



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

This Online Banking Access Agreement & Electronic Fund Transfer Act Disclosure (“Agreement”) will be effective as of the first day we make the Services accessible to you. Unless otherwise stated, any reference to the Agreement includes applicable schedules, enrollment forms and exhibits to the same, as well as applicable user guides, user manuals, set-up forms and other user materials, including online terms and information. Each time you access the Service, you confirm your agreement to these terms, as amended from time to time.

**NOTICE TO CONSUMER ACCOUNT HOLDERS: This Agreement includes disclosures applicable to consumer accounts as provided under the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E. Read this document carefully and retain a copy for your records.**

This Agreement is in addition to other agreements between Farmers and Merchants Bank of Long Beach and you, including but not limited to (as applicable), your checking, savings, and other account agreements, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the Terms & Conditions of your deposit account (“Deposit Agreement”), this Agreement will control.

## AVAILABLE SERVICES

With the Services, you can (subject to system limitations):

- View periodic statements and notices;
- Obtain Account information;
- Transfer funds between linked Accounts (“Internal Electronic Transfers”), excluding certificates of deposit;
- Make advances from and initiate loan payments to eligible linked Accounts (collectively, “Loan Transfers”);
- Initiate check stop-payment instructions;
- Order checks and change contact information, such as phone number and email address;
- Initiate bill payments (“Online Bill Pay” and “Bill Payments”) and electronic bill presentment;
- Initiate external transfers to your eligible accounts at other financial institutions (“External Transfers”)
- Access some of the Services and deposit checks to your linked accounts using your wireless access device (“Mobile Banking”); and
- Initiate nonrecurring fund transfers to third parties (“P2P Service”)

Some Services may not be available without a separate application and approval from us, and may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. We may make other services available to you and you agree to be bound by the terms and conditions of the additional services, as they apply, in addition to the terms of this Agreement.

## DOLLAR LIMITS

The following dollar limits apply:

- Bill Payments: Must have sufficient funds in the account for bill payment.
- External Transfers: \$5,000 daily/\$10,000 monthly
- Mobile Deposit: \$5,000 daily/\$10,000 monthly

Additional or different dollar limits may be applied to your Service and will be disclosed separately.

## CUTOFF HOURS

A Communication received by us after the cutoff time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us



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and the time we receive it. All times provided in this Agreement will refer to Pacific Standard Time (PST). Our current cutoff hours are as follows:

- Internal Electronic Transfers: 9:30 PM
- Loan Transfers (Advances/Payments): 9:30 PM
- Bill Payments: 12:00 PM
- External Transfers: 3:00 PM

## GENERAL TERMS

### Definitions

In this Agreement, defined terms have the meaning given to them. In addition:

- An “account” means any deposit account you maintain with us and can include all accounts and products you use with us. Your “Account” refers to the account(s) you have designated as the account accessible to the Services.
- The “Administrator” is a person who is able to provide Security Codes, to and establish access and use authority and/or limitations for Authorized-Users.
- An “authorized agent” is a person with authority of any kind with respect to an Account.
- An “Authorized-User” is a person other than the Administrator who uses Security Codes to access a Service. The Administrator (and not Bank) controls the designation of Authorized-Users and the access or other limitations (if any) placed on an Authorized-User’s use of the Services.
- Your “available balance”, “available funds” and similar words mean the balance in your Account as determined under our Funds Availability Policy.
- A “company” is anyone other than a consumer who owns an Account with respect to which a Service is requested. A company includes a sole proprietor, corporation, partnership, limited liability company, unincorporated association or any person not a consumer.
- “Communication(s)” means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- A “commercial account” shall mean an account that is not established primarily for personal, family or household purposes, or is otherwise not a “consumer account” under the EFTA.
- A “consumer account” shall mean an account that is established primarily for personal, family or household purposes, and is subject to the EFTA as a “consumer account.”
- A “payment order” is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to you, to a third party, or to any other beneficiary.
- Your “Security Codes” are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Codes are used to access Accounts and to use the Services. The Security Codes include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- The “Service(s)” and “Online Banking” are the on-line banking interface and the banking services described in this Agreement.
- “Supporting Documents” refers to supporting materials made available by us and includes any schedules, and exhibits, user guides, user manuals, set-up or enrollment forms and other user materials, including online terms and information.
- The word “includes” means “including but not limited to” the examples given.
- The word “may,” when used in reference to us, means at our option and sole discretion. Action (or inaction) that we “may” take is authorized by you and allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- The words “we,” “us”, “our”, “Bank” and similar terms are used to refer to Farmers and Merchants Bank of Long Beach.



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- The words “you”, “your,” “Account Holder” and similar terms are used to refer to the person entering into this Agreement and to the each person who is an owner of or has an interest in an Account together with the owner’s authorized agent.

