



## Funds Transfer Agreement

This agreement is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (Hereafter referred to as the "Customer") and 1st Century Bank, N.A. (Hereafter referred to as the "Bank").

By requesting a funds transfer by the Bank, Customer agrees to all of the terms and conditions in the Agreement. This Agreement and notices contained therein apply to the funds transfer as defined in Article 4A of the Uniform Commercial Code ("UCC4A"), as in effect from time to time in the State of California, and as covered by Regulation J of the Board of Governors of the Federal Reserve System ("Reg J").

UCC4A and Reg J establish a comprehensive legal framework covering the duties, responsibilities and liabilities of all the parties involved in a funds transfer. This Agreement contains several notices, which the Bank is required to provide to the Customer, and establishes other terms and conditions, which will apply to all funds transfers involving the Customer and the Bank. Using the Bank to send or receive funds shall constitute your acceptance of the terms of this Agreement.

This Agreement incorporates by reference the terms of the Account Disclosure and Agreement and the Business Account Agreement and Disclosure, that are in effect and that may be changed from time to time (collectively, "Disclosure"). To the extent this Agreement is inconsistent with the terms of the Disclosure, this Agreement will prevail. The term "business day" refers to any weekday; Saturdays, Sundays, and public holidays are excluded.

Customer authorizes Bank to conduct Funds Transfers on Customer's behalf and agree as follows:

1. **Sufficient Funds.** Customer should maintain sufficient funds available in the Account for the Funds Transfer and any associated fees. If there are not sufficient funds in the Account, the requested Funds Transfer will not be processed. Bank may, in Bank sole discretion, execute a Funds Transfer which causes an overdraft to the Account, in which case Customer are liable for the overdraft, any related fees, and interest as stated in the Disclosure.
2. **Fees and Charges.** Customer will pay all fees as determined by Bank Disclosure and fee schedule, which may change from time to time. Customer agrees to reimburse us for all fees and any actual expenses Bank incur to affect or revoke any Funds Transfer.
3. **Our Responsibility.** Bank will use reasonable efforts to execute Funds Transfers on the business day received, when received prior to Bank deadline. Funds Transfer requests received after Bank deadline or on a non-business day will be initiated the next business day. The Bank is authorized to execute Funds Transfers issued by Customer or any Authorized Person, without inquiry into the circumstances of the transaction, even if a Funds Transfer benefits the Authorized Person. Any credit Bank give to Customer for incoming Funds Transfers is provisional until Bank receives final payment. If Bank does not receive final payment, Customer will refund to us the amount of the provisional credit.

4. **Transfers Generally.** If a Funds Transfer describes a beneficiary incorrectly by name and/or account number, payment may be made on the basis of the account number, even if it identifies a person different from the named beneficiary. Under such circumstances Customer are required to honor the payment. If a Funds Transfer is to a foreign country and the foreign remittance credit is returned or re-credited to us, Customer agree to accept a refund in the US Dollar equivalent for the amount of the foreign money credited based on the current buying rate on the date of the refund less any charges and expenses.
5. **Cancellation of Funds Transfer.** Bank may, at Bank sole discretion, accept your cancellation or amendment to a Funds Transfer. Bank has no liability if a cancellation or amendment is not affected.
6. **Security Procedures.** All Funds Transfers are subject to verification by us pursuant to the following security procedure, which Customer agrees is a commercially reasonable security procedure.
  - a. **Call back:** If Customer or an Authorized Person gives Funds Transfer instructions by any method other than in person, Bank may telephone Customer or the Authorized Person at one of the telephone numbers listed below, in Appendix A, at another telephone number as shown in Bank records, or another telephone number as Bank and Customer agree upon. Bank will not call back to verify standing instructions or repetitive payments unless otherwise requested by you.
7. **Notice, Transaction Records, and Communications.** Bank will use best efforts to provide notice to Customer of a rejection of a Funds Transfer on the execution date of the Funds Transfer. However, Bank is not liable to Customer for interest compensation for failure to give such notice. For Funds Transfers out of an Account, Bank will send an advice to the address indicated in Bank records, which will indicate the date and the amount of the transfer. Any communication sent to us via facsimile or electronic mail will be deemed an original copy of such communication, admissible in a court of law as evidence of the form and content of the communication.
8. **Termination.** Bank may terminate this Agreement at any time without notice. Customer may terminate this Agreement by giving us written notice of termination, termination by Customer will become effective 5 business days after Bank receipt of the termination notice. Bank may complete all Funds Transfers accepted on the day termination is to become effective.
9. **Consent.** Customer expressly agree to be bound by any payment order, whether or not authorized, issued in its name and accepted by the Bank in compliance with the security procedure chosen by you.
10. **Indemnification.** Customer will indemnify and hold us harmless (including costs of litigation and payment of reasonable attorney's fees) from and against all claims, demands, losses, liabilities, costs and expenses of any nature, against all liabilities to third parties arising out of, or in connection with, the terms of this Agreement, any Funds Transfers, failures to affect a Funds Transfer amendment or cancellation requests, or resulting from your violation, or attempted violation of the governing Laws.

11. **Liability and Damages.** Bank are not liable for your attorney fees except as required by law. Bank liability in the event of delay or failure to transfer, is limited to the interest on the amount not transferred or delayed from the business day of receipt until Bank executed the Funds Transfer. Bank liability in the event of a transfer of an erroneous amount, is limited to a refund of the amount of the error, plus interest from the date of the transfer until the date of the refund. If Bank is liable for interest compensation, interest will be calculated on the basis of the average Funds rate at the Federal Reserve Bank of San Francisco for each day computed on a 360-day basis. **In no event are Bank to be liable for special, indirect or consequential damages, including loss or damage from subsequent wrongful dishonor or resulting from Bank acts or omissions, except as may be otherwise provided by law.**
12. **Liability.** Customer agrees that Bank is liable to Customer only for Bank negligent performance or non-performance of the services provided under this Agreement. Bank are not liable for any error or delay on the part of any third party, or for any error or delay in executing a Funds Transfer due to any cause other than Bank own failure to exercise reasonable and ordinary care. No third party will be deemed to be an agent of ours. Bank will not be liable for failure to perform under this Agreement if the failure is due to causes beyond Bank reasonable control, including, but not limited to, strikes, riots, insurrection, war, military, or national emergencies, acts of God, natural disasters, fire, outage of computers or associated equipment, or failure of transportation or communication methods or power supplies.

**Applicable Law.** All customers must comply with federal law and the laws of the state in which Customer opened the Account, including the Bank Secrecy Act, the Uniform Commercial Code of the state where the Account was opened (“UCC”), the Office of Foreign Assets Control [Type text]

**§ 4A-507. CHOICE OF LAW.**

- (a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:
- (1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.
  - (2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.
  - (3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.
- (b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.
- (c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant

to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

- (d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.
- (e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

13. (OFAC), and the USA PATRIOT ACT. With respect to Funds Transfers executed through Fedwire or using the Clearing House Interbank Payments System (CHIPS) or the Society for Worldwide Interbank Financial Telecommunication (SWIFT) systems, Federal Reserve Regulation J (and all applicable operating circulars), or the CHIPS or SWIFT Operating Rules govern, respectively.

**Keep a copy of this Agreement for your records**

