



**Disclosures and Account Agreement  
for  
Fiduciary Accounts**

**Effective October 11, 2018**



## Agreement for Your Account

Welcome and thank you for selecting Axos Bank for your financial needs.

This Disclosure and Agreements – Fiduciary Accounts (“Agreement”) explains important terms and conditions which govern your account(s) with us. This Agreement is periodically revised and always available electronically for your reference at [www.axosbank.com](http://www.axosbank.com). Please read this Agreement carefully and keep it with your banking records for future reference.

When you sign our signature card, whether in writing or electronically, and/or continue to have an account with us, you and each authorized signer on your accounts effectively agree to this Agreement, together with applicable schedules and disclosures. Your Axos Bank accounts will be deemed located and domiciled in California.

Bank products and services are offered by Axos Bank. All deposit accounts through Axos Bank brands are FDIC insured through Axos Bank. All deposit accounts of the same ownership and / or vesting held at Axos Bank are combined and insured under the same FDIC Certificate 35546. All deposit accounts through Axos Bank brands are not separately insured by the FDIC from other deposit accounts held with the same ownership and / or vesting at Axos Bank.

As used in this Agreement, the words “we”, “our”, “us”, and “Bank” mean Axos Bank, and the words “you” and “your” mean the owner(s) of the account(s) and any “agent” appointed by or on behalf of the owner(s) to sign on the account(s) in a representative capacity. The word “items” as used in this Agreement include a check, draft, demand draft, preauthorized draft, or other order or instruction for the payment, transfer or withdrawal of funds including a withdrawal slip, deposit slip/adjustment, automatic transfers, electronic transactions, and miscellaneous charges to your account. An item also means any other document created or authorized in your name that would be a check or draft but for the fact that it has not been signed. Except to the extent otherwise indicated in this Agreement, the term “may” shall mean that you authorize us to take action or not to take action, at our sole discretion without resulting liability to you. All times provided in this Agreement will refer to Pacific Time.

This Agreement supersedes any previous deposit account agreement and applicable disclosures with us.

### Account Ownership

The bank may rely solely on its records to determine the form of ownership of your account. The bank may presume that any person named, in addition to you in its records, owns the funds in your account as a co-owner. Account ownership is non-transferrable.

### Account Structure

We may structure your account to consist of two sub-accounts to take advantage of an interpretation of federal regulations. The sub-accounts, a checking account, and money market account, will be used to allow for the transfer of funds between the accounts, subject to federal regulations. This structure will occur solely on our books and will not be visible to you, nor will it affect your account in any way. Also, this will not affect the FDIC coverage of your account.

### Adverse Claims

If any person or entity makes a claim against funds in your account, or if the Bank believes that a conflict exists between or among the *authorized signers* on your account or that there is a dispute over matters such as the ownership of your account or the authority to withdraw funds from your account, the Bank may, without any liability to you, take one or more of the following actions:

- Continue to rely on the Bank's records to determine the ownership of or the identity of the *authorized signer(s)* for your account.
- Honor the claim upon receipt of evidence satisfactory to the Bank to justify such claim.
- Freeze all or a part of the funds in your account until the dispute is resolved to the Bank's satisfaction.
- Close your account and send a check for the *available balance* in your account payable to you or
- Pay the funds into an appropriate court.

The Bank may charge your account for expenses (including attorney's fees and expenses) and any fees the Bank incurs.

### Adjustments

We may make adjustments to your account from time to time. This may be due, for example, to the return of an item you deposited which was unpaid or if a deposit is posted in the wrong amount. Adjustments will be reflected on your periodic statement (if any).

### Amendments

We reserve the right to amend, modify, add to, or delete (collectively referred to herein as “change(s)”) the terms or conditions of this Agreement without prior notice to you, except as required by law. Your continued use of a service or an account constitutes your acceptance of the change. Changes may include a deletion, modification, or amendment of an existing term or the addition of a new



term not otherwise contemplated when you entered into this Agreement or opened your account(s). Any change will take effect immediately, unless stated otherwise in any notice we make available to you.

Unless otherwise expressly required by law, a notice of the changes, or a copy of the revised Agreement or schedule, may be sent to you to the address as it appears on our records, by posting information in our offices, on our website, or by otherwise making the information available to you in writing or electronically.

#### Arbitration

You and the Bank recognize that disputes may from time to time arise in connection with the offering and maintenance of your deposit accounts, including without limitation, checking, savings or certificate of deposit accounts ("Deposit Account Disputes"). In order to facilitate resolution of Deposit Account Disputes in an expedient manner, by mutual cooperation and without resort to litigation, you and the Bank shall follow the procedures if and when any Deposit Account Dispute develops, unless utilization of such procedures are otherwise prohibited by applicable law or regulation:

You and a representative of the Bank holding the rank of Vice President or higher shall speak in person or by telephone, and shall endeavor in good faith to resolve the Deposit Account Dispute. In the event that no resolution of the Deposit Account Dispute is had within thirty (30) days after you or the Bank initiated such attempt at resolution, the matter shall be submitted to arbitration at the request of either party. The party desiring to proceed with arbitration shall file an Arbitration Notice with the San Diego, California office the American Arbitration Association. The arbitration shall be a separate proceeding held before a single arbitrator under the American Arbitration Association's Commercial Arbitration Rules and in accordance with the expedited procedures set forth in such rules. The arbitrator shall be selected by the parties. If the parties cannot agree to an arbitrator within fourteen (14) days following the date of the Arbitration Notice, then the arbitrator shall be selected in accordance with the procedure set forth in the rules of the American Arbitration Association. The arbitrator shall be a licensed member of the California state bar, shall be experienced in banking law, and shall not have performed services for either party during the previous five (5) year period. You and the Bank understand and agree that the right to bring any claim related to any Deposit Account Dispute to court, including the right to a jury trial, is hereby waived. The arbitrator shall render a decision and award, including a statement of reasons upon which such award is based, within thirty (30) days after the arbitration hearing. The decision of the arbitrator shall be in writing, shall be binding upon the parties, and shall be final and non-appealable. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. All expenses of any arbitration, including fees and expenses of the parties' attorneys, the arbitrator, and any witness, or the cost of any proof produced at the request of the arbitrator, shall be paid by the non-prevailing party.

You and the Bank acknowledge that our relationship involves interstate commerce. Insofar as it applies, the United States Arbitration Act shall govern the interpretation of, enforcement of, and proceedings pursuant to, this arbitration clause. Except insofar as the United States Arbitration Act applies to such matters, the agreement to arbitrate set forth herein shall be construed, and the legal relations between the parties shall be determined in accordance with, the substantive laws of the State of California. You and the Bank hereby agree that the issue of arbitrability shall likewise be decided by the arbitrator, and shall not be submitted to any other person or forum for adjudication. As a supplement to arbitration, either party may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause such party irreparable harm.

Except as otherwise provided herein, no action at law or inequity in connection with any Deposit Account Dispute shall be instituted by either party. Nothing herein shall be construed as precluding either party from filing a civil or criminal complaint with, or participating in an investigation before, any appropriate governmental authority. However, each party understands and agrees that it cannot seek or obtain any monetary relief or recovery from any such a proceeding. In addition, nothing herein shall preclude the Bank from exercising any right of set-off or other self-help remedy it might otherwise have, or from closing or suspending any account or service provided to you.

#### Authorized signers

An authorized signer is someone to whom you give all rights you have now or in the future to make withdrawals and deposits, and to otherwise transact on your account and receive account information. Merely by designating an authorized signer you do not give any ownership rights in the account. Any one of the authorized signers may sign checks or withdrawal orders and give us instructions regarding the account, including an instruction to close the account. However, if there is a conflict, we reserve the right to require all authorized signers to sign an item, withdrawal order, or other instruction on the account.

Even if the authorized signers on an account change, we may continue to honor checks, withdrawal orders, and other instructions by authorized signers until we are notified in writing not to do so.



### Business Days

Our Business Days are Monday through Friday, excluding federal holidays.

