

## TOLLESON PRIVATE BANK

### REMOTE DEPOSIT CAPTURE AGREEMENT

1. **Service.** Customer wishes to subscribe to and make use of the Remote Deposit Capture Service (the “RDC Service”) provided by Tolleson Private Bank (the “Bank”). This Remote Deposit Capture Agreement (“RDC Agreement”) governs the RDC Service and supplements and is part of the Customer’s Deposit Account Agreement with the Bank. The RDC Service enables the Customer to submit electronic check images and associated information (“Check Images”) to the Bank for deposit in lieu of submitting the original checks which such check images represent.

2. **Equipment.** To use the RDC Service, the Customer must use certain equipment, computer software, office equipment and telecommunication services having the specifications and capabilities that the Bank may provide or specify from time to time. The Customer agrees that the Customer may not use the equipment to make deposits at another financial institution. The Customer is solely responsible for the operation, performance, and adequacy of the equipment, software, and services. The Customer agrees to complete any changes and/or upgrades to the system as required by the Bank within thirty (30) days of such request.

The Bank may assist Customer in submitting an order to obtain a scanner from a reputable equipment seller. **THE BANK AND ITS AFFILIATES AND SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, ABOUT THE SCANNER, ANY OTHER PROCESSING EQUIPMENT, ANY PROCESSING SOFTWARE DESCRIBED IN THIS AGREEMENT, OR SELLERS OF SUCH ITEMS, AND HEREBY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.**

If the Bank provides any software to the Customer in connection with the Remote Deposit Capture Service, the Customer may use that software on any Customer owned & operated machine. The software may not be provided to any agent of the Customer without the prior written consent of the Bank. The release of software to the agent will be dependent upon the agent’s agreement to contractual terms deemed acceptable by the Bank.

3. **Transmittal of Entries by Customer.** The Customer shall submit Check Images to the Bank in such format, and with such associated check information, as the Bank may require periodically, utilizing Accredited Standards Committee X9’s Specifications for Electronic exchange of Check and Image Data (DSTU X9.37-2003). The Customer agrees to inspect and verify the quality of the Check Images, ensuring that the Check Images of the front and back of the original check are legible. Specifically, the Customer warrants the following: (i) the Check Image is an accurate representation of the information contained in the original check, and the Check Image includes all endorsements from the original check; (ii) each Check Image contains a record of all MICR line information required for a substitute check, and the Check Image satisfies all of the requirements of Check 21 and Regulation CC; (iii) the original check, a duplicate check image, or any copy of the original check or Check Image will not be deposited by the Customer with the Bank; and (iv) the original check, a duplicate Check Image, or any copy of the original check or Check Image will not be presented, transferred or returned such that the Bank or any other person will be asked to make a payment based on a check or Check Image that has already been paid. In the case of transfers for collection or

payment or for transfers for return, the Customer makes the foregoing warranties, (i) – (iv), to any transferee bank, any subsequent collecting bank, the paying bank, the drawer, any transferee returning bank, any subsequent returning bank, the depository bank, and the owner. Pursuant to the Deposit Account Agreement, the Bank reserves the right to reject any single Check Image or group of check images for any reason, before or after it appears on the Bank's system. The Bank is not liable for any loss or failure to collect a Check Image that results from an inaccurate or illegible Check Image or failure to provide full and correct MICR, date, or dollar amount for a Check Image.

The Customer agrees to submit only valid, legal check images for deposit through Remote Deposit Capture. The Customer agrees not to use the Remote Deposit Services to deposit or otherwise process: (i) non-cash items, (ii) items for which the Customer is not a holder in due course, or (iii) substitute checks, except those which have been returned to the Customer for any reason.

