

## Check Deposit Services Image Capture Software License and Maintenance Product Operating Agreement

Authorization. The Master Membership Agreement (“MMA”) and Master Membership Contract (“MMC”) between Member and Alloya are incorporated herein by reference and represent additional terms that are part of this Product Operating Agreement (“POA”).

I. **Definitions.** In addition to those terms defined elsewhere in this POA, the following terms shall have the meanings set forth below:

1. **“Company.”** The Software manufacturer/owner/licensor and underlying Documentation licensed under this POA by Alloya to the Member as the designated End User. Alloya’s ability to license use of the Software is based on a contract and license executed between Alloya and Company.
2. **“Designated Location.”** The location in which the Software is installed and configured for use, as identified by software settings unique to the computer, connected scanner or other system identifiers.
3. **“Documentation.”** Any user manuals, End User or technical documentation for the Software supplied by Alloya as the designated reseller and provided to the Member as the designated End User of the software.
4. **“End User”** means the Member or other prospective customers to whom Alloya licenses the Software for use pursuant to a Software license.
5. **“Proprietary Information.”** Collectively, any such Confidential Information and/or Trade Secrets. Proprietary Information shall expressly include the Company Software and the associated manuals and other documents.
6. **“Software.”** Those software licenses which are part of Company’s software, of which portions may be owned and/or licensed by other companies. This license applies to all companies associated with the Software. “Software” also means the generally available commercial release of the computer software programs licensed to Company as well as all enhancements, updates, revisions, error corrections and upgrades pertaining thereto that are made generally available and all Documentation provided with respect to any of the foregoing, that are available during the term of this POA. The term “Software” also includes any new program or documentation that replaces, performs similar function to, or obsoletes, the Software during the term of this POA.
7. **“Trade Secrets.”** Any information provided hereunder including, but not limited to, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
8. **“Updates.”** Bug-fixes, patches, modifications and enhancements to the Software whether in machine readable or printed form and provided to the Member no matter the source.

## II. **Maintenance and Additional Services**

1. Annual maintenance services are set forth herein. Maintenance services shall consist of error corrections, installation assistance, Software debugging and other assistance by telephone support as

set by Alloya and made known to the Member in a separate schedule. Alloya offers updates to the Software at an additional charge to the Member as the End User under these maintenance services.

2. Alloya will maintain a service help desk call system to accept inquiries from the Member regarding the Software. Subject to timely payment of any annual maintenance fees, Alloya will provide the Member with such effective support and maintenance necessary for all levels of Software. Member may, in its sole discretion, elect to discontinue any such support services upon sixty (60) days written notice. Alloya will not be obligated to refund any amounts related to any early termination or discontinuance of maintenance support service nor will Alloya provide any annual updates to the Software system should the Member elect to cancel annual maintenance and/or fail to pay the annual maintenance fee when invoiced to the Member. If Member elects to terminate annual maintenance and the Software becomes out-of-date, obsolete or incompatible with Alloya's systems, then Member may not be capable of exchanging images or other services contemplated by the Software. Alloya will not be liable for any errors generated by the Member as a result of the Member using an unsupported or out-of-date Software no matter with whom the Member exchanges any images, data or other information.

### III. Software License Terms and Obligations of Member

1. **Limited License.** Alloya, as an authorized software reseller, is, under this POA, extending to the Member a limited license to use the software for the purposes intended in its design and use and within the bounds of the terms and conditions of this POA. Member acknowledges that it will only use such license as detailed and purchased herein.
2. **Prohibited Uses of Software.** Member will not under any circumstance:
  - (A) Translate, modify, disassemble, or reverse engineer the Software or its documentation (except to the extent permitted by law).
  - (B) Create derivative works based on any portion of the Software or the Documentation.
  - (C) Obtain possession of any source code or other technical material relating to the Software.
  - (D) Use the Software in a production environment or for the operation of a service bureau or as an application service provider unless the Member has a current, separate license to use the Software for such a purpose.
  - (E) Market, use, distribute or otherwise exercise any license to the Software except in connection with the Marks as defined below. All trademarks, service marks, trade names, logos, or other words or symbols identifying or associated with the Software or the business of Company ("Marks") remain the exclusive property of Company and all goodwill associated with the Marks will inure to Company's benefit.
  - (F) Remove, alter, or obscure any copyright notice(s) or proprietary legend(s) contained on the media or included in the Software or its documentation. Member shall notify Company or Alloya of any third parties known to engage in the foregoing prohibited activities with respect to the Software.
3. **Software Copying Restrictions.** If the Software is licensed to a Member by Designated Location, it may not be reproduced more than the maximum number of times set forth in this POA or as based on the license payment received from the Member. If this POA indicates that the Software is licensed on a server basis, then the server portion of the Software may only be installed at the Designated

