



## **PenChecks Trust Company of America Client Agreement**

This PenChecks Trust Company of America (“PenChecks Trust”) Client Agreement and the PenChecks Trust Statement of Services and Fees shall be known herein as the “Agreement” unless the context requires otherwise. This Agreement is entered into by and between the Plan Sponsor (“Sponsor”) or Plan Trustee and PenChecks Trust, a state-chartered, non-depository trust company regulated by the South Dakota Division of Banking in its capacity as a distribution processor. The terms of this Agreement are accepted by the Sponsor, Plan Trustee or its Authorized Representative on the date this Agreement is signed and Sponsor, Plan Trustee and/or its Authorized Representative completes the online registration process where the specific name of the Sponsor, Sponsor’s qualified plan, and Sponsor’s Authorized Representative such as its Third Party Administrator (“TPA”), Plan Trustee(s), and/or Plan Advisor are communicated to PenChecks Trust. When the Sponsor’s Authorized Representative is a duly appointed Trustee in Bankruptcy, please refer to Paragraph 8 below.

**WHEREAS**, Sponsor has adopted a qualified plan of deferred compensation (“Plan” and/or “Plan/Trust”) that qualifies for special tax treatment under Section 401(a) of the Internal Revenue Code (the “Code”) for the exclusive purpose of providing retirement benefits to its employees, and

**WHEREAS**, PenChecks Trust is a wholly-owned subsidiary of PenChecks, Inc., and the directed trustee of the PenChecks, Inc. Qualified Distribution Trust, an administrative tool to enhance the efficiency and effectiveness of processing benefit payments, and

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

**WHEREAS**, PenChecks Trust shall act only with respect to certain Plan assets (Fund[s]) the Sponsor authorizes PenChecks Trust to distribute to or on behalf of Plan participants, alternate payees, Plan beneficiaries or to Default/Missing Participant 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/Trust and desires to designate PenChecks Trust to provide those services listed in paragraph 4 below as may be selected by the Sponsor including, but not limited to, the establishment of a Default and/or Missing Participant IRA Rollover Account on behalf of Participants designated by the Plan Sponsor, and

**WHEREAS**, the Sponsor, Trustee, or other Authorized Representative acknowledges that the PenChecks, Inc. Qualified Distribution Trust shall from time to time earn interest from monies deposited pending distribution (float); said float shall be used by PenChecks Trust to defray operating costs and overhead expenses.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants set forth herein, Sponsor and PenChecks Trust 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 Trust to be distributed to or on behalf of designated Plan Participants, alternate payees, and Plan beneficiaries identified and provided to PenChecks Trust by the Sponsor or its Authorized Representative. 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 TRUST.** Sponsor, Plan Trustee or its Authorized Representative hereby accepts the terms of this Agreement and appoints PenChecks Trust, in a non-exclusive capacity only with respect to the specific provisions of this Agreement upon completion of the required online registration process at <https://p3.PenChecks.com>. Such appointment is hereby accepted by PenChecks Trust subject to Sponsor, Plan Trustee or its Authorized Representative completing the online registration process signifying review and acceptance of the fees as set forth in the Statement of Services and Fees. The online registration process requires the individual registering the Sponsor or Plan Trustee to certify via electronic signature that the individual is a duly Authorized Representative of Sponsor or Trustee and that they have read, understand, and agree to the terms of this Agreement. Upon proper online registration of Sponsor or Plan Trustee and acceptance of the Agreement via electronic signature, PenChecks Trust represents that it can perform legally all of its duties described herein.
3. **MISSING PARTICIPANT / DEFAULT IRA COMPLIANCE.** In the event PenChecks Trust 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) 2014-01 (or any updates on this subject matter published by the Department of Labor from time to time) 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 Trust to establish on behalf of such Participant, an Individual Retirement Account as set forth in section 4 of this Agreement.

As part of its services to Plan Sponsors, PenChecks Trust 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 FAB 2014-01. In the event the Plan Sponsor or TPA has already complied with FAB 2014-01 and communicates that such compliance is fulfilled and/or a Participant's account balance is less than \$500, PenChecks Trust will establish a Default/Missing Participant IRA under the Standard IRA Service. See PenChecks Trust Statement of Services and Fees for more details on the Premier and Standard Default/Missing Participant IRA Service.