#### **4. Security Procedures.**

(a) The Customer and the Bank shall comply with the security protocol requirements described in the Remote Deposit Capture Agreement Authorization and Set Up Form ("Authorization Form") attached hereto with respect to deposits transmitted by the Customer to the Bank. The Customer acknowledges that the purpose of such security procedures is for verification of authenticity and not to detect errors in transmission or content of a deposit. No security procedure for the detection of any such error has been established between the Bank and the Customer.

(b) The Customer is strictly responsible to establish and maintain the security protocol to safeguard against unauthorized transmissions. The Customer warrants and guarantees that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards. The Customer also agrees to take reasonable steps to maintain confidentiality of the security procedures and any logons, passwords, codes, security devices, and related instructions provided

(c) The Customer agrees to have in place and in effect such software, procedures, and systems as comply with security best practices for transmission of sensitive data. These shall include, at minimum, appropriate firewalls, anti-virus programs, spyware detection, anti-phishing and mal-ware programs. The Customer will ensure that all software upgrades and system patches will be installed in a timely manner by the Bank in connection with the security procedures described in the Authorization Form.

#### **5. Compliance with Security Procedures.**

(a) If the Bank, in good faith, receives an item for deposit or collection that was submitted to the Bank pursuant to the security procedures described in the Authorization Form, the item or deposit will be deemed to have been transmitted or authorized by the Customer, it will be deemed effective as the Customer's deposit and the Customer shall be obligated to the Bank for the amount of the deposit. In the event the deposit was not authorized by the Customer, the Customer will be liable for the amount of the deposit, provided the Bank accepted the deposit in good faith and acted in compliance with the security procedures referred to in the Authorization Form with respect to such deposit.

(b) If a deposit received by the Bank is erroneous in any manner and was transmitted or authorized by the Customer, the Customer shall reimburse the Bank the amount of the deposit, whether or not the Bank complied with the security procedures referred to in the Authorization Form with respect to that deposit, and whether or not the error would have been detected if the Bank had complied with such procedure. Reimbursement may be accomplished by the Bank initiating a chargeback to the Customer's account identified in the Authorization Form.

**6. Notification of Breach.** If the Customer believes or suspects that any such information or instructions are known or have been accessed by unauthorized persons, the Customer agrees to immediately notify the Bank through email, fax, or telephone by contacting any of the people identified in the Authorization Form. The occurrence of unauthorized access will not affect any transactions processed in good faith by the Bank as a result of a deposit made by the Customer prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

**7. Right to Inspect and/or Audit Records.** The Bank reserves the right to conduct an on-site inspection and audit the Customer's Remote Deposit Capture records and operations.

**8. Recording and Use of Communications.** The Customer and the Bank agree that all telephone conversations, emails, or other forms of data transmissions between them or their agents, made in connection with this RDC Agreement, may be electronically recorded and retained by either party by use of reasonable means.

**9. Processing, Transmittal, and Settlement by Bank.**

(a) Except as provided in Section 10, Rejection of Entries, the Bank shall (I) process deposits received from the Customer, (II) transmit such deposits to the Bank's correspondent bank or correspondent Federal Reserve Bank, (III) settle for such deposits as provided by the Bank in the procedures listed in the Authorization Form and this Agreement.

(b) The Bank shall transmit or complete the necessary batch authorization of such deposits by the delivery date deadline of the deposits as set forth in the Authorization Form attached hereto prior to the effective entry date provided (I) such deposits are received by the Bank's related cut-off time on a Business Day as set forth on the Authorization Form, (II) the effective entry date is at least one day after such Business Day, and (III) the Federal Reserve is open for business on such Business Day. For purposes of this RDC Agreement, (i) a "Business Day" is a day on which the Bank is open to the public for carrying on substantially all of its business, other than a Saturday or Sunday, and (ii) entries or deposits shall be deemed received by the Bank when the transmission is completed as provided in the Authorization Form.

(c) If any of the requirements of clause of Section 9 are not met, the Bank shall use reasonable efforts to transmit such deposits to the Federal Reserve by the next deposit deadline of the Federal Reserve following that specified in the Authorization Form which is a Business Day and a day on which the Federal Reserve is open for business.

