

## **BUSINESS ON-LINE BANKING AGREEMENT**

THIS BUSINESS ON-LINE BANKING AGREEMENT (this "Agreement") is for Business On-Line Banking Services provided by First National Bank of Northern California, ("Bank" or "we") to ("Customer" or "you").

**1. General.** The Business On-Line Banking Services to be provided by Bank to Customer (collectively, the "Services") will apply to those deposit accounts of Customer at Bank that are enrolled from time to time for use of the Services (the "Accounts") and may consist of one or more of the following: (a) access to Account information; (b) ability to transfer funds among Accounts; (c) ability to make stop payment requests on paper checks only; (d) ability to perform other account maintenance functions, such as ordering checks; (e) paying bills online; (f) if Customer and Bank enter into a separate ACH Agreement, transferring funds to other parties' accounts through the Automated Clearing House network; or (g) if Customer and Bank enter into a separate Wire Transfer Agreement, transferring funds to other parties' accounts via wire transfer. The Bank may add to, delete, or modify any Services at any time. Access to the services are provided at the Bank's website **www.fnbnorcal.com** (the "Website").

**2. Use of Service; Enrollment.** Bank hereby grants to the Customer use of the Services subject to the terms and conditions set forth in this Agreement. By using the Services to access an Account Customer is agreeing to the terms of this Agreement. Customers shall enroll the Accounts for which it has elected online banking by providing a list of those Accounts for which online access and access to Services is requested on enrollment forms to be provided by Bank either on paper or online, as the Bank may elect, and may enroll additional Accounts or request access to additional Services at a later date by providing new enrollment forms. In addition to this Agreement, the Accounts will continue to be governed by all other agreements that governed them at the time of enrollment for the Services, as amended from time to time, and by Bank's agreements and disclosures governing deposit accounts generally, including but not limited to Bank's Deposit Account Agreement and Disclosure, each as amended from time to time. Furthermore, the Accounts will be governed by the agreements, if any, for each additional Service used by the Customer after execution of this Agreement and by all State and Federal laws and regulations. Customer represents and warrants that it does not now and will not use the Accounts or the Services for personal, family, or household purposes.

**3. Term.** This Agreement is effective from the date any Service is first provided to Customer and shall remain in force until termination. The Agreement may be terminated by either of us upon thirty (30) days prior written notice to the other party. This Agreement will terminate automatically with respect to any Account if that Account is closed or its enrollment for the Services is terminated, and will terminate completely if Customer maintains no accounts at Bank. Any Account may be removed from access to the Services, or any Service terminated, by calling (650) 488-2512. Bank may terminate this Agreement IMMEDIATELY and without prior notice if Customer uses, or attempts to use, the Services to perpetrate any crime or fraud, fails to comply with the terms and conditions of this Agreement or any other agreement Customer has with Bank, is found to be abusing its privileges hereunder or with respect to any account Customer has with Bank, or as permitted by applicable law.

#### **4. Technical Requirements.**

a. Software Requirements:

- Microsoft Internet Explorer (IE) for Windows version 6.0 SP2 or higher with 128-bit encryption
- Mozilla Firefox version 2.0 or higher with 128-bit encryption

b. System Requirements:

- 486 with a 66 megahertz (MHz) processor or faster; 32 MB of RAM minimum
- Internet Access (High Speed Recommended)
- Windows 98 or higher
- Mac OS X 10.2.x or higher
- E-mail access and address

Some components may require additional system resources not outlined above.

**5. Security.** Customer acknowledges that the Internet may be insecure and that Bank cannot control the operation of and activities on the Internet. Customer accepts all risk of any insecurity in use of the Internet, including but not limited to, the possibility that data and information may be monitored or read by others, or that others may use malware, spyware and viruses to manipulate Customer's use of the Services on the Internet. Bank cannot and does not warrant that Account information and data transfers using the Services will not be monitored and read by others, or that use of the Services on the Internet will be secure.

a. You will be issued a temporary password when you enroll the first Account for use of the Services, and it is your responsibility to change it to a new password of your own selection when prompted to do so during your first login. Bank will not be liable or responsible for incidents of unauthorized access to or transactions on the Accounts with use of the temporary password. You are encouraged not to "save" your password on your computer, even if your Internet browser prompts you to do so, and even though it may appear convenient to do so. "Saving" your password may allow unauthorized persons with access to your computer to perform transactions on the Accounts or otherwise access the Services. Your use of a new password after your first login and/or use of the Services constitutes your agreement that Bank's security measures are commercially reasonable.