Location at the Member and one designated emergency recovery or back-up server and that copy may be stored in whatever medium or location as needed and as determined by the Member. A duplicate copy of the Software may also be used on a non-connected test bed for the purpose of testing and validating the Software's operating parameters and that portion of the Software may only be installed on that number of Member personal computers which are connected to and access such server for purposes of operation of the Software. Except for the limited rights granted to Member herein, all rights, title and interest in and to the Software, at all times, shall remain the sole and exclusive property of Company. No right to use, print, copy, display or alter the Software, in whole or in part, is hereby granted, except as expressly provided in this POA. No ownership right is granted to any intellectual property relating to the Software, including but not limited to any patent, patent application, copyright or copyright application. No right is granted to Member to use, distribute, rent, lease, lend, supply or market Software, except as expressly provided in this POA

#### **IV. Alloya's Rights as the Software Reseller**

1. Alloya, as the Software Reseller, may exercise any of the license rights directly or cause others to exercise them on Company's behalf so long as any such third parties, including the Member, are legally bound to this POA with license and confidentiality provisions and other obligations at least as restrictive. Alloya will provide Member with a licensed version of the most current copy of the Software as provided to Alloya by Company and will make all necessary arrangements to install the Software on the targeted platforms or the individual computers of the Member and provide any such necessary support and maintenance service to the Member. Any third-party installer and/or stager of the Software, if applicable, will take sole responsibility for loading and/or staging the Member's copy of the Software if so set forth in a separate contract. Any errors in application, loading, updating, staging of the Software executed by third-parties under any separate contracts shall not extend liability to Alloya unless Alloya was the so designated third party per contract.
2. Execution of this POA and any other associated contracts with Member shall not prevent or prohibit Alloya from executing similar contracts with other Members or customers of Alloya for the same Software and associated services. This non-exclusivity shall also apply to all Documentation, Software, services and support no matter which party supplies such services.

#### **V. Confidentiality**

1. Member acknowledges that during the term of this POA, Alloya and/or Company may provide Member with Proprietary Information, including but not limited to, the Software. Member will take reasonable precautions necessary to safeguard the confidentiality of the Software, Updates and any other Proprietary Information, including:
  - (A) Those taken by Member to protect Member's own proprietary information and;
  - (B) Those which Company or its authorized representatives may reasonably request from time to time. Member will not allow the removal or defacement of any confidentiality or proprietary notice placed on or within the Software.
2. Member acknowledges that the loss of competitive advantage due to unauthorized disclosure or unauthorized use of the Proprietary Information will cause great injury and harm to Company and/or Alloya. Member covenants and agrees that it shall not, without the prior written consent of Alloya and/or Company as set forth in either this executed POA or another contract, indirectly disclose, in whole or in part, any item of the Software or any other information marked as Confidential Information to any third party. Each of Member's employees who are provided access to the Software must be legally bound to comply with the use and non-disclosure restrictions set forth in

this POA. The restrictions set forth herein shall continue:

- (A) With respect to the Trade Secrets for as long as such information continues to be a Trade Secret under applicable law, and
  - (B) With respect to Confidential Information, for a period of three (3) years from the date of expiration or termination of this POA and/or the Software Support and Maintenance. Member shall not publish or otherwise disclose the results of any benchmark tests of the Software or any portion thereof to any third party.
3. The foregoing shall not apply to Proprietary Information or Confidential Information to the extent it is information which:
- (A) Was demonstrably previously known to Member or in Member's possession before or free of any obligation to keep it confidential,
  - (B) Is in the public domain by other than unauthorized disclosure;
  - (C) Is lawfully received from a third party whose disclosure does not violate any confidentiality obligation,
  - (D) Recipient may disclose Proprietary Information or Confidential Information to the extent required by law, provided, however, that Recipient shall give Discloser prompt written notice of any such disclosure so that it may seek a protective order. Recipient may disclose Proprietary Information to its examiners or regulators if they request.
4. Member acknowledges that in the event of an actual or threatened violation of the provisions outlined in this section, Company and/or Alloya may not have an adequate monetary remedy, and will be entitled to injunctive relief without requirement to post bond, in addition to any other available remedies.
5. In addition to the above, Member and Alloya will use commercially reasonable means to implement appropriate safeguards to meet the objectives of the Gramm-Leach-Bliley Act of 1999, which includes, without limitation, taking commercially reasonable methods to:
- (A) Insure the security and confidentiality of Proprietary Information provided to Alloya by Member;
  - (B) Protect against threats or hazards to the security or integrity of Proprietary Information; and
  - (C) Protect against unauthorized access to or use of Proprietary Information that could result in substantial harm or inconvenience to Member, or its natural person members. In order to meet the above noted obligations, all Parties will obtain written permission before any consumer (natural person member of the Member) sensitive information, as defined under Gramm-Leach-Bliley, is released for use by Alloya programmers, technicians or other employees of Alloya or any third party contractor who are not domiciled in the United States or who will be using the consumer sensitive information within the United States.

