

Business Overdraft Protection Line of Credit Agreement

This Agreement governs the Business Overdraft Protection Line of Credit Account with Western Alliance Bank.

1. **Definitions.** The following definitions apply to this Credit Agreement: "Application" means the request for a Business Overdraft Protection Line of Credit provided by the Customer. "Bank" means Western Alliance Bank. "Credit Line" means the revolving Business Overdraft Protection Line of Credit Account provided to the Customer under this Credit Agreement. "Credit Agreement" means this Business Overdraft Protection Line of Credit Agreement that applies to the Credit Line, as may be amended from time to time. "Credit Limit" means the maximum amount of credit available to the customer under the Credit Line as described in this Credit Agreement. "Customer" means the business entity named in the Application that is responsible for this Credit Agreement. "Deposit Account" means the Customer's account at the Bank designated in the Application as the account to be debited by the Bank for payments due under this Credit Agreement, as well as the deposit account to be credited with Loan proceeds under this Credit Agreement. "Advance" and "Advances" mean credit advances from the Credit Line made by the Bank under this Credit Agreement. "Overdraft" means a negative balance on the Customer's Deposit Account.
2. **Promise to Pay.** The Customer agrees to pay the Bank for all credit advanced by the Bank in connection with this Credit Agreement, together with all applicable interest, fees and charges. Each individual who signed the Application is a co-borrower in their individual capacity under the Agreement, and agrees to be jointly and severally liable for the Credit Line. This means Bank can require any co-borrower to pay all amounts due under this Agreement. Lender can release any borrower from responsibility under this Agreement and the others will remain responsible. An electronic, facsimile or optical image copy of this Credit Agreement shall have the same validity as an ink-signed original.
3. **Linked deposit account.** The Customer may link a single Deposit Account to the Credit Line.
4. **Credit Advances.** The Customer may obtain an Advance by (i) writing a check on the Customer's Deposit Account that exceeds the balance of the Deposit Account; (ii) using the debit card to make a purchase or obtain a withdrawal that exceeds the balance of the Deposit Account; or (iii) other methods offered by the Bank from time to time. The Customer cannot request an Advance directly from the Bank. The Customer will not attempt to obtain Advances which, when taken together with amounts then outstanding, would exceed the maximum credit limit, as may be changed by the Bank from time to time. In the event the Bank is presented with an item that exceeds the total available balance of the Deposit Account plus the maximum credit available hereunder, the Bank may, in its sole discretion, elect to advance up to the maximum credit available hereunder and transfer the proceeds of the Advance to the Deposit Account. In accordance with the agreement governing your Deposit Account, the Bank then may, whether or not it has extended an Advance as set forth in the preceding sentence; (i) pay the item by creating an Overdraft in the amount by which the item exceeds the balance of the Deposit Account (after giving effect to any Advance extended pursuant to the preceding sentence), in which case the Customer will immediately and without demand be required to pay the total amount of the Overdraft together with the Overdraft Fee as disclosed in the Bank's Schedule of Fees; or (ii) return the item unpaid, in which case the Customer will be responsible for an Item Returned Fee (NSF) as disclosed in the Bank's Schedule of Fees. Advances will be made in the exact amount necessary to cover the overdraft.
5. **Business purpose.** The Customer agrees that Advances provided by the Bank under this Credit Agreement are solely for business or commercial purposes and not for personal, family or household purposes.