### Check Processing

We have automated collection and payment procedures. These automated procedures rely primarily on information encoded on each check or item in magnetic ink. In paying or processing an item, we may rely on the information encoded on the check's magnetic ink character recognition (MICR) line, according to general banking standards, whether or not that information is consistent with the other information on the check. You will reimburse us for any loss or expense we incur because you issue or deposit an item containing altered or extra information in the MICR line. You agree that automated check processing is reasonable and that you have responsibility for preventing and reporting forgeries, alterations, and other unauthorized use of your account. We do not fail to exercise ordinary care by posting or paying checks without sight examination of checks.

We will not be obligated to monitor items deposited to, or drawn against, accounts held by a trustee or other fiduciary to determine whether a trustee or fiduciary is acting consistently with or in breach of any fiduciary duty. When we take an item for processing by automated means, "ordinary care" does not require that we examine each item. "Ordinary care" requires only that we follow standards prevailing in the area in which we are located and that do not vary unreasonably from the general standards followed by similarly-situated financial institutions. A mere clerical error, or an honest mistake, is not considered a failure of the Bank to perform any of our obligations. The Bank's own policies and procedures are used solely for our internal reasons and do not establish a higher standard of care for the Bank other than that which is provided by law or regulation.

The Bank is not responsible for the neglect, mistake or fault of another financial institution or person, including for the loss or destruction of an item or misrouting of an item in transit or in the possession of others. If a deposited item is lost or misrouted and we gave you provisional credit for that item, you agree that we may charge back the amount of the item to your account if we do not receive payment for the item, even if the item is not timely returned.

### Choice of Law

This Agreement is governed by federal laws and, when applicable, the laws of the State of California. Except as stated herein or as otherwise may be required by applicable law, the provisions of this Agreement are governed by, as applicable, federal laws and regulations, the laws and regulations of the state of California (excluding choice of law rules), and applicable local clearinghouse rules, as amended from time to time. In addition, our rights under this Agreement may be limited by laws, rules or regulations; to the extent this is so, this Agreement is modified to the extent needed to prevent representing that a transaction confers or involves rights, remedies, or obligations which we do not have or which are prohibited by law.

### Closing or Suspending an Account

The Bank may, at any time and in our sole discretion, close or suspend your account or any service we are providing to you. We may do so for cause or without cause. We may deliver the balance after an account is closed by any means chosen by us, including mailing a check for the balance by U.S. Postal Service, sent postage prepaid, to your last address as shown on our records. We may remit the balance by check payable to the name on the account as shown on our records, even if contrary evidence of account ownership has been given to us. We will provide you with notice before or after taking this action, unless prior notice is required by law, in which case we will provide you with such notice as is required by law.

Except to the extent otherwise agreed with us, you may close your account at any time upon notice to us, unless your account has a scheduled maturity date, subject to any applicable early withdrawal penalty. You will remain liable for checks in the process of collection, as well as any other obligations relating to actions or inaction prior to account closure. You agree to reimburse us immediately upon request for any overdrafts that arise after an account is closed, whether closed by you or by us.

You agree to notify us of your intention to close your account, and we reserve the right to request that your notice be in writing that affirmatively acknowledges that closing the account could affect your receipt of financial services. For security reasons, we may close your account and require you to open a new account if there is a change in authorized signers, there has been a forgery or fraud reported or committed involving your account, any account checks are lost or stolen, you have too many transfers from an account that has transaction limitations, or you have violated any other provision of an agreement you have with us. We may honor any account holder's or authorized signer's request to close or suspend an account or transaction. At our discretion, we may require the signatures of all account holders and/or authorized signers before permitting the withdrawal of funds or the closing or suspension of an account. We may honor any account holder's or authorized signer's request to close or suspend an account or transaction. At our discretion, we may require the signatures of all account holders and/or authorized signers before permitting the withdrawal of funds or the closing or suspension of an account.

Without limiting any of the foregoing, you authorize us, in our sole discretion, to "freeze" or place a hold on the balance in your accounts at the Bank if we suspect that there is irregular activity or we receive conflicting instructions involving your accounts. Should



the Bank place a “freeze” on your accounts to reasonably investigate our concerns, you agree that we shall not be liable to you for any claims you might have, including but not limited to claims of wrongful dishonor.

We may dishonor any check, withdrawal order, item or transaction presented for payment after an account is closed or frozen by you or by us. At our option, we may honor checks, withdrawal orders, items or transactions after an account is closed or frozen if the transaction was guaranteed by us under any check guarantee program or was part of an electronic fund transfer system, if you fail to place a stop payment order for any outstanding checks or other items or if we otherwise elect to honor the transaction in our discretion. You shall remain responsible and liable for such checks, items, and transactions.

#### Compliance with Laws, Rules, and Regulations

You agree to comply with all laws, rules, and regulations applicable to you, to your activities and to your use of our services. This includes your agreement to comply with (to the extent applicable to you and your actions) federal anti-money laundering laws, sanctions laws administered by the Office of Foreign Assets Control, currency transaction or Bank Secrecy Act reporting and recordkeeping requirements, and any state counterpart of the same. Upon request by us, you must inform us about and disclose to us the identity of all persons who have a beneficial interest in you (if you are a non-natural person) and in your transactions.

You represent and warrant that you will not use, and agree not to use, your account or any service we provide to you for any unlawful purpose. For example, you represent, warrant and agree not to accept or make payments in connection with the participation of any person (including yourself) in unlawful Internet gambling. You acknowledge that “restricted transactions” (as defined in the Unlawful Internet Gambling Enforcement Act and its implementing regulations) are prohibited from being processed through your accounts or your relationships with us. We reserve the right to deny transactions or authorization from merchants apparently engaging in the Internet gambling business or identifying themselves through card transaction records or otherwise as engaged in that or any other illegal or improper business. Further, we reserve the right to block or close any account which we believe may be involved in any such restricted transactions.

You represent and warrant that you are not, and you agree to take no action that would result in your being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business. Notwithstanding the foregoing, we reserve the right to refuse to open or to continue to maintain any deposit account.

You covenant, and represent and warrant that the foregoing is true and correct, as of the opening of your account and again each time you make a deposit or withdrawal or otherwise use a service offered by us. You agree to provide us with evidence showing that you are in compliance with the above, reasonably satisfactory to us, upon our request. If we are uncertain regarding the legality of any transaction, we may refuse the transaction or freeze the amount in question while we investigate the matter. You agree to indemnify, defend and hold us harmless from every action, proceeding, claim, loss, cost and expense (including attorney’s fees) suffered or incurred by us due to any U.S. or foreign government entity seizing, freezing or otherwise asserting or causing us to assert control over any account or funds in an account of yours (or ours) when purportedly caused by or arising out of your action or inaction. This will apply whether or not such action is ultimately determined to be authorized under the laws of the U.S. or its territories, or of any foreign jurisdiction. We are not required to inquire or determine the authority of any action taken by the U.S. or foreign government entity prior to acceding to any legal process initiated by it.

#### Customer Identification Notice Under the USA PATRIOT ACT

##### IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means to you: When you open an account, we will ask for your name, address, date of birth, tax identification number (TIN) and other information that will allow us to identify you. We may also ask to see a driver’s license or other identifying documents for account owners (and possibly authorized signers).

We may further ask you for specific information regarding the nature of anticipated activity, the sources of your funds, the purposes of transactions, the relationship you have with persons to whom you send funds and persons who send funds to you, the anticipated frequency of such transactions, the ultimate beneficiaries of funds you send and receive, and other questions that may help us clarify the nature and purpose of transactions. We may close accounts if we are unable to understand the purpose of the account, the structure of the organization, the authority of the signers, the documentation provided or the general risk associated with the establishment of the account. We may elect not to disclose the specific reason for our action.

Owners of fiduciaries, partnerships, corporations, and fictitious business names or other business names may also be asked at account opening and from time to time to provide us with valid documentation of trust agreements (or certification of trust), court orders, partnership agreements, certificates of limited partnership, articles of incorporation, and filed fictitious business name statements, in addition to any other documents deemed necessary by us.



### Cutoff Hours

A number of our services are subject to processing cutoff hours. Communications received after the cutoff hour or on a non-business day may, in our discretion, be deemed received as of the next business day.

### Death or Incapacity

You agree to immediately notify us about the death or incapacity of any owner or authorized signer on your account. Until we receive such notice in writing, and have a reasonable opportunity to act on it, we may continue to honor items drawn on your account by the authorized signer(s).