## **VI. Warranties of Alloya.**

1. Alloya warrants that:
- (A) The Software contains no viruses, ransomware, spyware, malware or other illicit or malicious

software programs or code at the time of execution of this POA.

- (B) It has the legal right to grant the license contemplated by this POA and that the distribution of Software does not infringe on the patent, copyright, or other intellectual property rights of any third party
  - (C) The Software does not, and will not, contain any backdoor or disabling capabilities that allow unauthorized access to the Software or Member's systems or data by any employee of Alloya or any third-party contractor employed by Alloya during the terms of the POA
2. Member's sole remedy and Alloya's sole obligation for breach of this warranty shall be for Alloya to correct the Software at their sole expense, or at the applicable party's option, to refund all the license fees, maintenance fees, and support fees paid by Member for use of the Software.
  3. Alloya will not correct all errors in the Software caused by:
    - (A) Modification of the Software by any person other than an approved Company third-party contractor such as Alloya,
    - (B) Use of the Software with infringing software or data, or
    - (C) Operation of the Software on hardware, in an operating environment or at a location(s) other than as set forth in this POA or as may be attached hereto.
    - (D) Alloya is not liable for any damages caused by any of the foregoing acts that are outside the control of Alloya.
  4. EXCEPT AS EXPRESSLY PROVIDED IN THIS POA, ALLOYA MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED OR LIMITED, WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, OR ANY COMPONENTS OR PORTIONS THEREOF, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## VII. Indemnity

Alloya shall hold harmless and defend Member against suits based on any claim that the Software infringes any U.S. patent or any copyright or trade secret or other intellectual property right of a third party, provided that Member gives Alloya prompt written notice of such suits and permits Company to control the defense and settlement thereof. In addition to the above indemnification, if Company determine that it cannot modify or replace the Software so as to make it non-infringing, it may terminate the license granted herein and refund to Member the license, maintenance and support fees previously paid by the Member upon return of the Software. The foregoing shall be Member's sole remedy for any infringement action and shall constitute Alloya's sole obligations with respect thereto. Alloya shall have no liability to Member for any infringement action or claim that is based upon or arises out of the use of the Software or any component thereof in combination with any other system, equipment, or software, or any unauthorized modification of the Software.

## VIII. Term and Termination

1. Member may terminate use of License for Designated Location(s) upon notification to and approval of Alloya and such approval will not be unreasonably withheld.
2. Within five (5) days of the effective termination of any Designated Location(s) Member shall promptly

upon either Alloya's written request, destroy or return to the so designated party all Company property in any form or format (including without limitation, the Software and all copies thereof) or, if so instructed, provide Alloya with a written statement certifying that it has either destroyed or returned all Company property to Alloya. Upon any termination of this POA, all rights and licenses granted by Alloya as Company's authorized reseller to Member shall immediately cease and any monies due to Alloya by Member shall remain due and payable.

#### **IX. General Terms and Conditions**

1. Alloya shall not be in default by reason of any failure in performance of this POA if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of Alloya. Neither party is liable for failing to fulfill its obligations due to causes beyond its reasonable control that are not the result of its fault or negligence. A party must:
  - (A) Use commercially reasonable efforts to promptly notify the other of conditions which will result in a delay in or failure of performances,
  - (B) Use commercially reasonable efforts to avoid or remove the conditions, and
  - (C) Immediately continue performance when the conditions are removed. In the case of any Force Majeure effecting one or both parties, performance shall be excused so long as the event or action prevents reasonable performance of the duties herein described.
2. The failure of either party at any time to require performance by the other party of any provision of this POA shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this POA be taken or held to be a waiver of any further breach of the same provision.
3. If any provision of this POA is declared invalid by a court of competent jurisdiction then such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this POA will continue in full force and effect.
4. The rights and remedies of Alloya and the Member set forth in this POA are not exclusive and are in addition to any other rights and remedies available to it at law or in equity. Notwithstanding anything to the contrary in this POA, in the event of an alleged violation of a party's intellectual property rights (including but not limited to unauthorized disclosure of confidential information), that party may seek temporary injunctive relief from any court of competent jurisdiction pending appointment of an arbitrator.
5. This POA constitutes the final, complete and exclusive statement of the contracts between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous contracts and understandings, whether written or oral, between the parties with respect to the subject matter hereof. This POA may be amended only by a subsequent writing, signed by the parties to be tasked.
6. This POA relates to software that captures images of deposit items. Member has agreed to Alloya's [Check Deposit Services Product Operating Agreement](#) in which images of Member's Items are transmitted to Alloya for presentment of the images into the interbank collection process. This POA is subject to termination when the [Check Deposit Services Product Operating Agreement](#) is terminated.