

## **Check Clearing Services 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. **General.** Unless otherwise clearly indicated in this POA, all terms used in the POA will have the same meaning as in the MMA; or as in the applicable operating rules of the Electronic Check Clearing House Organization (“ECCHO”); or as in the applicable rules, regulations, bulletins, Operating Circulars or operating letters of the Federal Reserve System (“FRB”). Such operating rules of ECCHO, and such rules, regulations, bulletins, Operating Circulars and operating letters of the Federal Reserve System, are collectively hereinafter referred to as the “Third-Party Rules.” Member hereby agrees to comply with and to be bound by all Third-Party Rules referenced in this Paragraph I or in Alloya’s POA.

“Alloya” includes third party processors engaged to provide services covered under this POA.

II. **Definitions.**

1. **“Cash letter”** includes both a paper cash letter and an image cash letter.
2. **“Check”** means both an original check, an electronic image, and a Substitute Check (as defined in this subparagraph).
3. **“Check 21”** means the Check Clearing for the 21st Century Act, 12 U.S.C. §5001 et seq., and any and all regulations issued thereunder, as such statute and regulations may be amended from time to time.
4. **“Item”** means a share draft, a check, a paper item, or an electronic item (i.e. an electronic image of an item together with information describing that item).
5. **“Substitute Check”** has the same meaning as in Check 21 and Federal Reserve Board Regulation CC, 12 C.F.R. Part 229. A Substitute Check is sometimes referenced as an “image replacement document” (“IRD”).

- III. **Federal Reserve System; Other Presenters.** Member will enter into any contract or agreement required by any FRB in order to do the following: (a) authorize the FRB to charge Alloya’s account at the FRB for cash letters consisting of cash Items (whether paper or electronic) drawn on Member; and (b) appoint Alloya as Member’s agent for accessing FRB check collection and return services (including, as examples but without limitation, image cash letters and image return letters). Alloya will also maintain necessary relationships with other presenting institutions.

Member acknowledges that: (a) as a drawee of Items, Member is required by Check 21 to accept presentment of Substitute Checks in lieu of original paper checks; (b) images may be presented to Alloya on behalf of Member and such images will be accepted by Alloya as if these parties had captured the image; and (c) exchange of images will be governed by the applicable Third-Party Rules that are in effect at the time of the image exchange.

- IV. **Other Responsibilities of Member.** Member agrees to do the following:

1. Maintain collected balances in an account at Alloya in amounts specified by Alloya from time to time, to cover net settlement charges and other anticipated activity.

2. Perform all accounting functions, including (as examples, but without limitation) proper posting of checks to the accounts of Member's members, and balancing of totals, as transmitted by Alloya, to FRB advices and other reported charges and credits.
3. Enter into any contracts or agreements required by any FRB or by any presenting institution or other third party for Alloya to provide to Member the Services to be performed pursuant to this POA.
4. Record retention functions including storage of records for at least the minimum time periods required by the NCUA's rules and regulations or by the applicable Third-Party Rules.
5. Comply with all security procedures, other procedures and processes set forth in the Operations Manual.
6. Provide to its members, as and when required by Check 21, the consumer awareness disclosure about Substitute Checks that is required by Check 21.
7. Provide the expedited re-credit that Check 21 requires for consumers, if a proper claim is made by one of Member's consumer members or accountholders.
8. Respond promptly, as and when required by Check 21, to any claim made against Member for expedited re-credit.
9. Timely perform the return Item functions designated in the Operations Manual, including (as examples, but without limitation) notification to Alloya as to any and all checks that Member has deemed non-payable, and balancing of return Item totals to return charges and credits at the institution of settlement.
10. Provide at least ninety (90) days' prior written notice to Alloya of any change in any data processor used by Member and cooperate with Alloya in test processing and other activities deemed by Alloya to be necessary to complete the transition to the new processor.

V. **Capture and Transmission.** Alloya will not have any obligation or responsibility to question or investigate the authenticity or genuineness of any check or of any image thereof, or of any signature or other information that may appear on any check. Alloya agrees to do the following on each Business Day:

1. Receive checks from presenting institutions for processing.
2. Process checks received.
3. Store image of check (front and back) during processing.
4. Perform necessary repair on exception Items.
5. Balance work processed to transmittals from presenting institutions.
6. Present return Items into the clearing process.
7. Transmit posting and settlement information to Member.
8. As referenced in Paragraph IX hereof, and if requested by Member, return any Item or Items drawn on a Routing & Transit Number ("RTN") that Member has requested Alloya to block.

- VI. **Check Return Processing.** Pursuant to Member's instructions, Alloya will locate, prepare and deliver return items to presenting institutions. Member acknowledges that Alloya's check return process may utilize Substitute Checks or image presentment.

Member acknowledges that whenever any check received by Member (or received by Alloya on behalf of Member) is returned for any reason in the form of a Substitute Check, one effect of the return is that Member makes the two "Substitute Check Warranties" required by Check 21 (and Member acknowledges that Alloya will rely upon such warranties): (a) that the Substitute Check meets the requirements for it to be the legal equivalent of the original check for all persons and all purposes; and (b) that the Substitute Check is not and will never be duplicative, meaning that no person will ever be asked to make a payment based on any check that such person has already paid.