6. **Type of Advance.** Each Advance is an advance on the Credit Line. The Customer must repay principal and interest, fees and charges, subject to the terms of this Credit Agreement. If the Credit Line is repaid, the Customer may reborrow, subject to the terms of this Credit Agreement. The Customer agrees not to take an advance from the Credit Line to pay the Bank for any amounts due under this Credit Agreement.
 - a. The Bank has the right to cancel this Credit Agreement as it relates to future Advances at any time without notice and demand payment upon ten (10) days advance notice to the Customer in accordance with this Credit Agreement. The Customer agrees to cease using the Credit Line upon any notice of such cancellation and demand. The Bank retains all rights under this Credit Agreement and cancellation of the Credit Line does not affect (i) the terms of this Credit Agreement that remain in effect until the Advances are paid in full; or (ii) the Customer's liability for payment of amounts owed on the Credit Line according to the terms of this Credit Agreement. The Customer agrees that the Bank may demand payment at any time prior to payment in full and for any reason (including but not limited to reasons unrelated to the Customer's ability to pay the Advance).
 - b. Regardless of whether a notice of cancellation and demand is provided, the amounts owed on the Credit Line shall become immediately due and payable, without demand or notice by or any action taken by the Bank, upon the occurrence of an Event of Default.
 - c. The Customer may terminate this Credit Line and this Credit Agreement at any time by notifying the Bank at least five (5) days prior to termination and paying all sums due under this Credit Agreement.
7. **Interest rate.** Interest on the Credit Line Advances will be a variable rate. Advances will continue to accrue interest as provided in this Credit Agreement until paid in full. The interest rate will be the Prime Rate in the "Money Rates" section of The Wall Street Journal plus a margin of 8.0% ("Interest Rate"); however, in no event will the Interest Rate be less than 12% or more than the maximum rate allowed by applicable law. If more than one rate is published, the Bank will use the lowest rate. The interest is determined for each monthly billing period by applying a daily periodic rate to each day's ending Credit Line balance ("Daily Loan Balance," as described below). The daily periodic rate is 1/360th of the Interest Rate (rounded five decimal places) (the "daily periodic rate"). The daily periodic rate may vary daily based on changes in The Wall Street Journal Prime Rate. Any change in the Interest Rate will be effective on the date of the change in The Wall Street Journal Prime Rate. The Daily Loan Balance will be computed by taking the principal balance of Advances at the beginning of each day, adding any Advances posted to the Credit Line that day, and subtracting any principal payments posted to the Credit Line as of that day. The Daily Loan Balance excludes interest, fees and charges. Interest begins to accrue on the date an Advance is posted to the Credit Line.
8. **Default interest.** The principal balance of Advances that remains unpaid past the date the Bank demands payment in full will bear interest until paid in full at a rate of 5% per annum above the Interest Rate otherwise applicable to the Advances (described above). The Rate payable under this Credit Agreement shall never exceed the highest rate that the Customer may contract to pay under applicable law.
9. **Other fees.** The Customer agrees to pay the following fees:
 - a. Late Payment Fee. Each time the Customer fails to make the periodic payment within ten (10) days after the payment due date, the Customer shall be charged a late payment fee. The late payment fee is 5% of the delinquent payment amount or \$15, whichever is greater.
 - b. Returned Payment Fee. If the Customer makes a payment that is returned unpaid for any reason, the Customer shall be charged a returned payment fee of \$30. At its option, the Bank may assess this fee the first time the payment is not honored, even if it is paid upon resubmission.
10. **Payments.** The Customer is required to make periodic payments each month on the fifteenth (15th) day of the month. The Customer authorizes the Bank to deduct or withdraw funds from the Deposit Account with the Bank to satisfy amounts owing under this Credit Agreement.