## ELIGIBLE ACCOUNTS

If you wish to add a new Account or remove an existing Account from Service access, you must tell us. We are not, however, obligated to establish access to any or all of your Accounts.

Eligible Accounts include the following types: checking, money market, savings, time deposits and loans. In some cases, we may allow loans and lines of credit to be linked, in which case you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use.

You agree to review the configuration of your Account(s) at commencement of the Services, and periodically thereafter, and, for commercial accounts (as applicable), to restrict Authorized-User access to Accounts and to specific Services on these Accounts in accordance with your risk assessment.

## SUFFICIENT FUNDS

You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account (if any). We may hold (or “freeze”) funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds for any reason, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions).

## ACCESS RESTRICTIONS WAIVER

Your Accounts may be subject to access restrictions when you conduct transactions in person or when you are using systems other than with a Service. If access restrictions exist, they do not apply to your use of the Services. We may limit or deny Services to you if there are access restrictions. Conversely, we may process your transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to your Accounts.

## COMPLIANCE WITH LAWS AND RULES

You agree to comply with all state and federal laws, rules and regulations applicable to you and to your use of the Services (the “Laws”), including the operating rules of all systems used to provide Services to you (the “Rules”), and to provide evidence reasonably satisfactory to us of the same if requested by us. You agree not to use the Service for any illegal purpose. You acknowledge and agree that the software you use to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations.

Additionally, each Account and the Services will be subject to and governed by the following:

- The terms or instructions appearing on a screen when using a Service;
- The terms of our Deposit Agreement with you, and our rules, procedures and policies;
- Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for bill payments facilitated through the ACH;
- Applicable state and federal laws, rules and regulations;
- The rules of other funds transfer systems when used in connection with a Service; and



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- Sanction laws administered by the Office of Foreign Assets Control.

Nothing in this Agreement relieves you of any obligation you may have under the Laws or the Rules, and this Agreement is deemed modified to the extent necessary to allow or require you to comply with the same. You will implement and maintain procedures, including retention of legal or compliance services, to ensure that you are able to comply with all current and future Laws and Rules, including any changes to them. We are not obligated to provide information, updates or notice of or regarding the Laws or the Rules. If we do provide information, updates or notices of or regarding the Laws or the Rules to you, we are not responsible for the accuracy of the same and may discontinue doing so at any time.

## ELECTRONIC SIGNATURES, CONTRACTS AND RECORDS

When any Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions or communications resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been “a writing” and authenticated by you “in writing” for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been “signed” and to constitute an “original” when printed from records established and maintained by us or our authorized agent in the normal course of business.

You agree that we may contract and communicate electronically with you, including execution and retention of contracts, documents, and certifications. You agree not to contest the authorization for, or validity or enforceability of our electronic records, contracts and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records, contracts and electronically “signed” documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary company records. Upon our request, you agree to manually sign or place your signature on any paper original of any record, contract or “signed” document which we provide to you containing your purported signature.

## TRANSFER LIMITATIONS

The transfers will be subject to the limitations disclosed in our Deposit Agreement.

## COMPUTER EQUIPMENT AND SOFTWARE TO ACCESS THE SERVICES

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. **WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU.** You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment.

For security purposes, you agree to keep your browser and operating systems up to date. You agree to install and maintain appropriate firewall and anti-virus software on any equipment you use to access the Service, to protect your data when connected to the internet. Except to the extent limited by applicable law, you assume the sole responsibility for any and all loss, damage or injury arising with respect to any failure of your equipment, software not provided by us, the disruptions or unavailability of connectivity, viruses, spyware, malware, or worms affecting your equipment or software.



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To use the Services, you must have sufficient computer hardware and appropriate software. Some Services may require you to download software from our website; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to maintain the confidentiality of the Security Codes at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services.

Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding our efforts to insure that the Services are secure, you acknowledge that the internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the internet. You expressly acknowledge that wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein. For commercial accounts (as applicable), you agree to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any Account information which you may access or store on your computer or other data storage systems.

## PRIVACY AND CONFIDENTIALITY

All information gathered from you in connection with using the Service will be governed by the provisions of our consumer privacy notice and policy (applicable to consumer accounts only), as well as our online privacy policy, which you agree to review at [FMB.com](http://FMB.com).

In addition, we will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers;
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant;
- In order to comply with government agency or court orders; or
- If you give us your written permission.

## SHADOW ACCESS

We may, in our sole discretion, make available to you the ability to grant our employees and our service providers with real-time access to your sessions in connection with the Service (“Shadow Access”). You acknowledge and agree that any Shadow Access by our employees or our service providers will only be activated upon your authorization which may be provided by you or on your behalf by any one of the authorized users on your Account. Once Shadow Access is granted, it will be limited to the session then open by you or your authorized user. Each new session will require a new authorization for Shadow Access. You acknowledge that the purpose of Shadow Access is to provide assistance to you when trouble-shooting questions presented by you to us or our service provider as it relates to the Service. You expressly agree that you will maintain a physical presence at the computer terminal for the complete duration of the session to which Shadow Access is granted. If you fail to maintain a physical presence for the duration of the session, you assume all risks associated with unauthorized access to your information and the Services.

