

## Remote Online Deposit Agreement for Check 21 Services:



Plaza Bank

19900 MacArthur Boulevard  
Suite 190  
Irvine, California 92612

[949] 502-4300  
[www.plazabank.net](http://www.plazabank.net)

**PLAZA BANK**

**REMOTE ONLINE DEPOSIT AGREEMENT FOR CHECK 21 SERVICES**

This Remote Online Deposit Agreement for Check 21 Services (“Agreement”) is entered into on \_\_\_\_\_, 2007, by and between \_\_\_\_\_ (hereinafter, referred to herein as “Depositor”), and Plaza Bank, a California banking corporation (hereinafter, together with its processor, successors and assigns, referred to herein as “PB”).

The Depositor and PB are collectively referred to herein as “the parties.”

**RECITALS:**

**WHEREAS**, Depositor desires to initiate Check 21 electronic deposits to its checking account at PB, and

**WHEREAS**, PB is willing to allow Depositor to initiate such deposits in accordance with the terms of this Agreement and the provisions of the Check Clearing for the 21<sup>st</sup> Century Act (the “Check 21 Act”).

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 **General.** Unless otherwise defined herein, capitalized terms shall have the meaning provided in Part 229 of Title 12 of the Code of Federal Regulations (“Regulation CC”), which is incorporated herein by this reference.

1.2 **Agreement.** Agreement shall mean this agreement by and between PB and Depositor, and all addenda, schedules, exhibits and attachments hereto, and all written amendments hereto signed by Depositor and PB.

1.3 **Check 21 Act.** Check 21 Act shall refer to the Check Clearing for the 21<sup>st</sup> Century Act. The terms and provisions of the Check 21 Act are made part of this Agreement and are incorporated herein by this reference.

1.4 **Check 21 Deposit.** A Check 21 Deposit is a deposit of a Substitute Check eligible for deposit as described in Sections 229.51 through 229.60 of Regulation CC.

1.5 **Consumer.** Consumer means a natural person who (1) with respect to a check handled for forward collection, draws the check on a consumer account; or (2) with respect to a check handled for return, deposits the check into or cashes the check against a consumer account.

1.6 **Items.** Items are checks as defined under the California Commercial Code (the "UCC") which are drawn on financial institutions headquartered in the United States, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ("U.S. Financial Institutions").

1.7 **Software.** Software shall mean the software and the scanner provided by PB or its vendor to Depositor to implement the services described in this Agreement.

1.8 **Substitute Check.** A substitute check is an electronic image of a check which substitutes for the original check for all persons and all purposes, including any provision of federal or state law if the substitute check (1) accurately represents all the information on the front and back of the original check as of the time the original check was truncated, and (2) bears the legend, "This is a legal copy of your check. You can use it in the same way you would use the original check."

1.9 **Substitute Check Indemnity.** Substitute Check Indemnity is an indemnity provided by PB to certain persons to which PB transfers, presents or returns a substitute check or a paper or electronic representation of such substitute check and to any subsequent recipient, as described in, and subject to the limitations of, Section 229.53 of Regulation CC, whenever PB transfers, presents, or returns a Substitute Check or a paper, or electronic representation of a Substitute Check for which PB receives consideration.

1.10 **Substitute Check Warranties.** Substitute Check Warranties are the warranties by PB to certain persons to which PB transfers, presents or returns a substitute check or a paper or electronic representation of such substitute check and to any subsequent recipient, as described in, and subject to the limitations of, Section 229.52 of Regulation CC, whenever PB transfers, presents or returns a Substitute Check, or a paper or electronic representation of a Substitute Check for which PB receives consideration.

## ARTICLE II COMPLIANCE

2.1 **Compliance with Laws.** Depositor shall comply with all applicable Federal, State and local laws, rules and policies when initiating deposits, including, but not limited to the Check 21 Act, including all procedures, rules and regulations promulgated thereunder, including but not limited to Subpart D of Regulation CC, and shall not, among other things, violate any prohibitions of the U.S.A. Patriot Act, the Bank Secrecy Act, or violate any prohibitions promulgated or enforced by the Office of Foreign Assets Control, or act on behalf of, or transmit funds to or from, any party subject to such prohibitions.

