



PenChecks, Inc Recurring Benefit Client Agreement

The PenChecks Recurring Benefit Client Agreement (Agreement) is entered into on _____ by and between _____, as the Plan Sponsor (Sponsor) and PenChecks, Inc, a California Corporation (PenChecks) in its capacity as a distribution processor.

WHEREAS, Sponsor has adopted a certain qualified benefit plan of deferred compensation, _____ (Plan/Trust) for the exclusive benefit of its employees, and

WHEREAS, the Plan provides benefits to employees of the Sponsor through a Trust (Trust), and

WHEREAS, the Sponsor issued a Corporate Resolution or Written Record of Action authorizing the Sponsor to enter into this Agreement with PenChecks as well as adopting the PenChecks, Inc Employee Benefit Distribution Trust as part of the above named Plan/Trust to be used as an administrative tool to enhance the efficiency and effectiveness in processing benefit payments, and

WHEREAS, PenChecks shall act only with respect to certain Plan assets (Fund(s)) the Sponsor authorizes PenChecks to distribute to or on behalf of Plan Participants, alternate payees, Plan beneficiaries and/or to Missing Participant/Default IRA Rollover Accounts, and

WHEREAS, the Sponsor is authorized by the terms of the Plan to designate certain parties to act as fiduciaries, investment managers, agents and in various other capacities with respect to the Plan and the Trust and desires to designate PenChecks to provide those services listed in paragraph 4 below as may be selected by the Sponsor including, but not limited to, the establishment on behalf of Participants designated by the Plan Sponsor, a missing Participant and/or default IRA rollover account and

WHEREAS, the Sponsor, Trustee, or any Authorized Plan Representative acknowledges that the PenChecks, Inc Employee Benefit Distribution Trust Account shall from time to time earn interest off the float; said earnings shall be used by PenChecks to defray operating costs and overhead expenses.

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth herein, Sponsor and PenChecks agree to the following:

- 1. DISTRIBUTABLE FUNDS OF THE PLAN.** Except as otherwise provided herein, the Funds shall consist of that part of the Plan assets that the Sponsor sends or causes to be sent to PenChecks to be distributed to or on behalf of designated Plan Participants, alternate payees, Plan beneficiaries identified and provided to PenChecks by Sponsor. In the event the funds to be distributed or rolled over arise from a designated Roth account, the Sponsor certifies that such account(s) has been maintained in compliance with all applicable law and regulations concerning such account(s).
- 2. APPOINTMENT OF PENCHECKS.** Sponsor or duly authorized representative hereby accepts the terms of this Agreement and appoints PenChecks, in a non-exclusive capacity only with respect to the specific provisions of this Agreement. Such appointment is accepted by PenChecks subject to completion and execution of the Sponsor Information and Authorization Section of this Agreement and the payment of agreed upon fees defined in the PenChecks Services and Fees Section of this Agreement. PenChecks represents that its services herein are in compliance with all applicable law, both Federal and State and that PenChecks can legally perform all of its duties associated with such services.



- 3. MISSING PARTICIPANT / DEFAULT IRA COMPLIANCE.** In the event PenChecks or the Plan Trustee and/or Plan Administrator is unable after due inquiry conducted in accordance with the Department of Labor (DOL) standards set forth in Field Assistance Bulletin (FAB) 2004-02 to locate a former Participant of a terminated or terminating Plan and the Sponsor maintains no other plan which can accept the funds which would otherwise be distributable to the Participant, the Trustee authorizes PenChecks to establish on behalf of such Participant, an Individual Retirement Account as set forth in section 4 of this Agreement. In the event it is impossible to locate Participants in a terminating defined benefit plan that is subject to the Pension Benefit Guarantee Corporation (PBGC), PenChecks will forward such benefits to the PBGC in accordance with the rules of that agency.

As part of its services to Plan Sponsors, PenChecks provides a Premier Default / Missing Participant IRA Program for accounts of at least \$500, which is intended to be compliant with the principles set forth in the DOL FAB 2004-02. In the event the Plan Sponsor or TPA has already complied with DOL FAB 2004-02 and communicates that such compliance is fulfilled and/or a Participant's account balance is less than \$500, PenChecks will establish a Default/Missing Participant IRA under the Standard IRA Service. See PenChecks Statement of Services and Fees for more details on the Premier and Standard Default/Missing Participant IRA Service.