### Deposits and Credit to Accounts

**Deposits and Credits Generally** - You may present deposits to be received by us either electronically or through the mail. Please do not send cash deposits. In the event we receive cash deposits, you agree that our determination of the amount of the deposit will be conclusive. Remember: when using the U.S. mail to make a deposit, you will need to allow extra time for the deposit to reach us.

You authorize us to accept an item for deposit to your account from anyone. We are not required to question the authority of the person making the deposit. Joint accounts include accounts held as joint tenancy, tenancy-in-common or as community property. A joint account holder authorizes the other account holder(s) to indorse items in that person's name and to cash the items or deposit them into the joint account, with or without an indorsement. You will be responsible for any loss because of your failure to identify your account properly by name and number on any deposit item. We may accept for deposit to your account all items made payable or indorsed by you as an individual payee or joint payee, regardless of whether those items bear your indorsement, subject to our verification and final inspection. You guarantee to us the payment of all such deposited items. All deposits are subject to later verification, adjustment, and collection by us. We may refuse any deposit (whether in cash or by item or other charge) to an account, limit the amount of any deposit, or return all or any part of a deposit to you without prior notice, whether the deposit is attempted to be made by you or anyone else on your behalf. We reserve the right to return to you any item or other charge that we receive for deposit to your account, if we decide not to handle that item or other charge. If we make this decision, we will send a notice by the next business day after we receive it.

You authorize us to present an item again for payment, after it has been returned or dishonored, without telling you that the item was returned unpaid or that we are presenting it again. If we present a returned item again, there is a charge. You also authorize us to process and deliver to you a photocopy or other image of a returned item or other returned item, in lieu of the original, whether it is charged back to your account or automatically presented again, and whether or not the original item is available.

**Provisional Credit; Returned and Unpaid Items and Other Credits** - Any item or other charge posted for credit to your account, including an item we cash for you, is subject to final payment by the payor or receiving bank (as applicable). If we credit your account for an item or other charge, we may charge back that item or other charge at any time, if we do not receive payment for the item or other charge or if we receive notice that the item or other charge will not be paid. We act as a collection agent for you when we receive an item for deposit or when we cash an item for you, and are not responsible for the negligent actions or inactions of other financial institutions during the collection process. You assume all risk of loss of an item in transit. You authorize us to reverse any credit given and any interest accrued for an item that is lost in transit or otherwise not paid, and we may recover from any account you maintain with us the funds given to you for a cashed item that is lost in transit or otherwise not paid. You agree that we can notify you of the return as part of the account statement or other communication method (including electronic communication). We reserve the right to charge the applicable account if an item credited to the account is dishonored, returned or not paid even if we have not sent you notice of the dishonor, return or nonpayment. We also reserve the right to charge a dishonored, returned or unpaid item or other charge against the applicable account even if the item or other charge is dishonored or returned late, the dishonor or return does not comply with applicable laws, rules or regulations (including any clearinghouse rules), or we could have made a claim for reimbursement on the item or other charge from the bank on which the item was drawn or from another bank. We may charge a dishonored, returned or unpaid item or other charge against the applicable account even if the charge results in an overdraft. You authorize us to charge your account for the amount of the item and for any returned item fee, if any, for each item returned unpaid, even if there is a delay in notifying you or in returning the unpaid item (or photocopy or other image) to you.

You authorize us without notice to you to charge an item back to your account even if you have already used the funds, if we receive an affidavit of forged indorsement or alteration, or similar document, and we have no obligation to investigate the accuracy of such affidavit or similar document. You acknowledge that we may not return an item to you if we cannot recover its full amount from your accounts.

**Daily Cutoff Time** - All transactions received after our daily cutoff time on a business day, or received on a non-business day, may be treated and recorded as if initiated on the next business day that we are open.

**Collection Items** - Handling an item as a "collection item" means that instead of accepting an item for deposit, we send the item directly to the issuer's financial institution for payment. If the item is returned unpaid, we will return the item to you. We are obligated only to use ordinary care in collecting items on your behalf. You agree that the Bank has sole discretion to determine whether to





accept an item or check for deposit or collection. If we do credit your account for a collection item, but do not receive final payment for an item or if the item is later returned, we may charge your account for the item plus any interest earned and associated fees. We may notify you that an item is not a deposit, but rather a collection item, as soon as practicable after we determine to handle the item as a collection item. Items drawn on an institution located outside the United States are handled on a collection basis only. Collection items may be credited to your account, however you agree that availability of these funds may be delayed by us until we receive final payment. You waive any notice of nonpayment, dishonor, or protest regarding any items purchased or received by us for credit to your account or for collection. An item or check accepted for collection will not be deemed accepted for deposit for purposes of Regulation CC and is not governed by the Bank's funds availability policy.

#### Direct Deposits

If, in connection with a direct deposit plan, we deposit or credit any amount in your account which should have been returned to the state or federal government or any other third party for any reason, you authorize us to deduct the amount from your account or from any other account you have with us without prior notice and at any time, except as prohibited by law. You also authorize us to use any other legal remedy to recover the amount of our liability.

#### Electronic Communications and Signatures

You agree that we may use electronic communications to enter into agreements and contracts between ourselves and you and otherwise to establish terms and conditions for products and services you receive from or through us. Electronic agreements may be provided to you through such things as hyperlinks or "click-through" agreements on our web site. Your consent to or agreement with the electronic communication in these circumstances may occur by your clicking "agreed" or similar terms, or by your subsequent use of a product or service, or otherwise as may be specified in the communication or as provided by law (subject to any limitations set forth in the communication). Your signature and agreement may be obtained by us electronically and includes mouse clicks, key strokes, your use of passwords or other authentication systems, or as is otherwise set forth in the particular electronic communication.

You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and electronically "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

#### Facsimile or Mechanical Signatures

Many customers use a facsimile or other mechanical signature, including a stamp, referred to herein as ("facsimile signature") to execute agreements, authorize transactions, provide and authorize instructions and to indorse or otherwise complete other documents. If you use any form of facsimile signature in connection with any account, you agree to deliver a sample to us before you begin using it, and to execute and deliver agreements in a suitable form, if we so require. If you use a facsimile signature for any of these purposes, you are responsible for any such transactions, instructions or indorsements that appear to us to bear a signature that resembles the signature of a person authorized to sign on your account. When you use a facsimile signature in connection with any account, you agree you shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and you shall bear the entire risk for unauthorized use thereof, whether or not you are negligent, except as may be required by law. You agree that we may rely on facsimile signatures that resemble the appropriate original or any signature specimen given to us and that appears to have been made through an authorized medium, regardless of how the facsimile signature came to be placed on the item. We may rely on facsimile signatures, even if they were placed on agreements, transactions, instructions, items or otherwise without your knowledge or consent. We may pay items bearing facsimile signature, regardless of the persons to whom they are drawn or paid. A facsimile signature that resembles an authorized signer's signature or any facsimile signature specimen is not considered a forgery or an unauthorized signature, and such a facsimile or automated signature shall be effective as your signature or indorsement, without regard to color variation, whether or not you have been negligent. You further agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile signature or the device by which it is affixed. This means that we are not responsible for any misuse of a facsimile signature we believe you authorized.



## Fraud Prevention

**Lost or stolen items; unauthorized items** - If any of your unissued paper *items* has been lost or stolen, or if you learn that unauthorized *items* are being issued on your account, you agree to notify the Bank at once. To the extent that your failure to so notify the Bank hampers the Bank's ability to prevent loss, the Bank will be relieved of any liability for such *items*. Upon receipt of any such notice, the Bank may at its sole discretion and without any liability to you take one or more of the following actions:

- Close your account and open a new account for you
- Dishonor any paper item you or an authorized signer have indicated may have been lost or stolen (unless you or an authorized signer subsequently have instructed the Bank to honor such an item) or
- Pay any paper item presented for payment on your account, provided you have instructed the Bank to pay such paper item and given the Bank the number of that paper item

If the Bank opens a new account for you and you have authorized a third party to automatically make regular deposits to or withdrawals from your account (such as wire or ACH transfers), the Bank will have no liability to you if you do not receive any regularly scheduled deposit or if a regularly scheduled payment is not made for you due to your failure to notify that third party in a timely fashion of the number of your new account.