Member further acknowledges that whenever Alloya, to return one of Member's items, presents a Substitute Check on behalf of Member, Member also gives the "Substitute Check Indemnity" required by Check 21; i.e., that Member will indemnify not only Alloya (as the Reconverting Bank) but also all subsequent transferees, returning banks, payees and other persons, to the extent of any loss incurred by any recipient of the Substitute Check that is thus returned, if that loss occurred due to the receipt of a Substitute Check instead of the original check. Notwithstanding the foregoing sentence, Member's Substitute Check Indemnity will not cover any portion of a loss that is demonstrably caused by an indemnified party's negligence or failure to act in good faith.

Notwithstanding the provisions of the immediately preceding paragraph hereof, Alloya hereby agrees that if: (a) Alloya is the party that makes the decision to utilize a Substitute Check in order to return an item on Member's behalf; and (b) Member is finally required to make any payment to any person pursuant to either of the two Substitute Check Warranties required by Check 21 or pursuant to the Substitute Check Indemnity required by Check 21, as referenced in the immediately preceding paragraph hereof; then (c) Alloya will reimburse Member for Member's actual direct damages represented by such payment (such reimbursement to be in an amount up to the face amount of the item that was thus returned in Substitute Check format); provided, however, that (d) Alloya will not make any such reimbursement to Member if any action or non-action by Member (including, as examples but without limitation, any duplicate presentment or any presentment of any image that is of poor quality) contributed to the breach of either of such two Substitute Check Warranties or caused the application of such Substitute Check Indemnity.

- VII. **Storage of Images of On-Ups Checks.** Member agrees to do the following for the On-Ups Checks that are referenced in this paragraph:

1. Member will notify Alloya if Member wishes to transmit to Alloya for archival purposes, by use of check deposit services, any On-Ups Checks that have been previously presented and paid at Member. Member will ensure check deposit services are set up appropriately to accommodate this option.
2. Member will transmit to Alloya images of On-Ups checks pursuant to the internal procedures established by Member. Member will ensure these procedures are applied consistently for all "On-Ups" Checks. Alloya agrees to archive such images so that they can be retrieved by use of the same process or processes that are used to retrieve images of checks that were presented to and paid by Alloya on behalf of Member.
3. Member acknowledges that if it elects to transmit to Alloya for archival purposes an image of an On-Ups Check that Member has previously paid, Member is responsible for truncating and destroying the original check (after whatever period of time Member deems to be reasonable for Member's retention or archiving of such original check).

**VIII. Item Storage and Retrieval.** Alloya agrees to do the following for checks that Alloya has processed under this POA:

1. Temporary storage of Member's physical checks. If Alloya has stored an image of a physical check, Alloya will have the right to destroy the physical check without notice to Member.
2. Storage of images of checks (both front and reverse sides) until the date that is the earlier of: (a) seven (7) years after Alloya processed the check; or (b) the date this POA is no longer in effect.
3. When this service is terminated for any reason, Alloya will, pursuant to Member's instructions, either: (a) provide Member with continued on-line access to the images; or (b) provide Member with digital copies of all of Member's checks then stored by Alloya; or (c) continue to store such checks for the then-remaining portion of the agreed-upon storage period. Member will be responsible for paying Alloya's then-applicable fees for provision of such post-termination services.

During the period when the physical check is stored, and during the agreed-upon storage period applicable to the image, Alloya will respond to inquiries and requests for copies of paid checks in accordance with the procedures set forth in the Operations Manual (including, as an example but without limitation, making images of Items available to Member using electronic media). After the expiration of the agreed-upon storage period, Alloya will have the right to destroy all images of a check without notice to Member.

Alloya agrees to and hereby does indemnify and hold harmless Member and its officers, directors, employees, agents and representatives (each, an "Indemnitee"), from and against any and all litigation, causes of action, losses, damages, claims by Member's members or other third parties, and liabilities of any and every kind (including, as an example but without limitation, reasonable attorneys' fees) to which Member or any other Indemnitee, jointly or severally, may be subjected, arising out of or attributed, directly or indirectly, to Alloya's failure to produce promptly either a paid check, an image thereof, or other proof of payment (or otherwise to resolve the matter), if such check or image is needed by Member during the period when Alloya has agreed to store such check or image under this POA. Alloya's indemnity: (a) will apply only to the Indemnitee's actual direct damages (and not to any indirect, consequential, punitive, exemplary or special damages); and (b) will be limited to two (2) times the amount of the check of which Alloya has failed to produce a copy or an image. Upon any termination of this POA, this indemnity will survive and remain in full force and effect as to transactions conducted prior to the termination of this POA until the expiration of applicable statutes of limitations.

**IX. Image Delivery Services.** If requested by Member, Alloya will provide digital images of paid checks and On-Us items in an agreed upon file format and frequency. Member acknowledges the following: (i) Image files will be sent to Member, or to a designated vendor, in a secure format with encryption; (ii) once images have been received, the confidentiality, security, and accessibility of images is the responsibility of Member.