- (d) The cut-off time specified in the Authorization Form shall prevail over the Bank's funds availability schedule and cut-off time.

**10. Rejection of Entries or Deposits.** The Bank may reject any entry which does not comply with the requirements set forth in Section 3, Transmittal of Entries by Customer, or Section 4, Security Procedures. The Bank may reject any entry if the Customer has failed to comply with its account balance obligations under Section 14, The Account: Offset Rights. The Bank may reject any deposit of the Customer that does not adhere to security procedures as described in the Authorization Form. The Bank shall notify the Customer by phone or electronic transmission, including email and fax, of such rejection no later than the Business Day such deposit would otherwise have been transmitted by the Bank to the Federal Reserve. The Bank may reject deposits or suspend processing of deposits if it reasonably suspects that the transaction does not comply with this agreement, the transaction exceeds a remote deposit limit established by the Bank, that the check is missing endorsements or is subject to any claims or defenses, that collection of the check is doubtful, that the check was not deposited to the proper account, that the check was submitted in connection with any unlawful purpose, including money laundering, kiting, fraud, that the RDC service was misused in any way, or for any other reason in the Bank's discretion.

Notices of rejection shall be effective when given. The Bank shall have no liability to the Customer for the rejection of any such deposit or the fact that such notice is not given at an earlier time than that provided for herein. Customer agrees to contact the Bank to make alternative arrangements with the Bank in the event a deposit is rejected.

**11. Cancellation or Amendment by Customer.** The Customer shall have no right to cancel or amend any deposit after its receipt by the Bank. However, if such request complies with the security procedures, the Bank shall use reasonable efforts to act on a request by the Customer for cancellation of a deposit prior to transmitting it to the Federal Reserve but shall have no liability if such cancellation is not implemented. The Customer shall reimburse the Bank for any expenses, losses, or damages the Bank may incur in implementing or attempting to implement the Customer's request for the reversal of a deposit.

**12. Returned Entries.** The Bank shall notify the Customer by phone or electronic transmission, including email, online banking notification, or fax, of the receipt of a returned deposit from the Federal Reserve no later than one Business Day after the Business Day of such receipt.

Except for an entry retransmitted by the Customer in accordance with the requirements of Section 3, Transmittal of Entries by Customer, the Bank shall have no obligation to retransmit or re-present a returned deposit to the Federal Reserve if the Bank complied with the terms of this RDC Agreement with respect to the original deposit. The Bank may return items to the Customer through transmission of an Image Replacement Document ("IRD").

The Customer shall reimburse the Bank the amount of each returned deposit transmitted by the Bank pursuant to this RDC Agreement for which deposit the Bank had made funds available to the client.

**13. The Account: Offset Rights.** The Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this RDC Agreement by debiting the account(s) of the Customer identified in the Authorization Form attached hereto (the "Account"), and shall credit or debit the Account for any amount received by the Bank by reason of the return of a deposit transmitted by the Bank for which the Bank has previously received payment or credit from the Customer. Such credit or debit shall be made as of the day of such receipt by the Bank.

The Customer shall at all times maintain a balance of available funds in the account sufficient to cover any payment obligations under this RDC Agreement. In the event there are not sufficient available funds in the account to cover the Customer's obligations under this RDC Agreement, the Customer agrees that the Bank may debit any account maintained by the Customer with the Bank or any affiliate of the Bank or that the Bank may off set against any amount it owes to the Customer, in order to obtain payment of the Customer's obligations under this RDC Agreement.