## Force Majeure

Neither party to this Agreement will be deemed to be in default of any of its obligations under this Agreement if its performance is delayed, hindered, or becomes impossible because of any act of God or of any public enemy, hostilities, war (declared or undeclared), guerilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, avalanche, tremor, ground movement, hurricane, storm, explosion, fire, labor disturbance, riot, insurrection, strike, sickness, accident, civil, commotion, epidemic, act of government, its agencies or officers, power interruption or transmission failure, or any cause beyond the control of either party.

## Legal Process

Legal process includes a writ of attachment, execution, garnishment, tax withholding order, levy, restraining order, subpoena, warrant, injunction, government agency request for information, search warrant, forfeiture or other similar order. We may accept and comply with legal process: served in person, by mail, by facsimile transmission, or by other means. Any such legal process is subject to the Bank's security interest and the right of setoff. The Bank will not notify you of a grand jury subpoena affecting you or your account. Any fees or expenses the Bank incurs in responding to any such legal process may be charged against any account you maintain with the Bank. We may, but are not required to, send a notice to you of the legal process.

## Limitation of Liability; Hold Harmless and Indemnification

Whether in connection with your account or a service, in no event will either party to this Agreement or its respective directors, officers, employees, or agents be liable to the other party for any special, consequential, indirect or punitive damages, weather any claim is based on contract or tort or whether the likelihood of such damages was known to either party. The foregoing limitation of liability will not apply where expressly prohibited by the laws governing your account. The Bank will not have any liability to you if there are not sufficient available funds in your account to pay your *items* due to actions taken by the Bank in accordance with this Agreement, or any third party.

Except to the extent that the Bank fails to exercise ordinary care of breaches this Agreement, you agree to indemnify and hold the Bank and its directors, officers, employees, and agents harmless from all claims, demands, losses, liabilities, judgments, and expenses (including their attorneys' fees and legal expenses) arising out of or in any way connected with the Bank's performance under this Agreement. You agree that this indemnification will survive the closing of your account and the termination of any *service*.

## Lost Items and Delayed Returns

We act only as a collection agent for you when we receive an item for deposit or which we cash for you. If that item is lost, stolen or destroyed in the process of collection, we may reverse the credit for any deposit or charge your account for the cashed item. You are responsible for the condition of an item when you issue it, or present it for deposit to your account. If an item is returned or payment is delayed as a result of any writing or marking that you or a third party placed on the front or back of the item, you will be responsible for any costs or liabilities incurred as a result.

## Other Agreements

You may have other agreements with us which, by their terms, supersede this Agreement in whole or in part.





## Overdraft Practices

When we determine that you do not have enough available funds in your account to cover a check or other item, then we consider the check or other item an insufficient funds item. We will either authorize or pay the insufficient item and overdraw your account (an overdraft item) or we will decline or return the insufficient item without payment (a returned item). We pay overdrafts at our discretion, which means we do not guarantee that we will always, or ever, authorize and pay them. If we overdraw your account to pay items on one or more occasions, we are not obligated to continue to paying future insufficient funds items.

## Preventing Misuse of Your Account

You agree to take reasonable steps to ensure the integrity of your internal procedures with respect to your account and *items* drawn on your account or deposited to it. To help prevent embezzlement and protect your account assets, the Bank recommends that you:

- Conduct daily online account activity review.
- Reconcile statements for your account as you receive them and notify the Bank immediately of any problem.
- Review your transaction activity for unexpected fluctuations. A large fluctuation might indicate embezzlement or fraud.
- Destroy any paper item that you do not intend to use.
- Notify the Bank immediately when an authorized signer's authority ends so that his/her name can be removed from all signature cards and online banking access and any cards that the Bank has issued to him/her can be cancelled.
- Do not sign blank paper items.
- Secure your supply of paper items at all times. Stolen paper items are a common method of embezzlement.
- Watch for paper items cashed out of sequence or made out to cash. These are classic red flags for embezzlement or fraud.
- Assign responsibilities for your account to multiple individuals. Those who reconcile statements for your account should be different from those who issue items drawn on your account.
- Obtain insurance coverage for these risks.

## Releasing Account Information

You authorize us to release information regarding the current status and history of your account to others. For example, we may release information: (1) where necessary to complete a transaction; (2) to verify the existence and condition of your account for a third party; (3) to comply with the law or a court order; (4) with your authorization; (5) for other legitimate business purposes; and (7) as otherwise permitted by applicable law or regulation.

## Remotely Created Checks and Electronically Created Items

A remotely created check is a writing not signed by the customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a financial institution. A remotely created check is also known as a demand draft. A remotely created check must contain the customer's account number and may contain the customer's printed or typewritten name, a notation that the customer authorized the draft, or the statement 'no signature required' or words to that effect. An electronically created item is an electronic image resembling a check, created from your information that was not actually derived from an original paper check.

If you voluntarily give information about your account (such as our routing number and your account number) to someone and authorize them to draw against your account, we may charge your account and pay any items, including remotely created checks and electronic items initiated by the person to whom you gave the information. You also agree that we may pay an electronically created item even though the item was not created from an original paper check, whether presented in the form of a remotely created check or an electronic item. You authorize us to continue to honor items or debits from a payee previously authorized by you, until you instruct us to cease to do so, whether or not the payee is acting within the scope of your initial authorization, subject only to such liability as may be imposed upon us by law. If you want us to stop honoring items from a payee previously authorized by you, you must tell us in writing. Until you notify us that such items are not authorized, we can continue to pay them and will not be liable to you even though the items are not in accordance with any authorization you may have given.

This does not, however, obligate us to honor remotely created checks, electronically created items or similar items or entries. We may refuse to honor remotely created checks, electronically created items or similar items or entries without cause or prior notice, whether or not we have honored or dishonored similar items or entries previously.

You agree that we are under no obligation to verify whether the name and account number shown on the remotely created checks or electronically created items are consistent. If any information on a remotely created check or electronically created item is incomplete, inaccurate, or in error, you agree that we may, at our sole discretion, either pay the remotely created check or electronically created item and charge your account for the check or item as drawn or refuse to honor the check or item and, without prior notice to you, return the check or item unpaid. You further agree to indemnify and hold the Bank harmless for losses resulting



from our honoring or dishonoring any such debit. You further agree not to present remotely created checks or electronically created items for deposit, unless we have given prior express written approval.

#### Restricted Transactions

You acknowledge and agree that "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG issued thereunder are prohibited from being processed through your account or any relationship between you and the Bank. In the event we identify a suspected restricted transaction, we may block or otherwise prevent or prohibit such transaction and further we may close the account or end the relationship.

#### Severability

If any provision of this Agreement is determined to be void or invalid, the remainder of the Agreement shall remain in full force and effect. No provision of this Agreement shall be deemed to deny (and any term to the contrary is modified so as not to deny) protections, rights or privileges that under state or federal law are required to be made available to either you or your accounts, except that any modifications of your protections, rights and privileges under this Agreement will be effective to the extent (but only to the extent) that the relevant state or federal law allows us and you to agree to modify them.

#### Statements

You will be able to review transactions, including images of the front and back of checks or other instruments drawn on your accounts daily for a period of 18 months through online banking services. You should review your transaction history daily to protect your rights, including your right to dispute transactions that you believe are unauthorized, counterfeit, or altered, forged. Because you are in the best position to discover and deter any problem, you agree to promptly review and verify your account transactions as if your transaction history shown online was a traditional periodic statement. The Bank hereby disclaims any responsibility for items and/or transactions debited from your account unless you (1) notify us within a reasonable time not to exceed 30 calendar days of its posting (2) results from a forgery, counterfeit or alteration so clever that a reasonable person cannot detect it or (3) as otherwise provided by law or regulation. We will make a monthly account statement available to you online only for your checking or savings accounts. If you elect to not receive or review your statement, you are responsible for having access to the information provided in the statement and complying with this section.

**Check Safekeeping.** Copies of your checks and other Items paid from your Deposit Account will be held by us instead of returned to you. An image of the front and back of the checks you write and are presented for payment will be deemed to be made available to you no later than the day after the items are presented to us for payment. We will keep the image copies of the front and back for seven (7) years.