- 4. AUTHORITY OF PENCHECKS.** Under the terms of this Agreement, PenChecks has the authority to receive Funds, which are to be used for Plan distributions or, where appropriate, to establish a Default/Missing Participant IRA Rollover Account. Funds shall be payable to PenChecks Inc. Employee Benefit Distribution Trust in the form of a check, wire, or ACH that is negotiable. PenChecks is authorized and will perform the following with respect to its duties hereunder:

- A. To receive Funds earmarked for distribution and deposit such Funds in a Trust or Default/Missing Participant IRA Rollover Account established by PenChecks with a federally insured banking institution or other qualified investment program. All such Funds shall be held separate and independent from the assets and liabilities of PenChecks. Roth Funds rolled over from designated Roth accounts shall continue to be accounted for separately with respect to both their basis and earnings until distributed.
- B. To contact the appropriate individuals or companies to effectuate the disbursement of Plan benefits directly to or for the benefit of Sponsor designated individuals as well as prepare all necessary documentation to release Funds directly to or for the benefit of Sponsor designated individuals or to establish a Default/Missing Participant IRA, all according to the service level requested (see Statement of Services and Fees) and applicable information provided by the Sponsor to PenChecks.
- C. To issue distribution payments in the form of, but not limited to, check, wire, ACH, or debit card to or on behalf of Sponsor designated individuals based upon the information furnished to PenChecks by the Sponsor or its designee, within the time period required by law and to establish Default/Missing Participant IRA Rollover Accounts on behalf of those Sponsor designated individuals in accordance with Plan provisions who either cannot be located or who are non-responsive to requests to make a benefit election.
- D. To withhold and remit any withheld taxes to the appropriate depositories as required by law and to prepare and file all required Federal and/or State forms (i.e. Forms 945, 1099-R, 1042, 1042-S, 1096) to the proper taxing authority as required by law. PenChecks will file all tax forms and reports under the name and TIN of PenChecks, Inc Employee Benefit Distribution Trust for all qualified Plan distributions disbursed by PenChecks unless otherwise instructed by Sponsor.
- E. To notify and contact Sponsor, TPA, or Participant as necessary of any returned payment or non-negotiated check to obtain more accurate instructions. If valid instructions are not received within a timely manner,



PenChecks will void any outstanding check, recapture any taxes previously withheld (if possible under the then existing taxing agency procedures) and establish a Default/Missing Participant IRA rollover account on behalf of the original beneficiary designated by the Sponsor in accordance with applicable law. Alternatively, the funds may be returned to the Plan assuming that the taxes have been recaptured and the Plan is still in existence.