## LINKING ACCOUNTS

We reserve the right to limit the Accounts that may be “linked” under the Services. Any signer on any linked Account, acting alone, is authorized by you to access and use the Services for any other linked Account, whether or not that person is authorized to transact on the other linked Account.

As to commercial accounts, you represent and warrant that you are authorized to engage in each Service used by you affecting a linked Account.

## MULTIPLE ACCESS SERVICE





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Multiple access refers to linking accounts without identical owners, within the Online System (“Multiple Access”). Accounts without identical ownership that are linked in the Online System are subject to this Agreement, including these Multiple Access terms. Each Account Holder requests us to allow all other Account Holders access to their Accounts using the Online System. Additional Account Holders may be added by notifying us and providing us with any information or approval we will require. To the extent these Multiple Access terms conflict with other terms in this Agreement, these Multiple Access terms will control. Accounts are linked, subject to our prior approval and ongoing discretion to delink at any time and without notice.

**Refer to the “Additional Disclosures Specific to Electronic Fund Transfers to and from Consumer Accounts” section of this Agreement for consumer protection disclosures applicable to electronic transfer to or from Consumer Accounts.**

## Definitions

As used in these Multiple Access terms, and in addition to other defined terms provided in this Agreement, the terms below will have the following meanings:

- “Accounts” means the deposit accounts identified by you on a Bank provided form where each Account Holder affirmatively agrees to the Multiple Access as to their respective accounts. Additional Accounts may be added by notifying us and providing us with any information or approval we require.
- “Adverse Event” means:
  - (i) If any Account is subject to levy, attachment or other legal process;
  - (ii) If any Account Holder is the subject of voluntary or involuntary bankruptcy proceedings, or any other action for relief of creditors generally;
  - (iii) If any Account Holder disputes the authenticity of any Communication, or our authority to act or not to act, or the legitimacy of any action taken by us, in connection with any Service performed in response to any Communication received by us;
  - (iv) Any non-Account Holder asserts an interest in an Account, whether or not the interest is later held to be valid; or
  - (v) Any other action or inaction deemed by us to present risk to us.
- “Authorized MA User” means any of the following any of whom may act independent of each other:
  - (i) The Account Holder; (ii) An Account Holder’s employees, officers, designees, agents, Administrators, Authorized-Users, or other persons authorized by the Account Holder to use the Online System or Services. Any person who has been given authorization by an Account Holder or by another Authorized-User (even if in breach of obligations of confidentiality) to use the Online System or Services. Except to the extent expressly prohibited by law or regulation, authorization to use the Online System or Services is deemed to have been given and is hereby confirmed to have been given by the Account Holder to any person: (A) to whom the Account Holder provides actual authority (for example, by appointment as agent or by resolution of the Account Holder’s board of directors or governing body); (B) who has apparent authority to act on behalf of the Account Holder; or (C) who receives Security Codes or any other security procedures from the Account Holder, or any other person previously given access to the security procedures by the Account Holder. The authorization of an Authorized MA User continues until the Account Holder notifies us and expressly withdraws authorization for that person to use the security procedures and we have had sufficient time to act on such information.
- “Customer Information File (CIF) Number” means a unique identification number assigned to each Account Holder.
- “Other Agreements” means our Deposit Agreement and any other agreement applicable to a deposit account or Service entered into by and between us and the Account Holder, as amended from time to time.
- “Online System” means the online banking system offered by us to the Account Holders, as described in the Agreement.



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## Services

Each Account Holder acknowledges and agrees that all of the Services available pursuant to this Agreement, will be subject to access by all Authorized MA Users. Accordingly, the Services will be applied or made available to each Account Holder and to all Accounts of each Account Holder on an individual and on a multi-party basis. We may, but are not required to, impose limitations on Account Holders that differ from one Account Holder to the next Account Holder. At our option, an Account Holder's access to or use of the Accounts of another Account Holder may be subjected to the restrictions applicable to the Account Holder in whose name the Account is held, or to those applicable to the Account Holder seeking access, or to such other restrictions as we may impose.

## Use of Services

We will provide access, at the express request of each Account Holder, between unlike accounts that may or may not be related by common ownership or common signers. Each Account Holder understands that the Security Codes allow active account transaction functionality (i.e., payments, transfers, etc.) between the Accounts and to third parties

## Authorization

Each Account Holder authorizes us to allow each other Account Holder and its Authorized MA Users access to the Account Holder's Accounts via the Online System with full authority. This may include Services that are made available to other Account Holders but are not made available by us directly to the Account Holder whose Accounts are affected. This includes authority granted under this Agreement or under any applicable Other Agreement. Without limiting the foregoing, each Account Holder authorizes us to debit or credit its Accounts and otherwise to act in accordance with Communications received from any other Account Holder or Authorized MA User.