**ARTICLE III**  
**ELIGIBLE ITEMS THROUGH CHECK 21 DEPOSIT SERVICE**

- 3.1 **Eligible Items.** Only checks drawn on U.S. Financial Institutions for deposit to U.S. Financial Institutions are eligible for Depositor's conversion into Check 21 Deposits.
- 3.2 **Payee.** The name of the payee on the Item shall be only that of Depositor.
- 3.3 **Amount.** If the numeric amount on the original Item is inconsistent with the amount on the portion of the Item where the amount of said Item is written in text, Depositor shall not submit said Item electronically. If Depositor submits a check for deposit as an Item where the amount varies from the portion of the Item where the amount of said Item is written in text, Depositor acknowledges that it will be liable for any and all claims resulting from inconsistency of the amounts.
- 3.4 **Signature.** All Items must bear the drawer's signature or indicate the drawer's name on the original check.
- 3.5 **Duplicate Items.** Depositor warrants to PB that no item will be offered for additional deposit either through use of the Software or physical deposit of the original item.
- 3.6 **Document Retention.** Depositor shall retain the original Item for a period of 45 days in a secured location and be able to produce the original Item if requested by PB. Depositor shall destroy the original item on the 46th day.
- 3.7 **Security.** Depositor must restrict access to the Software to authorized personnel only. PB will provide Depositor with an administrative user name and password for initial access. Depositor is solely responsible for any transactions created using the administrative user name and password assigned by PB or those set up by Depositor.
- 3.8 **Image Quality.** Depositor shall be responsible for the image quality of all Items, which shall be of sufficient clarity and shall be sufficiently clear, as determined by PB in its sole and absolute discretion, to prevent errors and mistakes in reading such Items; Depositor acknowledges and agrees that PB, in its discretion, shall be entitled to return any Items to PB, without liability, if such Items do not comply with this requirement.
- 3.9 **Fraud.** Depositor shall not submit, or allow to be submitted to PB, any forged, altered or fraudulent Item, and accepts full and absolute responsibility for any such Item.

**ARTICLE IV**  
**SUBMISSION AND PROCESSING OF DEPOSITS**

4.1 **General.** Depositor is required to review the Operational Manual provided and to comply with its provisions and procedures. Depositor shall deliver each deposit items to PB in accordance with this Agreement. PB shall not be liable for any loss or damages resulting from Depositor's failure to deliver any deposit of Items in accordance with the foregoing.

4.2 **Time Specifications.** Depositor shall present deposits to PB in accordance with the time specifications as detailed in the attached Addendum. For same day deposit, the deposit must be delivered and computer time stamped to PB on the business day by the time described on the Addendum attached hereto. Any deposit of Items received after this time will be deemed to have been delivered on the next succeeding business day.

4.3 **Customer Forms.** At the time of execution of this Agreement, Depositor will provide to PB all the relevant information on the attached Addendum sheets entitled *Remote Deposit Merchant Set Up Sheet* and *Logon Request* and shall thereafter provide any changes relative to Depositor's account to PB in the form of the Configuration Change Request.

## **ARTICLE V REJECTED AND ERRONEOUS DEPOSITS OR ITEMS**

5.1 **Deposit in Error.** If Depositor discovers that any deposit or Item it has initiated was in error, it shall immediately notify PB of such error and PB will utilize its best efforts to correct the deposit or Item. In all such cases, it shall be the responsibility of Depositor to notify its affected customers that a deposit or Item has been made that is at variance with the customer's authorization or is otherwise erroneous.