- F. In cases where recapturing taxes previously withheld and remitted is not possible, PenChecks is authorized to establish a Missing Distributee account, in which PenChecks maintains a financial interest, on behalf of the Participant separate from the PenChecks Employee Benefit Distribution Trust because such funds are no longer qualified and eligible for a Default/Missing Participant IRA. These funds will be maintained in such account and the interest thereon reported to the applicable taxing authority until such time as the Participant comes forward or it is appropriate to escheat such funds pursuant to the applicable state statute. PenChecks is authorized to charge reasonable fees (PenChecks Statement of Services and Fees) for establishing and maintaining such accounts.
 - G. Periodically, PenChecks will notify the Sponsor of any outstanding or undistributed Plan Funds and request the Sponsor to provide instructions to disburse such Funds to the appropriate beneficiary. In event that Plan Funds have been deposited with PenChecks in excess of 90 days for whatever reason and there is no Plan provision, no Sponsor direction, no PBGC applicability, or the Plan no longer exists, PenChecks is specifically authorized to establish on behalf of each Participant a Default / Missing Participant IRA (in which PenChecks has a financial interest) according to DOL and IRS regulations. All applicable fees shall be reasonable and are disclosed in PenChecks Statement of Services and Fees. In instances where an IRA cannot be established (i.e. ongoing Plan and Participant account balance exceeds \$5,000), or upon request by Sponsor, Plan assets will be returned to the Plan.
 - H. To accept compensation for services either directly from Sponsor, Plan Participants, TPA or any other entity which contracts with PenChecks, based on PenChecks Statement of Services and Fees in effect at the time a distribution is accomplished or an IRA is established. The Statement of Services and Fees is subject to modification without prior notice to any parties; however, any fee increase with respect to existing accounts will be prospective.
 - I. To receive earnings that may occur from the float on funds held in trust. All such earnings, if any, shall be used to defray operating and overhead expenses.
 - J. To retain such agents as are appropriate to perform the obligation of PenChecks hereunder. All such agents shall be entitled to the protections of Sections 7 and 9 hereunder.
 - K. Funds designated for benefit payments must be made payable to PenChecks, Inc. Employee Benefit Distribution Trust. Deposits made by wire require 72 hours and checks/draft deposits require a minimum of five business days to clear before any benefit distribution can be processed.
5. **PENCHECKS' NONFIDUCIARY STATUS.** PenChecks' is not a fiduciary with respect to the Plan/Trust and PenChecks' liability shall be limited to its capacity as detailed herein in connection with the distributable Funds that are the subject of this Agreement.
6. **QUALIFIED DOMESTIC RELATIONS ORDER ("QDRO").**With respect to any distribution made pursuant to a Qualified Domestic Relations Order ("QDRO"): (i) it is the Sponsor's / Plan Administrator's and / or Plan Trustee's responsibility to have written QDRO procedures in place and to follow those procedures when it instructs PenChecks to make any distribution involving a domestic relations matter; (ii) PenChecks will not act as a proper or necessary recipient of notice of any domestic relations matter that may result in a QDRO; (iii) PenChecks shall have no responsibility under



the Plan's QDRO procedures other than the responsibility of acting in accordance with the instructions of the Sponsor / Plan Administrator and/or Plan Trustee; (iv) only the Sponsor / Plan Administrator and/or Plan Trustee shall have the authority to interpret the terms of any QDRO and they shall jointly and severally hold harmless and indemnify PenChecks with respect to any and all issues arising from their interpretation; and, (v) PenChecks shall have no responsibility to determine whether a specific order is a QDRO or to calculate an alternate payee's interest under any domestic relations order, whether or not a QDRO.

7. **LIABILITY FOR ACTS OF OTHERS.** Without limiting the foregoing, PenChecks shall not be responsible for any loss incurred by reason of any act or omission of any service provider selected by Sponsor, by any Plan Trustee or Plan Custodian, the Sponsor itself, or any fiduciary under the Plan and Sponsor agrees to hold PenChecks harmless with respect thereto.
8. **NEGLIGENCE, WILLFUL MISCONDUCT AND DISHONESTY.** PenChecks will be liable for its own negligence or willful misconduct and for the dishonesty of its own employees or agents. Clerical errors due to erroneous or misleading information or vague instructions from the Sponsor, Administrator, or Trustee shall be the sole responsibility of the Sponsor, Administrator, or Trustee collectively or separately. The Sponsor agree to hold PenChecks harmless from any losses incurred by following their verbal or written instructions regarding any administrative activities unless the loss was caused by PenChecks' negligence.
9. **INDEMNIFICATION.** To the extent PenChecks acts upon the instruction or direction of the Sponsor, Sponsor shall indemnify and hold PenChecks harmless against any liability whatsoever including but not limited to the reasonable expense of defense in connection with any action or proceeding brought against PenChecks as a result of following such instruction or direction of the Sponsor. Furthermore, in the case where there is no Plan provision or lack of Sponsor or TPA direction or PBGC Jurisdiction, Sponsor or its successor(s) in interest shall indemnify PenChecks and hold it harmless with respect to any charges, taxes, penalties or any other outlays of costs arising out of the establishment and operation of any Missing Participant / Default IRA Account or Missing Distributee Account established by PenChecks under section 4 of this Agreement.
10. **TERMINATION OF AGREEMENT.** This Agreement may be terminated at any time by either party giving to the other party thirty days prior written notice of such termination; provided, however, that the parties may agree to waive any part or all of such time period.
11. **NOTICE.** All notices and documents specified herein shall be deemed duly given if transmitted by either a secured internet connection, email addresses provided by Sponsor, or first class mail to Sponsor at the address provided by Sponsor that was furnished to PenChecks and to PenChecks, Inc., P.O. Box 2669, La Mesa, CA 91943 or any other address that PenChecks shall furnish to Sponsor, including its website address at www.penchecks.com.
12. **SEVERABILITY.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereto or affecting the validity or enforceability of such provision in any other jurisdiction.
13. **CONTROLLING LAW.** This Agreement shall be construed and enforced pursuant to the laws of the State of California to the extent that such laws have not been superseded by Federal law.
14. **BINDING EFFECT.** This Agreement shall be binding upon, and shall insure to the benefit of, the parties thereto and their respective successors and assigns.
15. **CONTINUED QUALIFICATION.** Sponsor alone shall be responsible to maintain Plan as a qualified Plan of deferred compensation pursuant to applicable Federal law.