**Bank's Duty of Care.** In accordance with reasonable banking standards, most checks and other Items presented to us for payment are processed through automated processing and, except in limited circumstances and subject to such reasonable sampling procedures as we establish at our discretion, most Items are not individually examined to verify your signature or that the Item is otherwise properly payable. You agree that we act within reasonable banking standards by processing most checks and other Items through automated processing systems.

#### Stop Payment Request

To place a stop payment order on a check or other Item ("Stop Payment Order"), you can use the Website after you login, or write to Customer Service, 4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122. If you use the Website, you must fully complete the Stop Payment Request or the ACH Stop Payment Request Order form. If you use any other method to place the Stop Payment Order, your communication must include the exact amount of the check or other Item, the number of the check, your Deposit Account number, and the name of the payee. We cannot be responsible for the consequences of paying an Item if it is not described with reasonable certainty, or if we are not given reasonable time to place the stop payment. Our acceptance of a Stop Payment Order does not constitute a representation that the Item has not already been paid or that we have a reasonable opportunity to act upon the order. We require written or Website confirmation prior to accepting a Stop Payment Order.

Written Stop Payment Orders, and stop payments entered online, are effective for six (6) months and must be renewed by you to continue to be effective after that time. There is a charge for each Stop Payment Order request and for each renewal. You agree to hold us harmless from all liability because we refuse to pay an Item subject to your Stop Payment Order. If we re-credit your Deposit Account after paying an Item over a valid and timely Stop Payment Order, you agree to sign a statement describing the dispute you have with the payee, to transfer to us all of your rights against the payee or other holder of the Item, and to assist us in any attempt we make to recover the funds from that person.

**Duration of Order.** Written Stop Payment Orders, and stop payments entered online, are effective for six (6) months and must be renewed by you to continue to be effective after that time. There is a charge for each Stop Payment Order request and for each renewal.



**Hold Harmless.** You agree to hold us harmless from all liability because we refuse to pay an Item subject to your Stop Payment Order. If we re-credit your Deposit Account after paying an Item over a valid and timely Stop Payment Order, you agree to sign a statement describing the dispute you have with the payee, to transfer to us all of your rights against the payee or other holder of the Item, and to assist us in any attempt we make to recover the funds from that person.

**Unsigned Drafts.** If you voluntarily give information about your account (such as our routing and transit number and your account number) to a person who is seeking to sell you goods or services or collect a debt, we may consider any resulting debit as authorized by you, even if you did not physically deliver a check to the person or personally sign the instrument, unless you notify us to the contrary in accordance with our rules on Stop Payment Orders. If we receive pre-notification of a transaction, we will make a reasonable attempt to notify you of the pending transaction.

**Cashier's Checks.** We will accept a stop payment order for a Cashier's Check only if it has been lost, stolen or destroyed. We will not issue a replacement check sooner than 90 days after the issue date of the Cashier's Check.

### Taxpayer Identification Number

We are required to obtain a taxpayer identification number ("TIN") for each account you open or maintain with us. The taxpayer identification number for a business is usually an employer identification number (EIN). The taxpayer identification number for a sole proprietorship may be either a SSN or an EIN. We must obtain this number even if you are not required to file tax returns. This number is included on reports we must file with state and federal tax authorities about interest we pay you

### Transfer and Assignment

This Agreement is made exclusively for your and our benefit, and you may not assign the Agreement without our written consent. As such, no other person shall have any rights against you or us hereunder. In addition, your account may not be negotiated, transferred or assigned without our prior written consent.

### Waiver

We may delay enforcing our rights under this Agreement without losing them. Any waiver by us shall not be deemed a waiver of other rights or of the same right at another time.

## Checking and Savings Accounts

From time to time, we may offer you or you may open a variety of deposit accounts. Each such account (the "Account") is subject to the general terms and conditions and any specific terms and conditions relating to that type of account as set forth in this Agreement. This disclosure describes the terms, services and the interest calculation with respect to the Deposit Accounts opened through the Bank's website. All Checking and Savings accounts are variable accounts and these rates are subject to change without notice.

### Interest

If your account earns Interest, the following information applies unless otherwise specified in the description for your account type:

#### Rate Information:

- The interest rate and corresponding APY for savings and money market accounts are variable and are set at our discretion.
- Your interest rate and annual percentage yield may change.
- Fees may reduce earnings.
- At our discretion, we may change the interest rate on your account.
- We may change the interest rate on your account at any time.
- Interest rates and APYs for different balance ranges are listed on the Bank's website.
- We reserve the right to change balance ranges or apply the same interest rate to more than one range.

Balance Computation Method: We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the balance in the account each day.

Compounding and Crediting: Interest is compounded daily and calculated on a 365/366 day basis. Interest is credited on a monthly basis. If your account is closed before interest is credited, your accrued uncredited interest will be forfeited. If your account is at zero at the end of your statement cycle, we reserve the right to close your account, in which case your accrued uncredited interest for that cycle will be forfeited.

Accrual of Interest on Noncash Deposits: Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).



### Limitations on Withdrawals

Federal regulations require us to retain the right to require you to give at least seven (7) days notice in writing prior to any intended withdrawal or payments from an interest-bearing account or from any other savings account as defined by Regulation D. Although we usually pay withdrawals or checks without prior notice on these accounts, doing so does not mean that we give up that right. We also may refuse to allow any withdrawals without the Bank creating liability to you, if we have a concern that one or more transactions on your account may have been unauthorized or fraudulent, if there is a dispute concerning the Deposit Account that makes us uncertain regarding the instructions that have been given, the Deposit Account is garnished or attached, the Deposit Account has been pledged to the Bank as collateral for a debt, the availability of the funds on deposit cannot be verified, any required documentation has not been presented, or you have failed to repay an obligation to us on time. Federal regulations also limit certain types of withdrawals or transfers from your savings or money market account to a total maximum of:

- Six (6) per calendar month for savings accounts
- Six (6) per monthly statement cycle (the period from one statement to the next) for money market accounts

If you exceed the transfer limits on more than an occasional basis, we may convert your account to one not subject to transfer limitations or close your account. If we close or convert your account, you will receive a separate communication from us informing you of our actions. We count checks for the purposes of transaction limitations as of the date we post them to your account (not as of the date you write them).

### Limited Transactions (Maximum combined total of six (6) per month or monthly statement cycle, subject to Available balance)

- Checks
- ATM/Debit Card purchases or payments
- Preauthorized transfers to another deposit account at the Bank
- Preauthorized or automatic transfer to another institution (i.e. ACH payments and wire transfers)
- Telephone transfers
- Online bill payments
- Online withdrawal transfers

### Unlimited Transactions

- Deposits
- ATM Cash withdrawals and transfers (subject to Available Balance)
- Withdrawals or transfers made in person or by messenger, or by mail at the Bank (subject to Available Balance)
- Preauthorized transfers to repay your Bank loan (subject to Available Balance)

## E- Sign Disclosure and Consent

When applying for a Deposit Account or Loan with Axos Bank™, also known as UFB Direct, you will be asked to give your consent for the Bank to provide disclosures, communications and information to you electronically rather than paper form and agree to sign documents electronically, and we will accept your electronic signature as though it were your handwritten signature.

This eSign Disclosure and Consent (the "Consent") provides the person(s) giving his/her consent below ("you" and "your") with information relating to your electronic receipt of disclosures and notices (collectively, the "Disclosures") in connection with your loan transaction (the "Loan") pending with the Bank ("we", "us" and "our"); or your new Deposit Account. By providing your consent, you agree that we may send you any and all Disclosures (which are described below) relating to the Loan in an electronic form. We will sometimes use the words "Electronic Records" as a short way to refer to the communications and information that we may provide electronically. Before you decide whether or not you wish to give your consent to receiving Electronic Records, you should read and consider the following information.