**14. Account Reconciliation.** Deposits transmitted by the Bank will be reflected as part of the Customer's transaction activity, through online access via the Bank's internet banking system, with respect to the account pursuant to the Deposit Account Agreement between the Bank and the Customer. The Customer agrees to notify the Bank promptly of any discrepancy between the Customer's records and the information shown as account history, online, or on a periodic statement. If the Customer fails to notify the Bank of any discrepancy within 15 days after the account statement containing such discrepancy is mailed or otherwise made available to the Customer, the Customer agrees that the Bank shall not be liable for any losses resulting from the Customer's failure to give such notice or any loss of interest or any interest equivalent with respect to any deposit shown as transaction activity and shall be precluded from asserting such discrepancy against the Bank.

**15. Customer Representations and Agreements; Indemnity.** With respect to each and every deposit initiated by the Customer, the Customer represents and warrants to the Bank and agrees that, to the best of the Customer's knowledge, (a) each deposit is made payable to the Customer (b) any necessary authorization is operative at the time of transmittal or crediting/debiting by the Bank as provided herein, and (c) the Customer shall perform its obligations under this RDC Agreement in accordance with all applicable laws and regulations, including sanctions laws administered by the Office of Foreign Asset Control.

The Customer shall indemnify the Bank against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

**16. Bank Responsibilities; Liability; Limitations on Liability; Indemnity.**

(a) In the performance of the services required by this RDC Agreement, the Bank shall be entitled to rely solely on the information, representations, and warranties provided by the Customer pursuant to this RDC Agreement and shall not be responsible for the accuracy or completeness thereof. Except for the remedies provided expressly herein for breach of this RDC Agreement, the Customer agrees that the Bank will have no liability whatsoever for any loss, damage, or claim arising out of this RDC Agreement, **EVEN IF SUCH CLAIM ARISES, IN WHOLE OR IN PART, FROM THE BANK'S NEGLIGENCE.**

The Bank shall not be responsible for the Customer's acts or omissions, including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any deposit received from the Customer or those of any other person, including without limitation any Federal Reserve Bank, or transmission or communications facility, and no such person shall be deemed the Bank's agent.

The Customer agrees to indemnify the Bank against any loss, liability, or expense, including attorney's fees and expenses, resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of the Customer or of any other person described in this Section.

(b) Through our providing the remote deposit capture service to you, we are required to indemnify a depository bank that accepts the original check from which an electronic check is created for losses incurred by that depository bank if the loss is due to the check having already been paid. If the Bank suffers any Losses or Liabilities arising directly or indirectly from or related to such depository bank indemnity obligation, you will indemnify the Bank and will not hold it responsible or liable.

(c) If we transfer or present an "electronically created item" and receive settlement or other consideration for it, we are required to indemnify each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank, against losses that result from the fact that (i) the electronic image or electronic information is not derived from a paper check; (ii) the person on whose account the electronically created item is drawn did not authorize the issuance of the item or to the payee stated on the item; or (iii) a person receives a transfer or presentment, or return of, or otherwise is charged for an electronically created item such that the person is asked to make payment based on an item or check it has paid. If the Bank suffers any Losses or Liabilities arising directly or indirectly from or related to such electronically created item indemnity obligation, you will indemnify the Bank and not hold it responsible or liable.

(d) The Bank shall be liable only for the Customer's actual damage; **in no event shall the Bank be liable for any consequential, special, incidental, punitive, or indirect loss or damage which the Customer may incur or suffer in connection with this agreement**, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which the Customer may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from the Bank's acts or omissions pursuant to this RDC Agreement.

The Bank's liability shall not exceed the sum of the amount of any loss suffered by the Customer as a result of a breach of warranties under Regulation CC (12 CFR Part 229) up to the amount of any substitute check, interest and expenses (including cost and reasonable attorney fees and other expenses of presentation) related to the substitute check reduced by any amount that the Customer receives and retains as a re-credit. Furthermore, such liability shall be further reduced by the amount of any damages incurred as a result of the negligence or bad faith of the Customer.