## Communication with the Bank

Each Account Holder agrees that we are entitled to act upon any instruction or other Communication received by us through the Online System from any Authorized MA User, and may treat that Communication received through the Online System as valid to the same extent and to the same effect as if it had been received through the Online System from one of the Account Holders whose Account will be debited or otherwise is affected. To this end, each Account Holder appoints every other Account Holder and Authorized MA User as its agent and attorney in fact for the purpose of making payment orders and providing Communications to us, and agrees to be bound by any payment order or Communication issued through the Online System by any other Account Holder or Authorized MA User.

A Communication received by us through the Online System will be deemed valid and authorized. We are not required to verify the authenticity of any Communication other than through the security procedures set forth in this Agreement. Except to the extent expressly prohibited by law or regulation, a Communication received by us via the Online System in the name of the Account Holder will be deemed an authorized Communication, binding on the Account Holder named in the Communication, if the Communication is sent by:

- Any Authorized MA User, regardless of whether such individuals are reflected as authorized signers on the Account;
- Any officer of the Account Holder;
- Any other employee, designee or other person who has been authorized by the Account Holder to use the Online System under the terms of this Agreement or of any Other Agreement, or who is otherwise authorized to bind the Account Holder;
- Any other person, whether or not such person was authorized to act on behalf of the Account Holder, if the Communication is in the name of the Account Holder and if we verify the authenticity of the Communication using the security procedures described in this Agreement; or



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- Any person with actual or implied authority to represent or bind the Account Holder, whether by agreement with us or otherwise, to the fullest extent allowed by law (including the law of agency or otherwise).

Without limiting the foregoing, and except to the extent expressly prohibited by law or regulation, each Account Holder is bound by any Communication received by us through the Online System if: (i) The instruction or other Communication is in Account Holder's name (or in the name of any other Account Holder) and the payment order or other Communication was actually authorized by the Account Holder; or (ii) We verify the authenticity of the payment order or other Communication using the commercially reasonable security procedures set forth in this Agreement, whether or not the payment order or other Communication was actually authorized by the Account Holder or by any other Authorized MA User.

## Limitation on Services

Each Account Holder agrees that we may impose restrictions on any Services, with or without cause, at any time and either with notice or without notice to any Account Holder (including those affected by the restriction). Without limiting the foregoing, if an Adverse Event occurs, then we may (but are not obligated to) take any one or more of the following actions in connection with one or more (including possibly all) Accounts:

- Terminate or close Accounts;
- Restrict or terminate Services in connection with Accounts;
- Delay availability of funds on deposit in any one (and up to all) Account(s);
- Freeze funds in any one (and up to all) Account(s) and hold them pending instructions acceptable to us;
- Interplead funds in Accounts with any court, whether or not the court later determines that interpleader is or is not an authorized action by us; or
- Take any other action to protect us against cost, harm, inconvenience, litigation or otherwise as we see fit in our sole discretion.

## Account Holder Acknowledgements

Each Account Holder acknowledges and agrees that:

- We did not, at any time, solicit the Account Holders for activation of this multiple party access service;
- The multiple party access service is provided upon request and as an accommodation to the Account Holders;
- The transactions processed by any of the Authorized MA Users on any of the Accounts will not be controlled by us;
- The Authorized MA Users may access information and funds in any of the linked Accounts, such access may increase the risk of unauthorized activity, improper comingling and misapplication of funds;
- The Multiple Access feature will allow Authorized MA Users to utilize a single set of Security Codes to access all linked Accounts using the Service which may result in significant diminution in the protection offered by the Security Codes.
- We are responsible for reviewing and understanding any negative impact that may arise due to the use or allowance of these multiple party access services (for example, loss of any insurance coverage, increased possibility of liability for obligations or actions of other Account Holders in insolvency or otherwise, and increased losses due to unauthorized transactions);
- We should consult with legal counsel and our accountants prior to signing up for the multiple party access service;
- We accept all risks associated with the use of the multiple party access services by us and by the other Account Holders.

## Account Holder Representations and Warranties

The Account Holders individually represent and warrant to us as part of each Communication or use of a Service, that:





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- Each Communication is authorized, valid and binding on the Account Holder when named in the Communication;
- Any transaction conducted by an Account Holder will not be in violation of any state or federal law including California Corporations Code Section 2253, which prohibits making any dividend or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers; and
- All corporate or other company formalities (as applicable) have been and will be followed with respect to each transfer of funds, including, but not limited to, proper authorization of all requests and transfers and record keeping requirements with respect to them.