5.2 **Liability.** PB shall have no liability to Depositor or any customer arising out of Depositor's initiation of erroneous deposits or Items or PB's attempts to correct such deposits or Items, and Depositor shall indemnify and hold PB harmless from any such liability and any pecuniary loss therefrom, including all reasonable expenses, court costs, and attorney's fees, incurred in connection with any claim or claims asserting such liability.

## **ARTICLE VI REPRESENTATION, WARRANTIES, AND INDEMNIFICATION**

6.1 **Representations and Warranties of Depositor.** Depositor represents and warrants the following, as of the date of this Agreement and as of the time it initiates each deposit:

(a) Each of the requirements of Article III, with respect to each Item submitted, has been satisfied, and is true and accurate.

(b) Depositor is in compliance with all Federal, State and Local laws pertaining to Check 21 Deposits and as described in the Check 21 Act and Regulation CC, and all other rules

and directives of the Federal Reserve Board and United States Treasury Department concerning Check 21 services.

(c) Depositor has complied with all requirements of the U.S.A. Patriot Act, the Bank Secrecy Act, the requirements of the Office of Foreign Assets Control, and all other laws applicable to its banking relationships (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges there under) of all federal, state, local and foreign governments and all agencies thereof, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against Depositor alleging any failure to comply with any federal or state laws or regulations. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will violate any statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which Depositor is subject or any charter of Depositor, or conflict with or create any right to accelerate, terminate, modify, or cancel or require any notice under any other agreement, or other arrangement to which Depositor is a party or by which either is bound.

(d) Depositor is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, as shown in its signature on this Agreement.

(e) Depositor has full power and to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes valid and legally binding obligations of Depositor and is enforceable in accordance with its terms and conditions.

(f) The representations and warranties contained in this Section 6.1 do not contain any untrue statement of fact or omit to state any fact necessary in order to make these statements and information contained in this Section 6.1 not misleading.

(g) The information provided by Depositor pursuant to this Agreement and its Addendum is correct, accurate, and complete and does not contain any untrue or misleading statement or fact.

(h) No Item presented for deposit as a Check 21 item has been or will be re-presented for deposit either through use of the Software or deposited separately as a physical deposit of the original Item.

**6.2 Indemnification.** In the event of any breach of any of the representations and warranties stated above or otherwise contained in this Agreement, Depositor shall indemnify and defend PB and hold PB harmless against and from any pecuniary loss arising out of or in respect of any such breach, including all reasonable expenses, court costs, and reasonable attorney's fees incurred in connection therewith, and including any losses (including interest, costs, reasonable attorney's fees and other expenses) arising out of any Substitute Check Warranties or Indemnity of PB required under the Check 21 Act.

## **ARTICLE VII PB'S RESPONSIBILITIES**

7.1 **Reliance on Depositor.** In the performance of the services required by this Agreement, PB shall be entitled to rely on the information, representations, and warranties that Depositor provides, and shall not be responsible for the accuracy, completeness, or authenticity thereof.

7.2 **Misconduct; Force Majeure.** PB shall be responsible for its own fraudulent acts or willful misconduct, but shall not otherwise be responsible to Depositor for any action taken, allowed, or omitted by or under this Agreement, or for any liability, loss, claim, or damage arising from an act of God, from delay occasioned in transit of data or processed work, or from other cause of event beyond PB's control.

7.3 **Substitute Check Warranties and Indemnity.** PB shall provide the Substitute Check Warranties and Indemnity to certain persons to which PB transfers, presents or returns a substitute check or a paper or electronic representation of such substitute check and to any subsequent recipient, as described in, and subject to the limitations of, Section 229.52 of Regulation CC, whenever PB transfers, presents or returns a Substitute Check, or a paper or electronic representation of a Substitute Check for which PB receives consideration.

7.4 **Disclaimer.** PB makes no warranty to Depositor with respect to the services to be rendered under this Agreement, including without limitation, accuracy, merchantability, or fitness for a particular purpose. In no event will PB be liable to Depositor for direct, indirect, special, incidental, or consequential damages arising out of the use or inability to use the services or faulty service even if PB has been advised of the possibility of such damages. The warranty and remedies set forth above are exclusive and in lieu of all others, either oral or written, express or implied.