 - a. **Minimum Payments.** The minimum payment will equal (i) three percent (3%) of the outstanding balance or fifty dollars (\$50), whichever is greater; plus (ii) any fees and charges; and (iii) any past due amounts. The Customer must make at least the minimum payment by the payment due date as shown on the periodic statement.
 - b. **Payments Made.** Payments can be made at any Bank branch location or by mailing a check paid to the order of the Bank to: Western Alliance Bank Loan Payments 12220 El Camino Real, Suite 200, San Diego, CA 92130. Payments can also be made by debit to Customer's Deposit Account by contacting any Bank branch.
 - c. **Prepayment.** The Customer may pay the entire balance of the Advances at any time.
 - d. **Disputed Payments.** The Customer agrees not to send payments marked "paid in full," "without recourse," or similar language. If the Customer sends such a payment, the Bank may accept it without losing any of the Bank's rights under this Credit Agreement and the Customer will remain obligated to pay all amounts owed to the Bank. All written communication concerning disputed amounts, including any check that indicates that the payment constitutes "payment in full" of the amount owed as full satisfaction of the disputed amount, shall be mailed or delivered to Western Alliance Bank 12220 El Camino Real, Suite 200, San Diego, CA 92130. If the Customer pays more than the minimum payment, the Customer is still required to make future minimum payments.
11. **Crediting payments.** Payments received by the Bank shall be applied first to accrued interest, then to principal and then to other fees and charges, provided that during the existence of any Event of Default all payments received may be applied in such order and manner as the Bank shall determine. If any payment from the Customer becomes due on a Saturday, a Sunday or a day that is a legal holiday for banks in the State of Arizona, such payment shall be made on the next Bank Business Day and any such extension shall be included in computing interest under this Credit Agreement.
12. **Periodic statements.** The Bank will furnish the Customer with a statement for each monthly billing period that has any transaction or balance greater than one dollar (\$1). The statement contains important information and should be carefully read and reviewed each time a statement is received. Unless the Customer notifies the Bank within sixty (60) days of receipt of a statement, the statement will be conclusively deemed to be correct.
13. **Payment demand.** Any demand for payment shall be made in writing and shall be deemed made on the earlier of (a) the date the demand is sent, if properly sent by U.S. Mail to the Customer at the address in the Bank's records; or (b) the date of actual receipt of written demand by the Customer.
14. **Representation and warranties.** In consideration of establishing and maintaining the Credit Line, the Customer hereby represents and warrants to the Bank that (a) the Customer is a business entity (a corporation, partnership, sole proprietorship, non-profit, or limited liability company, as indicated on the Application), duly organized, validly existing, and in good standing under the laws of its state of organization; (b) the execution, delivery, and performance by the Customer of this Credit Agreement are within its powers, have been duly authorized and do not contravene the Customer's organizing documents or any law or contractual restriction binding on or affecting the Customer; (c) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the Customer's due execution, delivery, and performance of this Credit Agreement; (d) this Credit Agreement is, when the Credit Line is approved by the Bank and the Customer uses the Credit Line, the Customer's legal, valid, and binding obligation enforceable against the Customer in accordance with its terms; and (e) the Customer is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of the Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.
15. **Right of set off.** To the extent permitted by applicable law, whether or not an Event of Default exists and whether or not the Advance is then due or payable, the Bank reserves a right of