## Indemnification

Except to the extent expressly prohibited by law or regulation, each Account Holder shall jointly and severally, defend, indemnify and hold harmless Bank and its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of any losses due to action or inaction by any Account Holder in the use of the Online System, the Services, or by us in the performance of our obligations under this Agreement. The obligations of the Account Holders under this "Multiple Access Service" Section are in addition to those provided elsewhere in this Agreement, and not a limitation on any other obligation of an Account Holder to Bank (whether under this Agreement, any applicable Other Agreement, at law or in equity).

## SECURITY CODE CREDENTIALS

During your enrollment for the Services, you are required to select or will be assigned a logon name, password, certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and Communications in your name. These credentials, with the other components of your Security Codes, will give access to your Accounts through the Service. As a component of your Security Codes, our online banking system utilizes multi-factor authentication which is login security that combines two authentication factors, something you know (your password) and something you have (your computer/device), and in some cases out-of-band authentication ("OOBA"). OOBA requires the use of a Secure Access Code, when prompted. For example, each time you log on from a computer or device that is not recognized by us, OOBA will be prompted.

You agree to change all passwords no less frequently than every ninety (90) days. You agree not to disclose your Security Codes to anyone and to take other reasonable precautions to ensure the safety, security and integrity of transactions conducted with your computer or mobile device (for example, do not write them down). NOTE: Some browsers may store user names and security codes to facilitate the future use of a web site. For security reasons, you agree to disable this feature. For security reasons we may disable your Security Codes, for example if they are entered incorrectly several times. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. We may offer or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited. After three unsuccessful attempts to use your Security Codes, we may revoke your access to the Services. To re-establish your access to the Services, you must contact us.

## CONTACT IN EVENT OF UNAUTHORIZED TRANSFER

If you believe any part of your Security Codes, including your password, has been lost or stolen or you believe a transfer has been made without your permission contact us immediately.

## EMAIL

While access to us through the secure email function of the Services is "on-line," messages sent to us through email are not reviewed immediately after they are sent. If immediate attention is required, you must contact us by telephone or in person.



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Your email messages may be acted upon by us if received in a manner and in a time providing us a reasonable opportunity to act. Nevertheless, unless otherwise provided herein, email messages will not serve as a substitute for any requirement imposed on you to provide us with "written" notice.

Email or messages sent by us to you will be deemed received by you when sent by us to you at your email address as shown in our records. You agree to notify us whenever your email address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. You agree to access the Service from time to time, in no event less than monthly, to access this information or the messages. If you fail to update or change an incorrect email address or other contact information, you understand and agree that any email is deemed to have been provided to you if the email was sent to the email address we have on file for you.

## ACCOUNT INFORMATION SERVICES

The Services include the ability to obtain Account information, subject to system limitations. Balances and transaction information reflected in the Service may not reflect all transactions against an Account on the day the transaction occurs. Account balances may not be available for immediate withdrawal, may include deposits still subject to verification or other items in the process of being posted to the account, and may not include outstanding checks, debits or credits. You understand and agree that Account information may not reflect transfers made by multiple users from the same Account if different login credentials are used. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in your access to online information.

## ELECTRONIC STATEMENTS AND NOTICES

Electronic statements offer you a convenient way to view, save and print your periodic statements. If you elect to receive electronic statements, we may discontinue sending paper statements and make periodic statements available to you in electronic form only. This includes, but is not limited to, ongoing disclosures currently provided on the back of your paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. You agree to review your electronic statements in a timely manner, just as you would paper statements, and to promptly notify us of any errors, unauthorized activity or other problems, as provided in our agreement with you. You will be deemed to receive electronic statements when they are made available to you. Any time periods within which you must notify us of any problems or errors reflected on your statement(s) will begin on the date we make the electronic statement available to you, regardless of when it is actually viewed by you. We reserve the right to determine from time to time which accounts are eligible for electronic statements. A valid email address may be required to be maintained by you with us. If you fail to maintain a valid email address with us, you acknowledge and agree that any electronic statement shall nevertheless be deemed to have been provided to you if emailed to the email address we have on file for you. We reserve the right, in our sole discretion, to discontinue providing statements in electronic form. If you receive images of checks or receive cancelled checks with your paper statements, you understand that paper copies of these items will not be available once you elect to receive electronic statements. Electronic images of these items will be available for a limited time, subject to system limitations, through the system. You agree to periodically logon and check on the delivery of new statements. If you cannot access, print or view your electronic statements, you must immediately contact us.