7.5 **No Liability.** PB is not responsible to Depositor for any costs including, but not limited to, those incurred as a result of lost profits or revenue, loss of time or use of the services, loss of data, costs of consultants, costs of substitute products, claims by third parties, or other similar costs. In no event will PB's liability to Depositor exceed the amount of the fees of a single month of service.

7.6 **No Third Party Beneficiaries.** No third parties shall have any rights or benefits whatsoever under this Agreement. Any attempt by any third party to assert any such right or benefit shall be void *ab initio*.

## **ARTICLE VIII FEES**

8.1 **Fees for services.** Fees for services rendered to Depositor under this Agreement shall be computed in accordance with the Addendum attached hereto. PB may change the fees upon 30 days prior written notice to Depositor. Payment of these fees will be made by a direct charge to designated or any account of Depositor. If a debit for PB's fees is uncollectible for a period of three days after its transmittal, PB may cease providing services for Depositor and will be excused from the performance of all its obligations hereunder until the fees and all service charges with respect thereto have been paid in good funds.

8.2 **Equipment.** PB will provide a list of approved duplex scanners for Depositor to use. The size and cost of the scanners are described in the equipment addendum attached hereto. The scanners may be purchased or leased.

## **ARTICLE IX TERMINATION**

9.1 **General.** This Agreement may be terminated upon thirty (30) days written notice by either party, provided that applicable portions of this Agreement shall remain in effect for one hundred and twenty (120) days after the effective date of termination and any Items that Depositor initiates prior to the effective termination date.

9.2 **Termination for Cause.** PB shall also have the right to terminate this contract immediately for cause, which shall include but not be limited to (i) Depositor's failure to pay or settle any Item, (ii) Depositor's failure to maintain the requisite balance in the Settlement Account or Reserve Account, (iii) excessive returned or rejected items submitted by Depositor, in terms of number or amount, as determined by PB in its sole and absolute discretion, (iv) PB's receipt of unauthorized, false, or fraudulent Entries or deposits of Entries, or inaccurate or fraudulent authentication data, (v) Depositor's failure to conform to PB's specifications, (vi) PB is required by the any banking or other agency, state or federal, to terminate its contractual relationship with Depositor, (vii) any violation or breach of warranty of the requirements of Article 6.1 above.

9.3 **Notice Requirement.** If Depositor terminates this Agreement without the required notice, Depositor authorizes PB to debit the Deposit Account for an amount equal to Depositor's average monthly billing.

## **ARTICLE X MISCELLANEOUS**

10.1 **Presumption.** This Agreement or any section thereof shall not be construed against any party due to the fact that the Agreement or any section thereof was drafted by the party.

10.2 **Electronic Files and Records.** All electronic files and related records that PB uses in rendering services hereunder shall be and remain its property. PB shall retain such records pursuant to its retention schedule. Upon termination of this Agreement, PB shall, at Depositor's

request and expense, make available information contained in such tapes or records then on hand.

10.3 **Assignment.** This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of Depositor and PB, except that Depositor shall not have the right to assign this Agreement or any of the rights and duties hereunder to any person or entity without PB's prior written consent.

10.4 **Entire Agreement.** This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement between the parties, supersedes all prior agreements, oral or written, and may be modified or amended only by a writing signed by both parties.

10.5 **Headings.** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.

10.6 **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of California.

10.7 **Jurisdiction and Venue.** In the event that either party commences legal action seeking monetary, declaratory, or injunctive relief with respect to enforcement, interpretation, or violation of this Agreement or any other agreement between PB and Depositor, the parties (i) agree that any such action may be commenced only in a court of competent subject-matter jurisdiction in Orange County, California, (ii) consent to venue and personal jurisdiction in such a court, and (iii) waive any defense of lack of venue or personal jurisdiction in any such suit, action, or proceeding. The parties further (A) agree that process in any such suit, action, or proceeding may be served by mailing a copy thereof by certified mail, return receipt requested, to the other party at the address set forth on the Addendum attached hereto, and (B) waive any defense of insufficiency of service of such process.