b. Customer shall be solely responsible for limiting access to the Services to authorized individuals, including, but not limited to, controlling access to hardware and software used to perform online banking transactions, and to any information required to obtain online Account access, including but not limited to PIN numbers, passwords, access codes, usernames, and the like (individually and collectively, the "Access Information"). Customer shall be solely responsible for selecting the persons who are authorized to possess Access Information and to access the Accounts and the Services. Customer acknowledges that Bank does not know and cannot determine Customer's password or PIN, and has no ability to determine whether an individual accessing Account information or using the Services by providing accurate Access Information has in fact been authorized by Customer to do so, and agrees that Customer shall bear the entire risk of loss associated with any unauthorized access or transactions accomplished

through use of accurate Access Information. By way of example and not limitation, if Customer shares Access Information with an employee, and that employee uses the Access Information to transfer money to his or her own account, Customer shall be solely responsible for any losses, and Bank shall have no responsibility whatsoever. Customer further agrees that Bank may assume, without any duty to inquire, that any person accessing Account information or using the Services with the correct Access Information is authorized by Customer to do so, and that Bank shall have no liability to Customer or to any other party if the transactions or access so obtained were not actually authorized by Customer.

c. Customer agrees that it is solely responsible for securing and protecting its computers and any other access point to the Services and internet. Additionally, Customer agrees that it is responsible for protecting its computers against viruses, malware and spyware, and that Customer shall install all necessary anti-virus and anti-malware software to protect its computer and internet-accessible devices. Customer should perform a periodic risk assessment to determine threats to the security of its Access Information and computer systems.

d. You must notify us at once if you believe your Access Information is not secure, has been accessed by an unauthorized person, or if someone has transferred or you think someone may transfer funds to or from your Account without your permission, or if you suspect fraudulent activity with your Account. Telephoning is the best way to contact us and you should follow up a telephone call by writing us. To notify us, contact us at:

First National Bank of Northern California  
P.O. Box 9003  
Daly City, CA 94017-9003  
Tel. (650) 488-2512.

e. Customer agrees to defend, indemnify, and hold Bank harmless from any claim, allegation, debt, demand, liability, or cause of action by Customer or any other person or entity that arises out of or in any way relates to online access to Customer's Accounts, or online transactions against Customer's Accounts, or any other of the Services, that were accomplished through use of accurate Access Information, whether or not the access, or transactions, or other use of the Services were in fact authorized by Customer. Customer also agrees to defend, indemnify, and hold Bank harmless from any claims that access to the Services or to the Accounts was obtained by an individual not authorized by Customer to do so. Customer's obligation to defend, indemnify, and hold harmless shall be at Customer's sole cost and expense, including but not limited to payment of Bank's attorneys' fees and costs, and shall survive termination of this Agreement and closure of any or all of the Accounts.

f. Customer acknowledges that any requirement of two signatures on paper checks, if such a requirement exists with respect to any Account, does not apply to electronic or telephone transactions, and that the Bank shall rely exclusively on the provision of accurate Access Information to perform electronic or telephone-authorized transactions. At Bank's discretion, it may contact the Customer to request the Customer's Access Information or other online banking credentials in connection with online transactions initiated by the Customer.

## 5. Cutoff Times.

a. Bank will execute transfer requests on the Business Day received provided the requests are received by the Bank prior to its Cutoff Time and subject to sufficient collected funds. A “Business Day” is Monday through Friday excluding Federal holidays. Instruction received on a weekend or holiday or after any Cutoff time on a Business Day will be considered received on the next Business Day.

b. The Cutoff Time for transfers between accounts is 4:30 p.m. (Pacific Time).

c. Cutoff Times for stop payment requests are set forth in Section 8 hereof.

d. The Cutoff Time for submission of online bill pay requests is 1 p.m. (Pacific Time). You may designate either a particular payment date or recurring bill payments under the online bill pay Service, subject to the following: (1) If you designate a payment date that is not a Business Day, the payment will be processed on the first Business Day after the date you designate; (2) if you select a recurring payment, and the frequency settings you choose result in a payment date that is not a Business Day, the payment will be processed according to the following rules:

- If the recurring payment’s “Pay Backward” option is selected, the payment will be made on the Business Day immediately prior to the calculated process date.
- If the “Pay Backward” option is not selected, or is not available, the payment will be made on the first Business Day after the calculated process date.
- If your settings for the recurring payment specify the 29<sup>th</sup>, 30<sup>th</sup>, or 31<sup>st</sup> of a month, or if a frequency setting results in a calculated process date of the 29<sup>th</sup>, 30<sup>th</sup>, or 31<sup>st</sup> of a month, and that day does not exist in the month of the calculated process date, then the last calendar day of that month is used as the calculated process date.