## Additional Electronic Notification Provisions for Consumer Disclosures

Owners of consumer accounts have certain rights under law to receive consumer disclosures about their accounts in a non-electronic form, unless you affirmatively consent to the receipt of consumer disclosures electronically and have not withdrawn your consent. If you are a consumer, we will not substitute electronic communications in lieu of written consumer disclosures unless your consent is first obtained electronically in accordance with applicable law. This restriction does not apply to all electronic communications from us to you, only those that include consumer disclosures under applicable law. Please see the Consent to Receive Communications Electronically for other important information about electronic statements and our electronic communications with you. You agree to periodically logon and check on the delivery of new statements.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## Internal Electronic Transfers and External Transfers Generally

You may only transfer funds within the United States. You must not use the Service to transfer funds to or from an account that you do not own. Transactions posted to your account as of a certain business day may not be reflected in account balances reported by the Service until the following business day. Information on transfers to or from your accounts with us will be reflected on your periodic statements, will be available to you online, and can be obtained by calling us. We do not provide any other notice of the receipt, transmittal or debiting of funds transfers.

## Scheduling Fund Transfers

You may instruct us to initiate single or recurring fund transfers on any business day (the "Transfer Process Date"). If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the following business day. To initiate a transfer, you must specify the account to be debited, the account to be credited, the transfer amount, and the Transfer Process Date.

## External Transfers

By using the External Transfers feature, you agree to abide by the terms and conditions of this agreement. Before you can transfer funds to or from an account you maintain at another financial institution, the account must be set up and verified through our online banking website. Set-up for these accounts may require you to verify one or more micro-deposits to or withdrawals from to the account. Depending on the transfer type and your actions, it may take several days for an account to be set up and verified. Each time you instruct us to transfer funds to or from an account you maintain at another financial institution, you warrant to us that you are an owner of that account, that you are authorized to use the Service for that transaction, and that no other person's authorization is required. We may charge your account for the transfer amount as early as the Transfer Process Date and credit the funds to an omnibus account our vendor uses to process transactions.

## ACH Authorization for External Transfers

You agree and acknowledge that when you use the External Transfer Service to initiate ACH transfers to or from your accounts at other financial institutions, you authorize Bank to initiate an ACH transaction to your external account. You agree and acknowledge that the origination of all ACH transactions to your account must comply with U.S. law. Also, you agree that the rules governing the ACH credits and debits will not apply to any type of transfer request for which the ACH was not actually utilized.

You agree and acknowledge that we are not required to give you next day notice after our receipt of any ACH credit for a rejected or returned transfer request; instead, notification is sufficient by posting the re-credited amount to the applicable deposit account used for the debit and listing it on your periodic statement.

Credit given by us to you with respect to an ACH request is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to your account in connection with the ACH request.

You must provide accurate information regarding your External Transfer requests, including external account routing number and account number. If you describe any beneficiary or institution inconsistently by name and account or identifying number, we and other institutions may process the ACH request solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution. We may also process an incoming ACH request based on the account number, rather than on any inconsistent name reflected in the ACH request. Funds credited to your account as a result of ACH debits originated by you with us may be held until the third (3rd) business day following the credit to your account.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## Erroneous Transfer Instructions

You assume sole responsibility for accurately describing transfer amounts, dates, accounts, financial institutions, and addresses. We are not responsible for confirming such information, or for identifying or refusing to process duplicate transfer instructions. If you give us a transfer instruction that is incorrect in any way, you agree that we may charge your account for the transfer whether or not the error could have been detected by us. We are not obligated to detect or correct errors in your transfer instructions.

## Rejecting Transfer Instructions

We may reject transfer instructions with or without cause or prior notice. We may reject a transfer instruction, for example, if you do not have sufficient available funds to cover the transfer or the transfer instruction is unclear, ambiguous or incomplete. If we reject a transfer, you may need to re-enter the information if you wish to make the transfer at a later date.

## Changing or Cancelling Transfer Instructions

For same-day Internal Electronic Transfer requests, once submitted, the transfers cannot be cancelled through online banking. For future dated Internal Electronic Transfers, the transfers can be cancelled through online banking up to 3:00 PM the day prior to the scheduled transfer date. For future dated External Transfers, transfers can be cancelled through online banking up to 3:00 PM.

## LOAN TRANSFERS

### Eligible Loan Transfer Accounts

Accounts eligible for Loan Transfers will be determined in our discretion. You agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized pursuant to this Agreement. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements.

### One-Time Advance/Payment

You can use the Loan Transfer feature to make recurring and non-recurring “on-us” loan Account advances (“Loan Advance(s)”) and payments (“Loan Payment(s)”). The Loan Transfer will be processed on the Loan Transfer processing date (“Loan Payment Processing Date”); provided that the Loan Payment Processing Date selected by you is a business day and you submit your one time Loan Transfer instruction prior to the Loan Transfer cutoff hour for that date. If you select a Loan Payment Processing Date that is not a business day or submit your Loan Transfer instruction after the Loan Transfer cutoff hour for that date, then the Loan Payment Processing Date may be the next business day. Loan Advances will only occur to the extent there are sufficient available funds on the eligible loan Account, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the loan Account.