16. **CONFIDENTIAL INFORMATION.** All personal information received by PenChecks from Sponsor or other party will be used for the exclusive use and benefit of processing a distribution on behalf of the Sponsor and will not be released to any other unauthorized entity.
17. **ENTIRE AGREEMENT; AMENDMENT PROCESS.** This Agreement, PenChecks Client Agreement and PenChecks Statement of Services and Fees, constitute the entire Agreement between the parties and supersedes any and all prior understandings as to the subject matter hereof. PenChecks may amend this Agreement at any time and from time to time. Prior to any amendment effective date, PenChecks will make every effort to notify all interested parties.
18. **ARBITRATION CLAUSE.** Both parties to this Agreement agree to meet and confer in good faith on all matters and disputes arising under this Agreement. With respect to any controversy or claim valued in excess of \$5,000, arising out of or relating to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute in San Diego by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration. Any claim, which cannot be settled through negotiation or by mediation, shall be settled in San Diego by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The number of arbitrators will be limited to one (1) for any claim valued at \$50,000 or less and limited to three (3) for any claim valued in excess of \$50,000.

Any controversy or claim valued at \$5,000 or less and which cannot be resolved through negotiation will be submitted to the Superior Court of California, County of San Diego, El Cajon Judicial District, Small Claim Division. Where a party files a claim against PenChecks, Inc., or any of its subsidiaries in any other jurisdiction or venue whether or not judicially proper, such filing will have the legal effect of rendering such claim null and void and unenforceable against PenChecks, Inc. In the event that PenChecks, Inc., prevails in its action against a contracting party or in defense of an action against any contracting party, it will be entitled to any and all reasonable and foreseeable attorney fees, court and arbitration fees and any other reasonable and foreseeable costs associated with the litigation in addition to any award or relief granted by the court. For the purposes of this contract, the term prevails will mean any amount of relief (either monetary, injunctive or specific performance) awarded to PenChecks, Inc., regardless of the actual amount sought or any award or relief granted to the other party.

19. **PENCHECKS SERVICES & FEES**

A. Recurring Benefit Payments - Outsource a Plan's recurring/annuity payments to PenChecks. The TPA/Sponsor registers Sponsor, Plan and Participant with PenChecks. After the one time registration/upload of Plan and Participant information (One Time \$5 per Participant) PenChecks will:

- ✓ Invoice the TPA/Plan for distribution funds Quarterly or Monthly.
- ✓ Provide for Monthly (\$6), Quarterly (\$12), Semi-Annual (\$20), or Annual (\$35) per payment pay frequencies.
- ✓ Individual or Bulk upload of initial Plan and Participant information. \$5 per Payment Change thereafter.
- ✓ Disburse funds via Check, ACH or Cash Card according to initial registration.
- ✓ Withhold Fed /State taxes, remit taxes to taxing authority, and file all necessary Fed/State tax returns (i.e. 1099R, 945, 1096)
- ✓ Perform Weekly Death Audits and Provide an annual Participant tax withholding inquiry.
- ✓ Monitor and resolve all returned/uncashed disbursements. Perform address searches as needed.