If you agree to provide your consent, click the "I Agree" button at the bottom of the online acknowledgement. The statement contains important information that we are required by law to provide to you. You should keep a copy for your records. For your convenience, this statement is written in a "Question and Answer" format. If you have any questions about Electronic Records that are not answered, you can contact us as follows:



Send us an e-mail at [customerservice@axosbank.com](mailto:customerservice@axosbank.com)  
Call us toll free at 1-844-773-0647 for loan questions  
or 1-877-247-8002 for Deposit Account questions or write to us at:

**Axos Bank**  
Corporate Headquarters  
4350 La Jolla Village Drive, Suite 140 San Diego, CA 92122

[Types of Disclosures and Notices that will be provided in Electronic Form.](#) The Disclosures may include, without limitation, disclosures and notices under the Federal Equal Credit Opportunity Act and Federal Reserve Regulation B, the Federal Truth-in-Lending Act and Federal Reserve Regulation Z, the Federal Fair Credit Reporting Act, the Federal Electronic Fund Transfer Act and Federal Reserve Regulation E, the Federal USA PATRIOT Act of 2001 and Title V of the Federal Gramm-Leach-Bliley Act, together with all rules and regulations that implement the same, as well as all other applicable federal, state and local laws, rules, regulations and ordinances. The Disclosures also include any other information, agreements, disclosures and notices that we wish to provide you in connection with the Loan in an electronic form, even if the information, agreements, disclosures and notices are not required by these laws, rules, regulations or ordinances.

For Online Banking Services, the Disclosures may include your periodic Account Statement (As part of the monthly account statement, you will receive information about your account), other periodic or special notices (such as hold notices on availability of funds, or error resolution notices if you assert your rights under the federal consumer protection laws and regulations). These include special notices that federal laws and regulations from time to time might require us to provide to you and Privacy notices and disclosures. (These notices provide you with information about our privacy practices and policies).

[Your Right To Receive Paper Copies of the Disclosures.](#) You are not required to provide your Consent in order to submit an application for the Loan. If you prefer not to provide your Consent, all of the Disclosures will be provided to you in a paper form. If you decide to provide your Consent, you should also print all disclosures and legal documents.

[Your Right To Withdraw Your Consent.](#) You have the right to withdraw your Consent at any time. You will not be charged any fees as a result of the withdrawal of your Consent. If you withdraw your Consent, any Disclosures provided to you after the effective date of the withdrawal will be provided in paper form. You may also receive paper copies of any Disclosures that were previously provided to you electronically as described in Section 8 below.

[Scope of Your Consent.](#) Your Consent applies only to your electronic receipt of Disclosures and legal documents in connection with the origination, closing and servicing of the Loan or deposit account. Your Consent does not apply to other transactions that you may wish to enter into with us.

[To Withdraw your Consent](#) all you need to do is contact us using one of the Contacts described above.

[What records will you provide to me electronically?](#) If you consent, you will receive electronic records that relate to our online banking services. These will include the following types of documents:

- Your monthly account statement, if applicable. (As part of the monthly account statement, you will receive information about your account).
- Other periodic or special notices (error resolution notices if you assert your rights under the federal consumer protection laws and regulations). These include special notices that federal laws and regulations from time to time might require us to provide to you.
- Privacy notices and disclosures. (These notices provide you with information about our privacy practices and policies).

[Do I have an option to regularly receive these records in non-electronic form?](#) After you provide your Consent, you may receive, without charge, a paper copy of any Disclosures that have been provided to you electronically by contacting us using one of the Contacts described above.

[Can I get a copy of the records in non-electronic form if a special need arises?](#) At your request, we can prepare a paper-based version of any of the electronic records you receive, for up to five years after the date it was created. If you want us to prepare a paper-based copy, you can request it by contacting us.





[If I consent to electronic records now, and change my mind, what can I do and what are the consequences?](#) You can change your mind, and withdraw your consent, at any time, and provide notification to us at the contact information above requesting paper statements and documents be provided to you. However, remember that the Online Banking Services do not support paper-based communications. So the consequence to you, if you withdraw your consent to electronic records, is that your access to and your ability to use the Online Banking Services will end.

[Change of your designated E-Mail Address.](#) If you your designated e-mail address, you must notify the Bank to ensure continued delivery of electronic records.

[Are there any hardware or software requirements for me to access or retain the electronic records?](#) You will need a computer with sufficient memory to store electronic records, and with a working connection to the Internet. You will need a minimum web-browser version of Internet Explorer 8.0 (or higher version), Firefox 4.0 (or higher version), Safari 6.0 (or higher version), Chrome, with e-mail capability. Your browser will need to have a minimum of 128-bit encryption capabilities. You are responsible for configuring your system to accommodate these requirements. Finally, you will need a printer if you want to print copies of electronic records.

If we change the minimum hardware or software requirements needed to access or retain electronic records, and the change creates a material risk that you will not be able to access or retain a subsequent record, then before the change takes effect we will let you know about the change and let you know what the new requirements are.

We will notify you by e-mail, and at that time you will be allowed to choose whether you still want to give us your consent to receive communications or information by electronic records. If not, you will be allowed to withdraw your consent at that time, without any fee or charge by us.

However, if you withdraw your consent, you may not be able to access the Online Banking Services without upgraded hardware or software. Then, your ability to use the Online Banking Services could also end (as described above, under "If I consent to electronic records now, and change my mind, what can I do and what are the consequences?").

[How will the electronic records be provided to me?](#) All Disclosures are available on the Bank's Website and can be accessed by clicking on the "Disclosures" tab. Other periodic or special notices will be sent to you by e-mail, unless they contain confidential account information at which time they will be sent by secure email through the online banking service on our Website. Your monthly account statements, if applicable, contain confidential information, so they will be stored for you to access (print or review) on the online banking service on our Website, at [www.axosbank.com](http://www.axosbank.com) and will be available to you, for at least 2 years following the date it is first posted. To access your monthly statements and any notices sent by secure email, you will need to sign-in to the online banking service of the Bank's Website.

[Are there other special requirements for electronic records?](#) You must provide us with your current e-mail address, and keep it current with us at all times. Otherwise, you may not receive electronic records in a timely manner. If you download or print any confidential materials, such as your monthly statements, be sure that, you store them in a secure environment.

## Funds Availability

### Your Ability to Withdraw Funds

This policy applies to deposits into accounts that are opened at the Bank. All deposits are processed at Bank's processing facility located in San Diego, CA, and are received either electronically, through the mail, or in person. Please do not mail cash deposits. In the event Bank receives cash deposits, you agree that the Bank's determination of the amount of the deposit will be conclusive. The Bank is responsible for mailed deposits only after the Bank has received them. The Bank is not liable for any deposits, including cash, lost in the mail. Remember: when using U.S. mail to make a deposit, you will need to allow extra time for the deposit to reach us.

The Bank's policy is to make funds from certain electronic deposits available to you on the business day the Bank receives the deposit. However, the Bank may delay the availability of funds from your check deposits to afford us time to verify the deposit and ensure the funds are collected. During the delay, you may not withdraw the funds and the Bank will not use the funds to pay checks you have written or other debits against the account that you have initiated, such as electronic bill payments.

### Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day, except Saturdays, Sundays, and federal holidays. For in person deposits, if the Bank receives your deposit before 5:00 pm (PT) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 5:00 pm (PT) to a lobby drop box, we will consider the next business day we are open to be the day of your deposit. The availability of your deposit varies depending on the type of deposit and is explained below.





If you make a deposit through Remote Deposit after 3:00 pm (PT) or on a day we are not open, we will consider the next business day we are open to be the day of your deposit.

This funds availability policy does not apply to checks drawn on banks located outside the United States of America.

#### Same Day Availability

Funds from electronic direct deposits to your account will be available on the same day the Bank receives the deposit. Interbank Transfers initiated from your Online Banking account will be made available upon actual and final credit of the funds. This is typically within 3 to 5 business days.

#### Next- Day Availability

Funds from the following deposits on established accounts are available on the first business Day after the day of your deposit:

- U.S. Treasury Checks that are payable to you
- Wire Transfers
- Checks drawn on the Bank (on-us items)

If you make a deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash
- State and local government checks that are payable to you
- Cashiers, certified, and teller's checks that are payable to you
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit. If you make a deposit using our Remote Deposit Services, funds from these deposits will be available on the 4<sup>th</sup> business day after the day we accept your deposit. **Note:** At its discretion, the Bank may decline to accept any item for deposit.