### Loan Payments

You may designate the Loan Payment as a regular installment or an interest/principal only payment. If funds transferred will be applied as a reduction in principal only, funds will be applied as unscheduled reductions of principal and as such will not satisfy the installment obligations under the payment schedule for the loan Account or pay accrued interest. If funds transferred will be applied as a regular installment payment, you are responsible for ensuring that you initiate an Loan Payment instruction in time for the payment to be received by us before its due date. We are not responsible for any damages, costs or fees you may suffer if you do not allow sufficient time between the Processing Date and the due date.





# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## Noncompliance with Borrowing Base

This paragraph is applicable if the promissory note or other loan document for your loan Account provides that the loan Account is tied to a borrowing base of eligible receivables. At any time that you are not in compliance with the borrowing-base requirement, we may reverse any transfer that constitutes an advance on the loan Account.

## Loan Transfer Changes and Cancellation

You may change or cancel a Loan Transfer instruction via the Service as long as you submit the change or cancellation request by 5:00 pm prior to the Loan Payment Processing Date for the Loan Transfer instruction and you follow the Loan Transfer instructions provided by the Loan Transfer feature for changes and cancellations.

## Provisional Credit

You agree that any credit by us to you for any Loan Transfer is provisional until we have received final settlement for such Loan Transfer. We may delay availability of provisional credit at our discretion. If final settlement is not received, we are entitled to and you agree to pay a refund of the amount credited; we may charge your account for the amount due.

## BILL PAYMENT SERVICE

The Online Bill Pay service allows you to schedule payments through Online Banking. The Bank does not provide the service directly, but has entered into an agreement with CheckFree® from Fiserv Corporation, a bill pay provider, to offer the bill pay services directly to you. Subject to any regulatory or Bank-imposed limitations on usage, you can arrange for the payment of your current, future, and recurring bills from any checking account. There is no limit to the number of payments that may be authorized and you may pay any merchant or individual approved by the bill pay provider. While payments are initiated by you electronically, they are paid via an automated clearinghouse (ACH) network or by paper check. Payments delivered over an ACH network are governed by the rules and performance standards of that network.

## Definitions

For the purposes of these "Online Bill Pay Service" provisions, the words shall have the following meanings:

- "Billing Account" is the checking account from which all Service fees will be automatically debited.
- "Business Day" is Monday through Friday, excluding federal holidays.
- "Due Date" is the date reflected on your Payee statement for which the payment is due; it is not the late date or grace period.
- "Payee" is the person or entity to which you wish a Bill Payment to be directed or is the person or entity from which you receive electronic bills, as the case may be.
- "Payment Account" is the checking account from which Bill Payments will be debited.
- "Payment Instruction" is the information provided by you to the Service for a Bill Payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Payment Date).
- "Processing Date" is the day your Payment Instruction will be processed by us, unless the Processing Date falls on a non-Business Day in which case it may be considered to be the previous Business Day.
- "Payment" is a payment that has been scheduled through the Service but has not begun processing.

## Payment Scheduling

When scheduling payments you should select a Processing Date that is sufficiently in advance of your Due Date, not taking into consideration any available grace period. Some payments may take up to seven (7) business days to be received and processed by the Payee.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## Overnight Delivery Draft

The Service allows expedited payments using an overnight delivery service. There is an additional fee for this Service (please see our current Schedule of Fees for additional information).

## Available Funds

For Bill Payments, you will need to have sufficient available funds in your designated Payment Account to cover the amount of the Bill Payment. You can initiate Bill Payments up to the available funds in your Payment Account, plus any linked credit or other overdraft facility (as applicable). If you exceed these limits, we may prevent (or reverse) Bill Payments, even if the result is to reduce your transactions to a level below the amounts needed to pay your bills.

## Payment Delivery

Due to circumstances beyond our control, particularly delays in handling and posting payments by slow responding Payees or financial institutions, some transactions may take several days to be credited by your Payee.

## Payee Information, Payment Authorization, and Payment Remittance

Each time you want to initiate a Bill Payment, the Payee must be on your authorized list of Payees. We are not responsible if a Bill Payment is not made to a Payee because you provided us with incomplete, incorrect or outdated information regarding the Payee or we attempted to make a payment to a Payee you entered that is not on your authorized list of Payees. Also, we reserve the right to refuse to approve a Payee from your authorized list of Payees and to otherwise prohibit payment to a Payee via the Bill Payment Service.

By providing the Service with names and account information of Payees to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions that it receives through the payment system. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Payee directives.

When the Service receives a Payment Instruction, you authorize the Service to debit your Payment Account and remit funds on your behalf, as provided in this Agreement. You also authorize the Service to credit your Payment Account for payments returned to the Service by the United States Postal Service or Payee, or payments remitted to you on behalf of another authorized user of the Service.