7. Fees. Fees payable by Customer for access to and use of the Service shall be at rates specified by the Business On-Line Banking Fee Schedule attached to this Agreement, as it may be revised and updated from time to time and as otherwise set forth in any fee schedule for the Account. Customer agrees that Bank may deduct the fees from any Account. Bank may change fees upon thirty (30) days prior written notice to Customer.

8. Stop Payments. Customer may use the Services as an alternate entry system for placing stop payment orders on paper checks ONLY. The stop payment Service is NOT available for online bill pay, ACH, or wire transfers. Stop payments entered in such a manner do not post immediately; rather, they take some time before they are reflected on Bank’s records. **Your entering a stop payment order on the Internet does not constitute notice to the Bank. The Bank must actually receive and have an opportunity to act on the order before it is effective.** The Bank agrees to enter the Stop Payment to its main computer system within a reasonable period of time after receiving the request. Customer may use the Service to send the Bank a stop payment order before 5:00 p.m. Pacific Time on a Business Day (the “Stop Payment Cutoff Time”). Stop payments received after the Stop Payment Cutoff Time will be considered received on the next Business Day. Prior to requesting a Stop Payment, the Customer should

first verify that the item has not already been posted to its account. Customer is solely responsible for the exact description of the check to be stopped, including but not limited to the check number, amount, payee, and date, and Bank shall not be responsible for failure to stop payment if the information provided is incomplete or incorrect in any way. Customer agrees that Bank has no obligation to inquire of Customer or to confirm any information with Customer, and that the Bank's sole obligation with respect to stop payment requests is to act on the information provided by Customer within a reasonable time after receiving a stop payment request. Customer further acknowledges and agrees that a stop payment order will not stop payment of a check that has already been paid, cashed, or reached a point in the final payment process where the Bank cannot reasonably return the check in time to recover the amount thereof from its immediate transferor, before the Bank has received the stop payment request and has had a reasonable time to act on it. Without limiting the generality of the foregoing, no stop payment order will be effective for checks that have already been presented to the Bank for payment if the stop payment order is not received by 11 a.m. Pacific Time on the Business Day following the day of presentment. All stop payment orders originated through the Services are subject to applicable law and to the Bank's then-current rules and fees for stop payment orders. Stop payment orders are further subject to the applicable terms of the Bank's Deposit Account Agreement and Disclosure.

**9. Additional Terms Applicable to Wire Transfers, ACH Transfers, and Online Bill Pay Services.**

a. Customer acknowledges that the availability of Wire Transfer, ACH Transfer, and Online Bill Pay Services depends on Customer's providing complete, correct, and updated information regarding each payee, and on the willingness of transferees and vendors to accept online payments. Bank shall not be responsible for any failure of a Wire Transfer, ACH Transfer, or online bill payment to reach Customer's intended recipient if that failure is due to the recipient's inability or unwillingness to receive such transfers or payments, or the failure or nonoperation of the transferee's systems or equipment, or the failure, nonoperation, or error of any such transferee's or vendor's service providers, or on your failure to identify the payee correctly and completely. Customer shall bear the entire risk of loss of late payments or other consequences of the failure of its payments to reach its intended transferees or vendors for any reason.

b. In addition to the foregoing, in order to make bill payments online, you must first designate the payee(s), either online or by calling a Bank service representative. Payments can only be processed to payees who have been first designated by the Customer and assigned a payee code by Bank. Bank reserves the right to refuse to permit a certain payee to be designated for any reason. The following payments/payees are not permitted: (1) Payees located outside the United States; (2) Payments to tax authorities, governmental agencies, and collection agencies; (3) Payments to securities companies for stock trades or similar transactions; (4) Payments made pursuant to court order, such as alimony, child support, and judgments.

c. YOU MUST ALLOW AT LEAST EIGHT (8) BUSINESS DAYS PRIOR TO THE PAYMENT DUE DATE for an online bill payment to reach the payee. You may change or cancel a bill payment provided you do so prior to the Cut-Off Time on the Business Day prior to the Business Day upon which you have scheduled the payment to be transmitted.

