained therein.
38. **Payment for Services.** Third-Party Sender agrees to pay the Banc for services provided under this Agreement in accordance with the Banc's then current fee schedule. Banc may change its fees at any time. The Banc may charge the Third-Party Sender Account, as well as any other account of the Third-Party Sender with the Banc, for any charges or fees due to it.
39. **Termination and Amendments.** Banc may amend or terminate this Agreement at any time and in its discretion as provided in the Service Agreement. Banc shall have no liability to the Third-Party Sender as a result of any such amendment or termination. Any practices or course of dealings between Banc and Third-Party Sender or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.
40. **Heading.** The headings and captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain, or modify this Agreement or its interpretation, construction, or meaning.
41. **Severability.** The holding of any provision of this Agreement as invalid, illegal, or unenforceable, in whole or in part, shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
42. **Waiver.** No waiver by the Banc (whether or not in writing) of any term, condition, or obligation of Third-Party Sender shall bind Banc to waive that same term, condition, or obligation again, nor shall any other provision, condition, term, or obligation hereof be affected by such waiver.
43. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the successors, heirs, trustees, and assigns of the parties hereto. This Agreement is not for the benefit of any other person, and no other person shall have any right against Banc or Third-Party Sender hereunder.
44. **Appendices and Exhibits.** Appendices and exhibits to this Agreement are incorporated into, and constitute a part of, this Agreement.
45. **Effective Date.** The effective date of this Agreement shall be the date upon which it is executed by Banc.
46. **Transfers and Assignments.** Third-Party Sender cannot transfer or assign any rights or obligations under this Agreement without Banc's written consent.
47. **Entire Agreement.** This Agreement together with the Service Agreement, appendices and exhibits constitutes the entire agreement between the parties for the services described herein and supersedes all previous agreements and understandings between the parties relating to such services. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Banc is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Banc shall incur no liability to Third-Party Sender as a result of such violation or amendment.

In witness whereof the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Third Party Sender:

<p><u>X [ACCEPTANCE ON FILE]</u> Authorized Officer's Signature</p>	<p>_____ Printed Name</p> <p>_____ Title</p>
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Banc of California:

<p><u>X [ACCEPTANCE ON FILE]</u> Signature</p>	<p>_____ Printed Name</p> <p>_____ Title</p>
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ACH Origination / Third-Party Sender Agreement

Schedule A – Third-Party Sender Selected Standard Entry Class Code

Check all that apply:

- CCD** - Corporate Credit or Debit Entry
- PPD** - Prearranged Payment and Deposit Entry

ACH Origination / Third-Party Sender Agreement

Schedule B – Processing Schedule

Delivery of ACH Files:

- **Internet transmissions**

The Third-Party Sender may electronically transmit files to Banc pursuant to the Business Online Service Description

- **Format and content of entries**

All files must be submitted in NACHA format. Third-Party Sender should refer to Appendix Three in the NACHA Rulebook for specific formatting details.

- **Timing of delivery**

Processing Deadline for:

Credit Entries

Transmission of a File – until 5 p.m. Pacific Time (Standard or Daylight) two (2) business days prior to Effective Date*

Debit Entries

Transmission of a File – until 5 p.m. Pacific Time (Standard or Daylight) one (1) business day prior to Effective Date*

*“Effective Date” must be a Business Day or the file will be processed on the first business day following the effective date.

ACH Origination / Third-Party Sender Agreement

Schedule C – Holiday Schedule

Banc of California will be closed on the following standard holidays observed by the Federal Reserve Bank. Banc of California will not accept files for processing on the following days, as well as all Saturdays and Sundays. Likewise, entries should not be effective dated for these days.

- New Year's Day (January 1)
- Martin Luther King's Birthday (Third Monday in January)
- Presidents Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Juneteenth (June 19)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25)

Note: If January 1, June 19, July 4, November 11, or December 25 fall on a Sunday, the following Monday is a standard Federal Reserve Bank holiday.



ACH Origination / Third-Party Sender Agreement

Schedule D – Sample ACH Authorization Agreement: ACH Debits

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)

Company Name: _____

Company ID Number: _____

I (we) hereby authorize _____, hereinafter called COMPANY, to initiate debit entries to my (our) Checking Account/ Savings Account (select one) indicated below at the depository financial institution named below, hereinafter called DEPOSITORY, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository Name _____	Branch _____
City _____	State _____ Zip _____
Routing Number _____	Account Number _____

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) _____

ID Number _____

Date _____

Signature _____

NOTE: ALL WRITTEN DEBIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.



ACH Origination/Third-Party Sender Agreement

Schedule D (continued) – Sample ACH Authorization Agreement: ACH Credits

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS (ACH CREDITS)

Company Name: _____

Company ID Number: _____

I (we) hereby authorize _____, hereinafter called COMPANY, to initiate credit entries to my (our) Checking Account/ Savings Account (select one) indicated below at the depository Financial Institution name named below, hereinafter called DEPOSITORY, and to credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository Name _____ Branch _____
City _____ State _____ Zip _____
Routing Number _____ Account Number _____

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) _____
ID Number _____
Date _____
Signature _____

NOTE: ALL WRITTEN CREDIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.