**X. Blocked Routing & Transit Numbers.** If requested by Member, Alloya will "block" any Item that is drawn on an RTN designated by Member. If any such Item is presented to Alloya, Alloya: (a) will not pay the Item; (b) will not place the Item into any posting file; and (c) will return the Item to the Item's first depositing institution.

Member acknowledges the following: (i) Member continues to own any RTN that it has requested Alloya to block; (ii) on any RTN that Member has requested Alloya to block, Alloya will continue to block Items until Member requests that Alloya discontinue the blocking; and (iii) the Third-Party Rules referenced in Paragraph I (General) of this POA may contain procedures related to the blocking of RTNs.

Member hereby agrees that its indemnification of Alloya and other Indemnitees, as set forth in the MMA, applies to any liability or claim to the effect that Alloya's return of an Item (that is drawn on a blocked RTN) constitutes a late or non-timely return, or constitutes a wrongful return or wrongful dishonor.

**XI. Member Image Access to Check Images.** If Member provides its members with access to check images, the provisions of this Paragraph are applicable. In addition to the responsibilities set forth in the MMA and elsewhere in this POA, Member agrees to do the following:

1. Maintain the confidentiality of Alloya's image delivery script and of Alloya's other confidential information, and not use such script for any purpose other than receipt of the Services referenced by this POA.
2. Obligate its home banking vendor and/or its e-statement vendor: (a) to comply with Alloya's interface specifications (as they may be amended from time to time by third party processor); (b) to maintain the confidentiality of Alloya's image delivery script; (c) not to use such script for any purpose other than assistance to Alloya in its receipt of the Services referenced by this POA; and (d) to comply with the restrictions of the Gramm-Leach-Bliley Act as to the use of nonpublic personal information for transaction processing only.
3. Ensure that all information utilized by its home banking vendor and/or its e-statement vendor (to identify an Item of which Member's member requests an image) will match Alloya's information about the requested item. As an example of the foregoing (but without limitation of the generality thereof), Member will ensure that the "cleared date" utilized by its home banking vendor and/or its e-statement vendor to identify an Item will match either the date on which the Item was actually processed by Alloya or the Business Day immediately preceding Alloya's processed date.
4. If Member pays an Item that is presented for payment over the counter, and wishes for an image of such Item to be available to Member's member, Member will forward the paid Item to Alloya in the manner and with the accompanying information that is set forth or referenced in the Operations Manual.
5. If Member offers access to check images through Member's web site, Member will ensure that all information entered into Member's member database is accurate and is updated from time to time when deemed necessary by Member.
6. Make images of cleared Items available upon receipt of requests transmitted from or through Member's home banking vendor, or through its e-statement vendor, or through Member's website.
7. Assist Member's home banking vendor and/or its e-statement vendor in compliance with Alloya's interface specifications. Alloya will provide Member with at least thirty (30) days' prior notice of any changes in such specifications (unless Alloya deems that a more rapid change is necessary for security purposes).

Notwithstanding any other provision of this POA or of the MMA, any release of check images in response to a request transmitted from or through Member's home banking vendor, or through its e-statement vendor, or through Member's website, will be conclusively deemed to be a proper purpose under this POA, and under no circumstances will Alloya have any liability under the Gramm-Leach-Bliley Act, or under 12 C.F.R. Part 716 (Privacy of Consumer Financial Information), or under 12 C.F.R. Part 748 (Security Program, etc.) or under the Appendices to Part 748, or under any other applicable law, for any such release of check images in response to such a request, if Alloya has complied with its own interface specifications and with applicable law.

**XII. Member Service.** Alloya agrees to the:

1. Reasonable set-up assistance in dealing with Federal Reserve Banks, other sending banks, printers,

processors and other providers of services and supplies.

2. Provision of a toll-free telephone number at Alloya for operational assistance to Member.
  3. Notification to first depositing institution on all large-return Items.
  4. Daily notification (by Alloya's "TranZact" computer-to-computer communication system or other mutually agreed-upon means) of check adjustment entries.
  5. Daily settlement for Member with other financial institutions.
  6. On-call assistance for trace-back and other needs in adjustment entries.
  7. Assistance in collection of late-return "without-entry" Items by returning direct to the Item's first depositing institution.
  8. Rapid resolution of overages by generating a check, if requested by Member.
  9. Provision of daily settlement totals to Member, by Alloya's "TranZact" computer-to-computer communication system.
  10. Upon request, assist Member in making an expedited recredit claim against an indemnifying bank under Check 21.
- XIIX. Termination Fees.** Member shall pay Alloya termination fees as described on Alloya's Pricing Schedule if Member terminates service. Termination fees are limited to amounts Alloya's vendor(s) charge Alloya for termination of the service, plus reasonable internal processing costs, plus any other expenses Alloya incurred on the Member's behalf to acquire or offer the service that Alloya cannot recover. Termination fees do not include future Alloya revenue or its opportunity costs.