(e) Without limiting the generality of the foregoing provisions, the Bank shall be excused

from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission of communication facilities, equipment failure, war, emergency conditions, or other circumstances beyond the Bank's control. In addition, the Bank shall be excused from failing to transmit or delay in transmitting a deposit if such transmittal would result in the Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in the Bank's reasonable judgment otherwise violating 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. In such event, the Customer shall be responsible for having a contingency plan in place including temporarily depositing original, paper items at any branch facility of the Bank.

(f) Subject to the foregoing limitations, the Bank'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 Dallas for the period involved. At the Bank's option, payment of such interest may be made by crediting the account resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of the Customer or any other person described in Section 17.

**17. Payment for Services.** The Customer shall pay the Bank the charges for the services provided in connection with this RDC Agreement, as set forth in the Bank's general fee schedule. All fees and services are subject to change upon thirty calendar days prior written notice from the Bank to the Customer. Such charges do not include, and the Customer shall be responsible for payment of, any sales, use, excise, value added, utility, or other similar taxes relating to such services, and any fees or charges provided for in the agreement between the Bank and the Customer with respect to the account (the "Account Agreement").

**18. Data Retention.** The Customer shall retain physical checks that represent the deposit for at least thirty (30) days following the date of their transmittal to the Bank and agrees to make the originals available to the Bank for fraud control purposes. The Customer is responsible for destroying all physical checks deposited through the RDC Service within a maximum of sixty (60) days. The Customer shall be responsible for maintaining physical control over processed checks and agrees to indemnify and hold the Bank harmless for any losses resulting from physical loss, whether by theft or otherwise, of any check.

**19. Records.** All electronic media, security procedures, and related records used by the Bank for transactions contemplated by this RDC Agreement shall be and remain the Bank's property. The Bank may, at its sole discretion, make available such information upon the Customer's request. Any expense incurred by the Bank in making such information available to the Customer shall be paid by the Customer.

**20. Cooperation in Loss Recovery Efforts.** In the event of any damages for which the Bank or the Customer may be liable to each other or to a third party pursuant to the services provided under this RDC Agreement, the Bank and the Customer 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.

**21. Inconsistencies, Severance.** In the event of any inconsistency between the terms of this RDC Agreement and the Deposit Account Agreement, the terms of this RDC Agreement shall govern to the extent of the inconsistency. In the event performance of the services provided herein in accordance with the terms of this RDC Agreement would result in a violation of any present or future statute, regulation, or government policy to which the Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this RDC Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy, and the Bank shall incur no liability to the Customer as a result of such violation or amendment. No course of dealing between the Bank and the Customer will constitute a modification of this RDC Agreement or the security procedures or constitute an agreement between the Bank and the Customer regardless of whatever practices and procedures the Bank and the Customer may use.

**22. Waiver.** The Bank may waive enforcement of any provision of this RDC Agreement. Any such waiver shall not affect the Bank's rights with respect to any other transaction or modify the terms of this RDC Agreement.

**23. Amendment.** The Bank may amend this RDC Agreement from time to time with 10 days' prior written notice. Use by the Customer of Remote Deposit Capture Services following the effective date of any amendment shall constitute the Customer's acceptance of and agreement to the amendment. Unless otherwise provided for herein, this RDC Agreement may not be amended or modified unless agreed to in writing by the Bank.

**24. By Either Party.** Either party may terminate this RDC Agreement, with or without cause upon written notice to the other of its intent to do so. If this Agreement is terminated, Customer shall promptly make full payment to Bank of all amounts due and amounts incurred under this Agreement. Customer's obligations regarding scanning

**25. Governing Law; Dispute Resolution; Jury Trial Waiver.** The Customer and the Bank agree that any controversy or Claim between the Customer and the Bank, or between the Customer and any of the officers, employees, agents, or affiliated companies of the Bank, arising in connection with this RDC Agreement or any services provided pursuant to this RDC Agreement, whether based in contract, in tort, or on any other legal theory, shall be governed by federal law and all applicable substantive laws of the State of Texas without regard to its conflict of laws principles. The Bank is located in Texas and that is where the Customer opens Customer account(s). Venue for any legal action or proceeding regarding this agreement shall be in Dallas County, Texas. In addition, the Bank is subject to certain federal and state regulations, and the Bank must comply with these laws, regulations and rules. The Customer agrees that if there is any inconsistency between the terms of this Agreement and any applicable law, regulation or rule, the terms of this Agreement will prevail to the extent any such law, regulation or rule may be modified by agreement.