10.8 **Attorney's Fees.** The prevailing party in any legal action regarding the enforcement, interpretation, or violation of this Agreement shall be entitled to an award of all reasonable expenses, court costs, and attorney's fees incurred in connection with such litigation.

10.9 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof; and the remaining provisions herein shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10.10 **Waiver.** Waiver of the benefit of any provision of this Agreement must be in writing to be effective. The waiver by any party hereto of a breach of any provision hereof shall not operate

or be construed as a waiver of any subsequent breach. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by such party of compliance by the other party hereto with any of the covenants or other obligations contained herein. A failure by a party to insist upon strict compliance with any term of this Agreement, enforce any right, or seek any remedy upon any default of any other party shall not affect, or constitute a waiver of, such party's right to insist upon such strict compliance, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default.

10.11 **Notice.** Any notice or other communication required or permitted by this Agreement shall be in writing and may be given by personal delivery, overnight delivery service, or certified mail (return receipt requested) (postage prepaid). Notice shall be deemed given upon personal delivery thereof, on the day after such notice is deposited with an overnight delivery service, or upon receipt of delivery of such notice by certified mail. Notices shall be sent to the addresses set forth below. Failure or refusal of a party to accept receipt of a notice or other communication hereunder shall in no manner invalidate the notice.

10.12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

10.13 **Rule Violations.** In the event of monetary penalties imposed by the applicable Clearing House or Payment System for violation of rules, these penalties will be recovered from Depositor directly, if it is deemed by PB that the violation was caused by Depositor's disregard or violation of these rules.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed effective on the day and year first written above but actually signed on the dates indicated below by their respective signatures.

PB:

Plaza Bank,  
a California banking corporation

By: \_\_\_\_\_  
Larry Luckey  
Executive Vice President  
Chief Operating Officer  
Date: \_\_\_\_\_

Depositor:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Addendum**

**File Transmission, Security Procedures & Contingency Plan**

PB shall be entitled to rely any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication shall be deemed to have been signed by such person. The only Authorized Representative is the legal signor of this Agreement or the individuals listed below whose signature is a true and valid signature.

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_

**NON-Processing Days**

Depositor acknowledges that documents transmitted on the following days will not be processed until the next business day.

- |                                   |  |
|-----------------------------------|--|
| <b>New Year's Day</b>             | <b>Martin Luther King Jr.'s Birthday</b> |
| <b>Presidents' Day</b>            | <b>Memorial Day</b>                      |
| <b>Independence Day</b>           | <b>Labor Day</b>                         |
| <b>Columbus Day</b>               | <b>Veterans' Day</b>                     |
| <b>Thanksgiving Day</b>           | <b>Christmas Day</b>                     |
| <b>Weekends (Saturday/Sunday)</b> |  |

**Fee Schedule**

<i>Fee Type</i>	<i>Amount</i>	<i>Frequency of Charge</i>
Maintenance	\$50	Monthly
Set-Up	\$125.00	One Time
Scanner	Included *	Included in Maintenance Fee *
Level 1 Per Item Fee	\$0.20	Per Item
Level 2 Per Item Fee	\$0.25	Per Item

\*Standard Scanner (Docketport 485 Scanner)

\*Scanners for higher volume are available at an additional charge to your monthly maintenance fee.

Depositor shall pay Bank fees as set forth on the Fee Schedule above. Fees will be hard charged to Depositor's account or paid through Account Analysis.

**Addendum, Cont'd**

**Time Specifications**

**Same day credit:** Deposit must be computer time stamped by 3:00 p.m. Pacific Standard Time. Any deposit of items received after this time will be deemed to have been delivered on the next succeeding business day.