B. IRA Services



i. Standard Default / Missing Participant IRA - The TPA/Sponsor directs Plan assets and all necessary Participant data to PenChecks. There is no account minimum. PenChecks will:

- ✓ Notify Sponsor/TPA upon receipt of Plan Assets.
- ✓ Provide access to PenChecks Pay Portal where TPA/Plan will bulk upload or manually enter all necessary Participant data in order to establish the IRA (i.e. Name, SSN, DOB, Address, Account Balance, etc).
- ✓ Establish Default/Missing Participant IRA on behalf of the Participant, notify Participant that an IRA has been established, and provide instructions on how to contact PenChecks to collect/transfer their funds out of the IRA.
- ✓ Register Participants with the National Registry of Unclaimed Retirement Benefits, an online searchable database of missing Participants. A Participant can search to find their benefit. If a match results, PenChecks and TPA/Sponsor are notified.
- ✓ File all Fed and State tax returns (i.e. 1099R, 945, 5498).
- ✓ Perform address search as needed for returned mail/notices and annually to update Participant address included on form 5498.
- ✓ Provide 24/7 access to review history, current status of distribution, generate reports, or make additional distribution requests.

ii. Premier Default/Missing Participant IRA - The TPA/Sponsor directs Plan assets and all necessary Participant data to PenChecks. PenChecks will provide all benefits included in the Standard service (above) as well as comply with DOL FAB 2004-02 for Participant accounts greater than \$500. The additional services include:

- ✓ Perform an address search for all Participants and update as necessary.
- ✓ Notify Participants via certified mail of pending distribution, Plan's intent to establish a DMP IRA if Participants are unresponsive and request Participant to contact PenChecks in a timely manner to make a benefit election.
- ✓ Request the use of the IRS Letter Forwarding Service.
- ✓ Notify Participants' designated beneficiary if provided by Sponsor and request beneficiary's assistance in locating the missing Participant.
- ✓ Direct all responsive Participants to the PenChecks Benefit Election Website where Participants can safely and simply log on and elect to rollover their funds to an IRA or new employer Plan, take a cash lump sum, or create an IRA to rollover their funds into.
- ✓ Disburse funds to responsive Participants via Check, Wire, ACH or Cash Card according to the instructions provided.
- ✓ Establish a Default/Missing Participant IRA for those non-responsive Participants, handle all future Participant interaction, and assist Participants in collecting/transferring their Default/Missing Participant IRA elsewhere.

iii. Default / Missing Participant Fees – there is a one-time processing fee, per Participant, of 20% of the total account balance, not to exceed \$100, charged to the Participant's account balance. There is also a \$45 annual administrative fee assessed to the Participant's account every December by the custodian. PenChecks has a financial interest with respect to the ongoing administration of such IRAs. When the use of the IRS Letter Forwarding Service (Premier) exceeds 49 letters in a 12 month period per Plan, a \$1,750 + \$0.50 per letter charge may be charged to the Sponsor by the IRS for use of the IRS Letter Forwarding Service.

C. Specialized Solutions

i. Missing Distributee Program (20% of the Account Balance, not to exceed \$100) - When lump sum distributions checks go uncashed a benefit is still due to the Participant. However, if taxes are withheld, paid, and reported to the taxing authorities under a prior tax year a Default/Missing Participant IRA is not an option due to the fact that a taxable distribution has taken place. The funds are non-qualified. PenChecks will assist Sponsors/ Institutions in resolving these accounts by attempting to locate the missing distributee and/or eventual escheatment of funds to the proper state authority. Sponsors/Institutions shall transfer these non-negotiated / stale dated checks payable to PenChecks Missing Distributee, LLC and provide basic payee information (name, ssn, address, dob, etc) to PenChecks and PenChecks will:



- ✓ Perform an address search, notify the payee of the unpaid benefit, and request payee to contact PenChecks.
- ✓ Validate the identity of any located missing distributee; upon validation, PenChecks will pay out the missing distributee.
- ✓ If missing distributee is unresponsive, the funds will be escheated to the state of last known residence of the Participant where the original distribution was issued in accordance with that state’s escheat regulations.
- ✓ Establish a taxable savings account for each Participant where it will earn interest until the funds are escheated.
- ✓ Issue any necessary tax reports (i.e. 1099-Int).
- ✓ Those institutions / Sponsors or advisors wanting to use this service will need to enter into another contract specific to the Missing Distributee Program.