4. **AUTHORITY OF PENCHECKS TRUST.** Under the terms of this Agreement, PenChecks Trust 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. Any Default/Missing Participant IRA Rollover will be established under the Department Of Labor Safe Harbor Regulations (DOL Reg 2550.404a-2 and 3). Funds shall be payable to PenChecks Trust Inc. Qualified Distribution Trust in the form of a check, wire, or ACH that is negotiable. PenChecks Trust 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 the Qualified Distribution Trust or Default/Missing Participant IRA Rollover Account established by PenChecks Trust 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 Trust. 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 Trust.
- C. To issue distribution payments in the form of, but not limited to, check, wire, ACH, or prepaid (debit) card to or on behalf of Sponsor designated individuals based upon the information furnished to PenChecks Trust 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 Trust will file all tax forms and reports under the name and TIN of PenChecks Trust, Inc Qualified Distribution Trust for all qualified Plan distributions disbursed by PenChecks Trust unless otherwise instructed by Sponsor.
- E. To notify and contact the 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 Trust will void any outstanding check(s), 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 provided the taxes have been recaptured and the Plan is still in existence.
- F. For uncashed checks in cases where PenChecks Trust has processed a distribution, withheld taxes and issued a check that goes uncashed after ninety (90) days from the date of issue, PenChecks Trust will perform an additional search for the Participant and if needed reissue payment to the Participant/Beneficiary at their updated address. If the Participant cannot be located or is located but is unresponsive to a follow –up notice after thirty (30) days, PenChecks Trust will restore the taxes withheld from the distribution thereby making the distribution whole, qualified and eligible for rollover to a Default/Missing Participant IRA or, if the distribution is more than \$5,000.00, return said funds to the Plan from which the funds emanated.
- G. For uncashed checks in cases where PenChecks Trust was not the originating payor (i.e., did not process the original distribution and withhold taxes) or, more than three (3) years has passed since the check was issued, recapturing taxes previously withheld and remitted is not possible. In these cases there is currently no official, published U.S. Dept. of Labor or IRS guidance. Absent official guidance, PenChecks Trust is authorized to transfer such funds to PenChecks Missing Distributees, LLC (a wholly-owned subsidiary of PenChecks, Inc.) on behalf of the Participant to be held in a Taxable Savings Account separate from the PenChecks Trust Qualified Distribution Trust because such funds are no longer qualified and are not eligible for a Default/Missing Participant IRA. These funds will be maintained in said Taxable Savings Account and the interest thereon reported to the applicable taxing

authority(s) until such time as the Participant is located, comes forward or it is appropriate to escheat such funds pursuant to the applicable state unclaimed property statute. In the alternative and upon receipt of written instructions from the Plan Sponsor, Trustee, Named Fiduciary or other authorized representative, PenChecks Trust will establish an IRA for said funds. PenChecks Trust and/or PenChecks Missing Distributees, LLC are authorized to charge reasonable fees (please see PenChecks Trust Statement of Services and Fees) for establishing and maintaining such accounts.

- H. Periodically, PenChecks Trust 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 Participant or beneficiary. In event that Plan Funds have been deposited with PenChecks Trust in excess of ninety (90) days and for whatever reason there is no Plan provision, no Sponsor direction, no PBGC applicability, or the Plan no longer exists, PenChecks Trust is specifically authorized to establish on behalf of each Participant a Default / Missing Participant IRA according to DOL and IRS regulations. PenChecks Trust has a financial interest with respect to the ongoing administration of such IRA's. All applicable fees with respect to such accounts shall be reasonable and are disclosed in PenChecks Trust 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 instruction/request by Sponsor, Plan assets will be returned to the Plan.
  - I. To accept compensation for services either directly from Sponsor, Plan Participants, TPA or any other entity which contracts with PenChecks Trust, based on PenChecks Trust 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 upon thirty (30) days advance notice via posting at <https://p3.PenChecks.com>. Any fee increase with respect to existing accounts will be prospective.
  - J. 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.
  - K. To retain such agents as are appropriate to perform the obligation of PenChecks Trust hereunder. All such agents shall be entitled to the protections of Sections 7 and 9 hereunder.
  - L. Funds designated for benefit payments must be made payable to PenChecks, Inc. Qualified 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. **TERMINATING DEFINED BENEFIT PLANS SUBJECT TO PBGC COVERAGE.** Most defined benefit plans are insured by the Pension Benefit Guaranty Corporation (PBGC), a U.S. government agency. Accordingly, benefits from a terminating defined benefit plan may be subject to coverage and distribution by the PBGC. PenChecks Trust is not responsible for determining whether a defined benefit plan is subject to PBGC coverage and any amounts submitted to PenChecks Trust by the Sponsor, Trustee and/or its Authorized Representative for distribution shall be the Sponsor's, Trustee's or Authorized Representative's certification that said Plan and benefits are not subject to PBGC coverage and that the Plan Sponsor, Trustee and/or the Authorized Representative is solely responsible to the PBGC and all Participants for any and all funds it instructs PenChecks Trust to distribute .
6. **PENCHECKS TRUST' NONFIDUCIARY STATUS.** PenChecks Trust' is not a fiduciary with respect to the Plan/Trust and PenChecks Trust's liability shall be limited to its capacity as detailed herein in connection with the distributable Funds that are the subject of this Agreement.