## **10. Limitation of Liability.**

a. In no event shall Bank be liable to Customer for any damages, including lost profits, lost savings or other direct, indirect, incidental, special or consequential damages arising out of the use or inability to use the Service, or for any claim by another party. The Bank does not make any warranty of any kind, either express or implied, with respect to the availability or use of the Services. You will generally be able to access your Accounts 24 hours a day, seven days a week, but at certain times the Services may be unavailable due to system maintenance or circumstances beyond the Bank's reasonable control, and the Bank will not be liable for unavailability of the Services.

b. To the extent not prohibited by law, the Customer agrees to indemnify and reimburse the Bank all fees and costs (including but not limited to attorney's fees), incurred as a result of any dispute involving Customer's use of the Services or an Account, and the Customer authorizes the Bank to deduct any such loss, costs, or expenses for the Customer's Accounts without prior notice.

c. The provisions of this "Limitation of Liability" section shall survive termination of the Agreement.

d. The Bank will not be obligated to honor, in whole or in part, any transaction or instruction which:

- (i) is not in accordance with any term or condition applicable to the relevant Service or Account, whether or not set forth in this Agreement;
- (ii) we have reason to believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to a hold, dispute, restriction, or legal process we believe prevents their withdrawal;
- (iii) would violate any applicable provision of any risk control program of the Federal Reserve or any applicable rule or regulation of any other federal or state regulatory authority;
- (iv) is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- (v) we have reasonable cause not to honor for our or your protection.

e. We will not be liable for failure to process any transaction for which you do not have sufficient funds in the applicable Account(s). If you have attempted several transactions for a single Business Day, you agree that: (i) transactions involving disbursements of cash, such as ATM transactions or cashed checks, will be processed first; (ii) funds transfers initiated through use of the Services that would result in an overdraft of one of your Accounts may, at our discretion, be cancelled; and (iii) should any transactions that would result in an overdraft not be cancelled, all applicable overdraft fees and charges may be imposed, and charged against any Account.

**11. Indemnification.** Except to the extent that we are expressly liable under the terms of this Agreement or an agreement that otherwise governs your Account, if you are an owner of an Account, you agree to indemnify and hold us, our directors, officers, employees, and agents harmless from all loss, liability, claims, demands, judgments, and expenses arising out of or in any way connected with any Account or the performance of any Service. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized representative. Except where applicable law requires a different result, neither we nor our service providers or other agents will be liable for any loss or liability resulting in whole or in part from any act or failure to act of your equipment or software, that of an Internet browser provider, by an Internet access provider, by an online service provider, or by an agent or subcontractor of any of them, nor will we or our service providers or other agents be responsible for any direct, indirect, special or consequential, economic, or other damages arising in any way out of your access to or use of, or failure to obtain access to the Accounts or Services.

**12. Miscellaneous.**

a. This Agreement, together with other written agreements and applicable Bank rules and regulations governing the Accounts, represent the entire understanding of the parties. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect.

b. Customer agrees not to sublicense, assign or transfer this license or the Service except as expressly provided in this Agreement.

c. This Agreement is governed by the laws of the State of California. It may not be amended or modified except by a written instrument signed by both the Customer and the Bank. Venue for any action brought to interpret or enforce this Agreement shall be in the courts of San Mateo County, California.

d. If any party to this Agreement shall bring an action to interpret or enforce this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorneys fees and costs of suit, in addition to any award.

e. Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lighting, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond that party's control. Either party may terminate this Agreement immediately on written notice if the other party is prevented from performing its obligations under this Agreement for a period of more than thirty (30) days due to the reasons set forth in this subsection.

**13. Changes.** Except as otherwise required by law, rule, or regulation, we may change the terms of this Agreement from time to time. You agree that all such changes, and any future required disclosures, may be communicated by posting them on the Website or sending them to you via e-mail. The Website will be updated on the effective date of the change, unless an immediate change is necessary to maintain the security of the system or unless a law, rule, or regulation requires that it be updated an earlier time, or that you be given earlier notice of a change. If such a change is made, and it can't be disclosed without jeopardizing the security of

the system, this Agreement will be updated within thirty (30) days after the change. Your continued use of the Services will indicate your agreement to the change. Changes to fees or terms applicable to Accounts that are governed by other agreements may be made by amending such other agreements as provided therein.

**14. Notices.** Unless otherwise required by applicable law, we may provide any notice or other communication to you either in writing or by sending it to you electronically at your Internet address as reflected on our records.

## ON-LINE BUSINESS BANKING FEE SCHEDULE

Stop Payments	\$15.00 each
Online Bill Pay	\$9.95 per month includes the first 10 bills then \$0.25 thereafter
Balance Reporting and Account Reconciliation	\$10.00 per month