ii. In Kind Distributions (\$100) – assist in issuing a 1099R as a result of an inkind rollover or inkind lump sum distribution while invested in a non-cash asset.

iii. 1099R Only / Tax Payments (\$30) – assist in issuing a 1099R for a pension distribution issued by a party other than PenChecks and/or assist in submitting withheld taxes and filing necessary tax forms to federal and state authorities.

iv. Participant Address Searches and/or Registered Mailing (\$30) – perform an address search for a missing Plan Participant and/or mail correspondence to Participants. The search is performed based on the information provided by the Sponsor (i.e. SSN, name, last known address, DOB, etc). A summary report will be issued to the Sponsor by PenChecks indicating if there are any matches or updates to the current address.

D. Float Disclosure

Due to factors which are beyond the control of PenChecks, such as the time required for Participants to make benefit elections and/or negotiate their distribution checks, some earnings (float) will occur on the funds to be distributed. The float is used to defray operating and overhead expenses. Funds pending distribution are temporarily invested in FDIC insured money market or savings instruments. Since the time factors are different for each Plan and the rate of return on money market investments varies, it is not possible to calculate the precise amount of float that will be generated by any given deposit held for distribution. Based upon averages derived from the processing of thousands of distributions, use of the following formula will produce an average amount of float for each \$1,000 deposited for distribution processing: Average Daily Interest Rate of 0.0000275 x \$1,000 x 5 days of float on average = \$0.14 per \$1,000 deposit.

E. Availability of Funds - Funds designated for benefit payments must be made payable to PenChecks, Inc. Employee Benefit Distribution Trust. Deposits made by wire require 72 hours and checks/draft deposits require a minimum of five business days to clear before any benefit distribution can be processed.

20. SPONSOR INFORMATION & AUTHORIZATION

A. PLAN SPONSOR INFORMATION

Company Name: _____

Company Type: Corporation Partnership LLC Sole Proprietor

Primary Contact: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: (_____) _____ - _____ E-mail: _____

B. PLAN INFORMATION

Plan Type: Defined Contribution Defined Benefit

Benefit Options in Plan: Lump Sum Rollover/Transfer Periodic Roth 401(k)



Annuity Forms: N/A Ten C&C 50% J&S 66% of J&S 75% of J&S 100% J&S Life Annuity

Is the Plan Terminating or Terminated? Yes No

Does the Plan provide for the Participant to elect the 30-day waiver? Yes No

C. TRUST INFORMATION

Trust Name: _____ Trust Tax ID: _____

Name of Trustee(s): _____

Trustee(s) Address: _____

Trustee(s) City: _____ State: _____ Zip: _____

Trustee(s) Phone: () - _____ E-mail: _____

D. THIRD PARTY ADMINISTRATION (TPA) INFORMATION

TPA Company Name: _____ TPA Tax ID: _____

TPA Company Type: Corporation Partnership LLC Sole Proprietor

TPA Company Address: _____

TPA City: _____ State: _____ Zip: _____

TPA Contact Name: _____ TPA Phone: _____

TPA Contact E-Mail: _____

E. TYPE OF DISTRIBUTION DESIRED / PARTICIPANT INFORMATION – PenChecks requires Sponsor to communicate the Participant payout information (i.e. Name, SSN, Address, Payment Amount, Frequency, Tax Withholding, etc) in an electronic format and will provide Sponsor with a template to use in communicating the information to PenChecks.

On behalf of the above named Sponsor and those parties designated in the following subsections, I/we hereby acknowledge that I/we have read, understand, accept and agree to be bound by the conditions set forth in this Agreement. I/We have provided and received all proper notices, consents, and election forms including withholding and optional forms of benefits as may be required by the Plan, and agree to hold harmless PenChecks of any and all liabilities relating to such issues.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title: _____

PenChecks acknowledges that we accept and agree to be bound by the conditions set forth in this Agreement

Authorized Signature: _____ Date: _____

Printed Name: _____ Title: _____