BUSINESS OVERDRAFT PROTECTION



Alliance Bank
OF ARIZONA

BANK OF
NEVADA

FIRST
INDEPENDENT
BANK

TORREY PINES BANK

- set off in all the Customer's accounts with the Bank (whether checking, savings or some other account). This includes all accounts the Customer may open in the future. The Customer authorizes the Bank to the extent permitted by applicable law to charge and set off all amounts owing under this Credit Agreement against all such accounts and, at the Bank's option, to administratively freeze all such accounts to allow the Bank to protect the Bank's set off rights provided in this section.
16. **Events of default.** The occurrence of any of the following shall be an "Event of Default": (a) non-payment when due of any amount payable under this Credit Agreement, or non-payment when due of any other indebtedness or liabilities of the Customer owing to the Bank or any other Lender; (b) failure of the Customer to notify the Bank of a change of address; (c) closing the Customer's Deposit Account with the Bank; (d) dissolution, termination, insolvency or death of any principal of the Customer or co-borrower; (e) the filing by or against the Customer or co-borrower of any bankruptcy or similar proceeding for the relief of debtors or the appointment of any receiver for any such party or any of its property; (f) the making of an assignment for the benefit of creditors by the Customer or co-borrower; or (g) a change in which the Bank in good faith deems material and adverse occurs in the condition (financial or otherwise) or operating results of the Customer or co-borrower.
 17. **The Bank's rights upon default.** Upon the occurrence of any Event of Default, (a) unless the Bank elects otherwise in writing, the entire unpaid balance of the Advances under this Credit Agreement, including interest and other fees and charges, shall be immediately due and payable by the Customer without notice or demand; (b) if this Credit Agreement and Advances are secured by property the Bank may exercise all of the rights and remedies of a secured party under the UCC; (c) the obligation of the Bank to extend further credit shall immediately terminate; (d) the Bank may change the terms of this Credit Agreement; and (e) the Bank shall have the right to set off the balance of any account that the Customer may maintain with the Bank against any amounts owing under this Credit Agreement, whether or not the balance of Advances under this Credit Agreement would be otherwise due.
 18. **Waiver.** No delay by the Bank in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. The Customer and any Guarantors waive the rights to presentment, notice of dishonor and protest.
 19. **Termination.** The Customer may terminate this Credit Agreement at any time effective upon receipt by the Bank of at least five (5) days prior written notice and paying the Bank all sums due under this Credit Agreement. No termination under this paragraph shall affect the Bank's rights or the Customer's obligations regarding payment or default under this Credit Agreement. Such termination shall not affect the Customer's obligation to pay all Advances, fees and charges, and the interest accrued through the date of final payment. Advance requests made after termination of this Agreement will not be accepted.
 20. **Notices.** The Bank may rely on instructions from the Customer with respect to any matters relating to this Credit Agreement and the Credit Line, including telephone loan requests that are made by a person whom the Bank believes to be the Customer or its designated representative. All notices and statements to be furnished by the Bank shall be sufficient if delivered to any such person at the billing address for the Customer shown on the records of the Bank. All notices from the Customer shall be sent to the Bank: Western Alliance Bank 12220 El Camino Real, Suite 200, San Diego, CA 92130. The Customer waives presentment and notice of dishonor. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. No amendment or waiver of any provision of this Credit Agreement, or consent to any departure by the Customer therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank.
 21. **Consent to jurisdiction.** The Customer submits to the jurisdiction of the Federal and State Courts where the branch office Deposit Account linked to the Credit Line is located for purposes of all legal proceedings arising out of or relating to this Credit Agreement. The Customer irrevocably consents to the jurisdiction and venue of such courts and waives any right to object to the jurisdiction or venue of such courts.
 22. **Jury trial waiver.** THE CUSTOMER, CO-BORROWER(S) AND THE BANK WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
 23. **Governing law.** This Credit Agreement will be governed by and construed in accordance with federal law and to the extent not preempted by federal law, by the law of the state of Arizona. If any part of this Credit Agreement is unenforceable, that will not make any other part unenforceable.
 24. **Attorneys' fees; expenses.** The Bank may hire someone else to help collect amounts due under this Credit Agreement, if the Customer does not pay. The Customer will pay the Bank that amount including, subject to any limits under applicable law, the Bank's attorneys' and paralegals' fees, legal expenses, whether or not a lawsuit is instituted and including attorneys' fees and expenses for post-judgment and bankruptcy proceedings and appeals. If not prohibited by applicable law, the Customer will also pay court costs, in addition to all other amounts permitted by law.
 25. **Amendment.** The Bank may amend this Agreement by written notice to the Customer. Any amendment to this Agreement shall be effective thirty (30) days after notice of such amendment is sent to the Customer.
 26. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective legal representatives, successors and assigns, but not for the benefit of any other person, and no other persons should have any rights hereunder against either party to this Agreement. The Customer may not assign this Agreement without the Bank's prior written consent.

USA Patriot Act

The Bank hereby notifies the Customer that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify, and record information that identifies the Customer, which information includes the name and address of the Customer and other information that will allow the Bank to identify the Customer in accordance with the Act.