#### Check Deposits

Checks are available as follows:

Checks: The first \$200 from a deposit of checks will be available on the first business day after the day of your deposit. The remaining funds from a deposit of checks will be available on the second business day after the day of your deposit. For example, if you deposit a check of \$700 on Monday, \$200 of the deposit is available on Tuesday. The remaining \$500 is available on Wednesday.

If we take longer to make all of the funds from these types of deposits available as disclosed above, we will notify you by e-mail within one business day after we receive your deposit. We will also tell you when the funds will be available.

#### Longer Delays May Apply

In some cases, we will not make all funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$200 of your deposits, however, may be available no later than the first business day after your deposit. If we are not going to make all funds from your deposit available by the first business day after the day of your deposit, we generally notify you by mail or e-mail if the Bank delays your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit. If you need the funds from a deposit right away, you should ask when the funds will be available.

We may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- The Bank believes a check you deposited will not be paid;
- You deposited checks totaling more than \$5,000 on any one day;
- You redeposit a check that has been returned unpaid;
- You have overdrawn your account repeatedly in the last six months; or
- There is an emergency, such as failure of communications or computer equipment.



### Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open:

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Funds from deposits of cash and wire transfers will be available the first business day after the day of your deposit. The first \$5,000 of a day's total deposits of traveler's, cashier's, certified, teller's and federal, state and local government checks will be available the first business day after the day of your deposit, if the deposit meets certain conditions. For example, the check is deposited into an account held by the payee and in person to an employee of the bank. The excess over \$5,000 will be available on the seventh (7th) business day after the day of your deposit. If your deposit of these checks (other than a US Treasury check) is not made in person to one of our employees, the first \$5,000 will not be made available until the second business day after the deposit.

Funds from all other check deposits will be available on the seventh (7th) business day after the day of your deposit.

### Holds On Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you deposited it.

### Privacy Policy

We recognize, respect and protect the personal privacy rights of all our customers and work diligently to safeguard your privacy. We are committed to providing the highest level of security and privacy regarding the collection and use of our customers' personal information, as well as the personal information of all consumers who visit our institution. The following [Privacy Policy](#) explains how we use and protect the information about our customers. We ask that you read it carefully.

### Remote Deposit Anywhere Services

Remote Deposit Anywhere services allows you to make deposits to your accounts with Axos Bank from your Android or Apple devices or using your desktop scanner by sending images of paper checks which will convert into electronic items or Substitute Checks. You will capture digitized images of Items using the software and equipment provided by or through us or other software and equipment acceptable to us, and will ensure that the output files are compatible with the Service. Any software necessary shall be maintained by you, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to us. You shall maintain one or more bank accounts at Axos Bank for the crediting of deposits made using this Service. You shall be responsible for training your own employees in the use of the Service.

### Check Processing and Requirements

Any image of a check that is transmitted for deposit must accurately and legibly provide all the information on the front and back of the check prior to being scanned. The scanned image of the check transmitted must accurately and legibly provide, the following information: (1) the information identifying the drawer and the paying bank that is preprinted on the check, including complete and accurate MICR information and the signature(s); and (2) Payee information placed on the check prior to the time an image of the check is captured and properly endorsed on the back of the check.

You will submit Items for processing to us that meet the ANSI X9.37 standards for image quality required by Regulation CC, or other standards established by us or applicable law. Our processing of any items that do not meet the image requirements ("Non-qualifying Items") shall not constitute a waiver by us or obligate us to process such Nonqualifying Items in the future. We may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

You will not attempt to scan and transmit to us any Item which (a) has been a previously truncated and reconverted Substitute Check (any previously truncated and reconverted Substituted Check must be physically deposited with us); (b) has already been transmitted by you.

### Check Endorsement Requirements

You will (a) ensure that Items are endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (b) handle, process, maintain and destroy original checks, and (c) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item or its corresponding electronic Item more than once.



You will use the Service, including the entering, processing and transmittal of Items. In addition, you will provide, at your own expense, an internet connection via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to, a Web browser, and other equipment and supplies required to use the Service, all of which must satisfy any minimum requirements or as otherwise acceptable to us. You will provide, or obtain from another party selected by you at your expense, support and maintenance of such internet connection and all other such computer hardware, software, and equipment required to use the Service, including without limitation troubleshooting internet connectivity issues with your internet service provider (ISP), and we will not be responsible therefore.

You shall be responsible for verifying our receipt of your transmission(s) by verifying that deposits have been posted to the appropriate accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with us. You shall be responsible for installing and implementing any changes and upgrades to the Service as required by us within 5 days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Service. You will further ensure the equipment for the Service is clean and operating properly, and inspect and verify the quality of images and that the digitized images of Items are legible for all posting and clearing purposes.

### Business Days and Hours

Remote Deposit Anywhere is available Monday through Sunday, 24 hours a day. Deposits will be processed Monday through Friday, excluding Federal Holidays and will post that same day if deposits are received before 3:00 PM (PT); deposits received after 3:00 PM (PT) will be posted the following business day.

Items processed for deposit through the Service will be deemed to have been received by us for deposit at the time the electronic Items are actually received and accepted at the location where our designated agent posts the credit to your account. A deposit of electronic Items will be deemed to have been received and accepted by us for deposit when all of the following have occurred: (a) we have preliminarily verified that the image quality of the electronic Items is acceptable to us in our discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (b) we have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Items received by us for deposit may be rejected by us in our sole discretion.

Items will be processed and ready for presentment by us after we receive all good digitized images and associated data for any given transmission from you. We will use commercially reasonable efforts to present Items or corresponding electronic Items to the applicable Endpoint within a reasonable period of time following such receipt. If an Item is not accepted for deposit, you may then submit the original voided Item for processing or contact the maker to reissue the Item. If you submit the original voided Item for processing, we reserve the right to refuse to process the Item for deposit and presentment to the Payor Financial Institution and may instead require you to have the maker reissue the Item.

It is your responsibility to understand and build into your transmission schedules the appropriate deadlines necessary to meet the availability schedules of Axos Bank. You are further responsible for understanding and building into your transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

You will be solely responsible for establishing, maintaining and following such security protocols as you deem necessary to ensure that output files transmitted directly to us are intact, secure and confidential until received by us. In addition to your security protocols, you agree to implement Security Procedures that we may offer to verify the authenticity of any output files transmitted to us in your name. If we verify the authenticity of an output file using Security Procedures chosen by you, then you agree that we may rely on and you will be obligated on the output file, whether or not the output file was authorized by you. Also, if an output file was authorized by you, you will be obligated on the output file even if we did not verify its authenticity using the Security Procedures and even if the Security Procedures would have prevented error. You agree that the Security Procedures are intended to verify authenticity and not to detect error.

### Compliance with Law

Customers agree to use the products and service for lawful purposes and in compliance with laws, statutes, regulations and ordinances pertaining to the services, all laws relating to the banking transactions contemplated hereunder. Customers will only transmit acceptable items for deposit and have the original items in accordance with applicable laws, rules, and regulations. Customers promise to indemnify and hold Axos Bank harmless for any damages, liabilities, costs, expenses (including attorneys' fees) or other harm arising out of any violation thereof. This indemnity will survive termination of the Account and this Agreement.

### Customer Representations and Warranties

You understand and agree that an item or its corresponding electronic Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to you and your account will be charged for the amount of the Item or



corresponding electronic Item. Our right to charge your account will apply without regard to whether the Item or corresponding electronic Item is timely returned to us or whether there is any claim or defense that the Item has been improperly returned to us.

You shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform your obligations under this Agreement. Your account will be provisionally credited upon our acceptance of electronic Items for deposit which are received by us from you through the Service.

You will create images of Items at your location by use of scanning hardware and software approved or provided by us. You will enter all amounts and any other required information accurately.

The electronic images of Items will be transmitted by you to our authorized processor, over the internet through a web-based interface.

We will maintain the appropriate bank account for you to receive credit and provide other specific information required by us related to the Service. As set forth in this Agreement, all deposits received by us are accepted subject to our verification and final inspection and may be rejected by us at our sole discretion. All deposits are subject to the terms of the Deposit Account Agreement.