THE CUSTOMER AND THE BANK, FOR THEMSELVES AND EACH OF THEIR RELATED ENTITIES, SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY OF ALL DISPUTES, CONTROVERSIES AND CLAIMS BY, BETWEEN OR AGAINST EITHER THE CUSTOMER OR THE BANK WHEN THE DISPUTE, CONTROVERSY OR CLAIM IS TO BE DECIDED BY A COURT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, no action, regardless of form, arising out of this



Agreement may be brought by either party more than two (2) years after the claiming party knew or should have known of the cause of action.

**26. Assignment.** The Customer may not assign all or any part of its rights or obligations under the Agreement without the Bank's prior express written consent, which may be withheld in the Bank's sole discretion. The Bank may assign or delegate all or any part of its rights or obligations under the Agreement. The Agreement will be binding on and inure to the benefit of the permitted successors and assigns of either party.

**27. No Third-party Beneficiaries.** The Agreement is for the benefit of the Customer and the Bank and is not intended to grant, and shall not be construed as granting, any rights to or otherwise benefiting any other person, except as expressly otherwise provided for in the Agreement.

**28. No Prior Agreements.** This Agreement, together with its forms, schedules and the Deposit Account Agreement are the complete and exclusive statement of the agreement between the Bank and the Customer with respect to the subject matter hereof and supersedes any prior written or oral agreement between the Bank and the Customer with respect to such subject matter.

**29. Use of Third Parties.** The Bank's ability to provide the RDC Service depends on its ability to provide access to third-party networks and other third-party services. In the event the Bank determines, in its sole discretion, that it is unable to provide third-party network or services access, the Bank may discontinue the RDC Service or may provide the service through an alternate third-party network or service and shall have no liability for the unavailability of the service.

**30. Confidentiality.** The Customer and the Bank each agree that all information concerning the other party or parties which comes into its possession in connection with the service and/or the performance of the RDC Agreement including, but not limited to, software licensed to the Customer by the Bank or other parties, user guides, and Security Procedures including any security access codes, security test codes or any method for deriving security test codes, keys, PINs, or template numbers, will be maintained as confidential and shall not be used or divulged to any other party except as may be appropriate to enable the Bank to provide the service or as required by applicable law. The Customer agrees that the Bank may share any information concerning the Customer's accounts and account transactions with any of the Bank's affiliates, subsidiaries, parent company or service providers and to the extent the Bank determines necessary, with the Customer's third-party processor(s), and state or federal regulators.

**31. Amendment and Termination.** Either party may terminate the RDC Agreement, with or without cause upon written notice to the other of its intent to do so.

The Bank may amend the Agreement from time to time with thirty (30) days' prior written notice. Notwithstanding the foregoing and to the extent permitted by applicable law, the Bank may amend any term of the Agreement without prior notice or obligation to the Customer: (i) if a service provider changes any term without providing the Bank sufficient prior notice to enable the Bank to timely notify the Customer; (ii) for security reasons; or (iii) to comply with applicable law. Use by the Customer of the RDC Service following the effective date of any amendment shall constitute the Customer's acceptance of and agreement to the amendment. If the Customer does not agree to the changes as set forth in an amendment, the Customer may choose to terminate this Agreement prior

to the effective date of the amendment by discontinuing further use of RDC Service and notifying the Bank in writing. Unless otherwise provided for herein, the Agreement may not be amended or modified unless agreed to in writing by the Bank.