**7. 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 Trust to make any distribution involving a domestic relations matter; (ii) PenChecks Trust will not act as a proper or necessary recipient of notice of any domestic relations matter that may result in a QDRO; (iii) PenChecks Trust 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 Trust with respect to any and all issues arising from their interpretation; and, (v) PenChecks Trust 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, regardless of whether or not the order is a QDRO.

**8. BANKRUPTCY TRUSTEE.** In cases where the Authorized Representative of the Plan Sponsor is a duly appointed Bankruptcy Trustee in the context of a Federal Bankruptcy proceeding and such Bankruptcy Trustee is empowered by the Bankruptcy Court and required by applicable federal law to liquidate or otherwise dispose of the assets of Sponsor’s qualified plan of deferred compensation, then all references to “Sponsor” herein shall mean such Bankruptcy Trustee and the various actions referred to herein as emanating from Sponsor shall be satisfied by such Bankruptcy Trustee providing PenChecks Trust with specific directions as to its services hereunder. Any provisions hereof that are inconsistent with the functioning of a Trustee in Bankruptcy for the purposes contemplated herein shall be resolved in favor of expediting the Bankruptcy process and implementing the directions of the Trustee in Bankruptcy and pursuant to all applicable federal bankruptcy law. In addition, the PenChecks Trust Statement of Services and Fees set forth as a part of this Agreement shall be supplemented (or replaced) by the addition of a fee schedule specifically directed at services to be rendered by PenChecks Trust in the event of a Bankruptcy proceeding as contemplated herein.

The employment of PenChecks Trust by the Bankruptcy Trustee to act under this agreement is subject to approval by the Bankruptcy Court. All compensation to PenChecks Trust under this agreement is subject to potential review and approval by the Bankruptcy Court. PenChecks Trust may be considered a professional employed by the Bankruptcy Trustee and may be subject to all statutes and rules governing employment and compensation of a professional under the Bankruptcy Code. To the extent any terms of this agreement conflict with applicable bankruptcy law, those terms are not binding and the applicable bankruptcy law will prevail. The Bankruptcy Trustee has provided all information reasonably available to it to PenChecks Trust. However, the Bankruptcy Trustee makes no independent representations as to the accuracy, veracity or completeness of the information provided.

**9. LIABILITY FOR ACTS OF OTHERS.** Without limiting the foregoing, PenChecks Trust 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 Trust harmless with respect thereto.

**10. NEGLIGENCE, WILLFUL MISCONDUCT AND DISHONESTY.** PenChecks Trust 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 agrees to hold PenChecks Trust harmless from any losses incurred by following their verbal or

written instructions regarding any administrative activities unless the loss was caused by PenChecks Trust' negligence.

- 11. INDEMNIFICATION.** To the extent PenChecks Trust acts upon the instruction or direction of the Sponsor, Sponsor shall indemnify and hold PenChecks Trust 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 Trust 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 Trust 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 Trust under section 4 of this Agreement. The indemnification set forth herein shall not apply to liabilities which may arise as the result of PenChecks Trust willful misconduct or gross negligence.
- 12. 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.
- 13. 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 Trust and to PenChecks Trust, P.O. Box 2669, La Mesa, CA 91943 or any other address that PenChecks Trust shall furnish to Sponsor, including its website address at [www.penchecks.com](http://www.penchecks.com).
- 14. 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.
- 15. 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.
- 16. BINDING EFFECT.** This Agreement shall be binding upon, and shall insure to the benefit of, the parties thereto and their respective successors and assigns.
- 17. CONTINUED QUALIFICATION.** Sponsor alone shall be responsible to maintain Plan as a qualified Plan of deferred compensation pursuant to applicable Federal law.
- 18. CONFIDENTIAL INFORMATION.** All personal information received by PenChecks Trust 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. Sponsor grants PenChecks Trust the right to refer to Sponsor in its customer listings, website and/or marketing brochures, as a customer of PenChecks Trust but without reference to the specific services of PenChecks Trust used by the Sponsor. Except as otherwise provided herein, neither party may issue a press release or make public statements relating to this Agreement