You agree to use such communications security software as we may reasonably require in connection with the transmission of output files to us. We may, from time to time, require and change the software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by you.

At any time during the term of this Agreement, we may require in our sole discretion the use of software in connection with the Service. If software is required, we will provide to you a copy of the software. To the extent we require the use of software in connection with the Service; you will implement and use the software, and any applicable materials relating to transmit output files to us.

You acknowledge that (a) your license to any software that may be required for the Service is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you, (b) we may provide certain "first level" support to you with respect to the software, but that we will have no responsibility, for maintenance, support, infringement protection, or otherwise, to you with respect to the software, and (c) you will look strictly to the software provider, or its successors, with respect to any issues concerning the software that cannot be satisfactorily resolved with our assistance.

You will use the software solely for the purpose of transmitting output files to us consistent with this Agreement and not for communications with any other party. You will not allow access to the software or the use of the Service by any person other than you, and will not process Items except Items arising from a transaction or obligation between you and your direct payor. You will not process any third-party Items. You represent, agree and warrant to us that (except as otherwise specifically disclosed in writing to us) you are not now engaged, and will not during the term of this Agreement engage, in any business that would result in you being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.

For all Items processed by you pursuant to this Agreement, either (a) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (b) Image Exchange Items will be presented for payment through image exchange networks. We may in our sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in this Agreement and as otherwise established by us from time to time.

Unless otherwise agreed by you and the Bank, we will process any returned items in accordance with applicable law and the Deposit Account Agreement. In addition to any other rights we may have as regards your accounts, we may hold and use funds in any account following termination of this Agreement for such time as we reasonably determine that any Item or electronic Item processed by us prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which we may be responsible. Without limitation, you recognize that under the NACHA Rules, the UCC, Regulation CC and the rules of any image exchange network our representations and warranties as regards to electronic Items and Substitute Checks may expose us to claims for several years following processing of the electronic Items or Substitute Checks.

We may at our sole discretion, with or without cause, at any time and from time to time, refuse to process Items or any corresponding electronic Item. We may from time to time establish exposure limitations and assign them to you.

In the event of any Service failure or delays, you acknowledge that you may deposit directly with us any original Items for processing and presentment provided such original Items have not been previously imaged and processed in connection with the Service. In addition, we shall be excused from failing to transmit or delay in transmitting an Item or electronic Item for presentment if such



transmittal would result in our having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You may deposit original checks and other Items to any deposit account at Axos Bank in person or in any other manner permitted by agreement between you and the Bank, and you will be responsible for maintaining procedures and facilities to enable you to do so if the Service is unavailable to you.

We may at our sole discretion conduct an on-site inspection, at any time and from time to time, of your place of business to ensure compliance with the provisions of this Agreement.

You make the following additional representations and warranties with respect to each Item processed using the Remote Deposit Service by pursuant to this Agreement (and, if applicable, any corresponding electronic Item): (a) the electronic Item is a digitized image of the front and back of the Item and accurately represents all of the information on the front and back of the Item as of the time you converted the Item to an electronic item; (b) the electronic Item contains all endorsements applied by parties that previously handled the Item in any form for forward collection or return; and (c) all encoding, transfer, presentment and other warranties made under applicable law as we are deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network; (d) there will be no duplicate presentment of an Item as a digitized image, as a paper negotiable instrument or otherwise and you assume responsibility for any such duplicate presentment of any Item; (e) Files and images transmitted to The Bank will contain no virus or any other disabling features that may have an adverse impact on your network, data, or related systems.

#### Dollar Amounts Limitations

The limitations on dollar amounts of Remote Deposit Anywhere transactions are set forth. The following deposit limits of:

- "Daily item volume limit" - 20
- "Monthly item volume limit" - 60
- "Daily Deposit Limit per business day" - \$25,000
- "Monthly dollar Limit" - \$200,000

#### Deposit Confirmation

Customers will receive a notification confirming receipt of the deposit; such notification does not mean the image contains no errors or that the item has been accepted for deposit.

#### Email Address

Customers will notify the Bank immediately if they change their email address, as this is the email address where notification will be sent.

#### Funds Availability

You agree that items transmitted through Remote Deposit Anywhere are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. Funds deposited using Remote Deposit Anywhere will be available the fifth (5<sup>th</sup>) business day after the day of your deposit. The Bank may, but is not required to, make such funds available sooner based on such factors as credit worthiness, the length and extent of your relationship with us, transaction and experience information, and other such factors as the Bank, in its sole discretion, deems relevant.

Deposits received before 3:00 PM (PT) Monday through Friday, excluding Federal Holidays, will post that same day. Deposits received after 3:00 PM (PT) will be posted the following business day. It is the sole responsibility of each customer to verify that items deposited using Remote Deposit Anywhere have been received and accepted for deposit. Customers understand that any amount credited for items deposited using Remote Deposit Anywhere is provisional credit and agree to indemnify the Bank against any loss suffered because of acceptance of the remotely deposited check.

#### In Case of Errors

In the event there has been an error with respect to any original check or image transmitted to the bank for deposit, immediately contact the Bank regarding such error, Monday through Friday, 7:30 am to 6:00 pm (PT), telephone number: 877-247-8002, or email customer service through Online Banking.



### Rejection of Deposit

The Bank reserves the right to reject any item for remote deposit for any reason, including but not limited to, rejection of a Substitute Check that was created by another financial institution, customer or any other person. Customers are responsible for any loss or overdraft plus any applicable fees due to an item being returned.

### Returned Checks

If images of checks deposited are dishonored or otherwise returned unpaid by the drawee bank, or are returned by a clearing agent for any reason, including, but not limited, to issues relating to the quality of the image and or duplication. Customer understands and agrees that they maintain the original check or have destroyed the original check and therefore the original check will not be returned. Customers understand that the image will be in the form of a paper reproduction of the original check or a substitute check. Unless otherwise instructed, Customers will not deposit the original check and understand that their account will be charged back the amount of the item returned along with any applicable return item fee.

### Storage and Destruction of Original Check

The original check will be securely stored for a period of 90 days after receipt that the file has been accepted. Within those 90 days the appropriate security measures to ensure that: (i) the information contained on the check(s) are not to be disclosed, (ii) the checks will not be duplicated or scanned more than one time, and (iii) checks will not be deposited or negotiated in any form. This means the original check(s) must be accessible after a file has been accepted by the bank. After such period expires, the original check will be destroyed using a cross-cut shredder. Customers understand that they are responsible for any loss caused due to their failure to secure the original check(s).

### System Requirements

All customers agree, at their sole expense, to use computer hardware and software that meets all the technical requirements for the proper delivery of deposit and the responsibility for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of this service. Customers release the Bank from any and all claims for damages resulting from, or related to, any computer virus or related problems. Axos Bank will not be responsible for or related to defects in or malfunctions to computer hardware or software, or failures of or interruptions in any electrical, telephone, or Internet Services. The following hardware and software is required:

#### Operating System

Windows Vista  
Windows XP (service pack 2)  
Windows 2000  
Windows 7

#### Mobile Devices

Apple  
Android

#### Internet Connection

Broadband (Basic DSL or cable internet)  
Wi-Fi  
Cellular Broadband

#### Scanner

Any TWAIN compatible scanner

### Termination of Service

The Bank may deny, suspend, or revoke access to Remote Deposit Anywhere immediately at our sole discretion without notice. In the event of termination of service, the customer will remain liable for all transactions performed on the account.

### Unacceptable Deposits

The following items are not permitted for deposit:

- Any item that is stamped with a "non-negotiable" or "void" watermark.
- Any item that contains evidence of alteration to the original information
- Any item issued by a financial institution in a foreign country
- Any item not payable in US Dollars





- Any item that is "stale dated" or "postdated"
- Any third party check, i.e., any item that is made payable to another party
- Any Savings Bonds

Remotely created checks ("Remotely created check" means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn.)

#### Unavailability of Services

Remote Deposit Anywhere may at times be temporarily unavailable due to system maintenance or technical difficulties including those of the Internet service provider and Internet software. In the event that Remote Deposit Anywhere is unavailable, customers may deposit a check by mailing the original check to:

**Axos Bank**  
PO Box 509127  
San Diego, CA 92150-9948

\* \* \*