## Payment Methods

The Service reserves the right to select the method in which to remit funds on your behalf to your Payee. These payment methods may include, but may not be limited to, an electronic payment or electronic to check payment. If payment is made using an electronic or check payment, then funds remitted to the Payee may not be deducted from your Payment Account until the check is presented to us for payment.

## Payment Cancellation Requests

You may cancel or edit any Scheduled Payment (including recurring payments) without charge by following the directions within the application, prior to 12:00 PM of the Processing Date. If your payment was made using a check, a stop payment request must be submitted and we must have a reasonable opportunity to respond to your stop payment request before the check has been paid against your account. See below regarding "Stop Payment Requests" for details.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## Stop Payment Requests

The Service's ability to process a stop payment request will depend on the payment method. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact us. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in our Schedule of Fees.

## Prohibited Payments

Payments to Payees outside of the United States or its territories are prohibited through the Service.

## Exception Payments

Tax payments and court ordered payments may be scheduled through the Service; however, such payments are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from you're scheduling of these types of payments. The Service has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, misposted, or misdirected payments will be the sole responsibility of you and not of the Service.

## Bill Delivery and Presentment

This feature is for the presentment of electronic bills only and it is your sole responsibility to contact your Payees directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

## Information provided to the Payee

The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers, and e-mail addresses, with the electronic Payee. Any changes will need to be made by contacting the Payee directly. Additionally, it is your responsibility to maintain all usernames and passwords for all electronic Payee sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. The Service may, at the request of the Payee, provide to the Payee your email address, service address, or other data specifically requested by the Payee at the time of activating the electronic bill for that Payee, for purposes of the Payee informing you about Service and/or bill information.

## Activation

Upon activation of the electronic bill feature, the Service may notify the Payee of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Payee. While your electronic bill feature is being activated, it is your responsibility to keep your accounts current. Each electronic Payee reserves the right to accept or deny your request to receive electronic bills.

## Authorization to obtain bill data

Your activation of the electronic bill feature for a Payee shall be deemed by us to be your authorization for us to obtain bill data from the Payee on your behalf. For some Payees, you will be asked to provide us with your user name and password for that Payee. By providing us with such information, you authorize us to use the information to obtain your bill data.



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## Notification

The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an email notification to the email address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. You are responsible for ensuring timely payment of all bills.

## Cancellation of electronic bill notification

The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The Service will notify your electronic Payee(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

## Non-Delivery of electronic bill(s)

You agree to hold the Service harmless should the Payee fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly.

## Accuracy and dispute of electronic bill

The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Payee. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Payee directly.

This Agreement does not alter your liability or obligations that currently exist between you and your Payees.

## Payee Limitation

The Service reserves the right to refuse to pay any Payee to whom you may direct a payment. The Service will notify you promptly if it decides to refuse to pay a Payee designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

## Returned Payments

In using the Service, you understand that Payees and/or the United States Postal Service may return payments to the Service for various reasons such as, but not limited to, Payee's forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or Payee account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to your Payee, or void the payment and credit your Payment Account. You may receive notification from the Service.

## Information Authorization

Through your enrollment in the Service, you agree that the Service reserves the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that the Service reserves the right to obtain financial information regarding your account from a Payee or your financial institution (for example, to resolve payment posting problems or for verification).





# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

## ACH Entries

Electronic payments that are made through the Automated Clearing House Network ("ACH") are subject to the NACHA rules, and you agree to be bound by the Operating Rules of the ACH, including the rule making payment to the Payee provisional until receipt by the Payee's bank of final settlement of the credit transaction. If final settlement is not received, you will not be deemed to have paid the Payee the amount of the electronic bill payment. Furthermore, you agree that any payment by us to you for any returned credit entry or credit reversal is provisional until receipt by us of final settlement for such entry. If final settlement is not received, we are entitled to a refund from you of the amount credited, and we may charge your account for the amount credited. We may refuse to permit the use of any amount credited for a credit reversal if we believe that there may not be sufficient funds in your account to cover charge back or return of such reversal.

## CHECK STOP PAYMENT SERVICES

You may request a stop payment on a check issued on your Account(s) by completing the form presented as part of the check stop payment Service and submitting all the required information to us ("Check Stop Payment"). All Check Stop Payment requests, renewals, and revocations of stop orders will be subject to our current policy on stop payment requests. For significant or material items, contact us by coming to one of our branches or by telephone in addition to using the Services for Check Stop Payment. You are responsible for reviewing all information available to you to determine whether the check has already been paid, including your account statements. Information available online may not include sufficient current and historical information to verify whether the check has been paid. Your receipt of a Check Stop Payment confirmation via the Service, or acceptance of your request via the Service, does not conclusively represent whether or not the check has already been paid. We may accept a Check Stop Payment request from you with respect to a check that has already been paid, and we will have no obligation to determine or notify you that such check was previously paid. In any event, we must receive your Check Stop Payment request sufficiently in advance to provide us with a reasonable opportunity to process your request in sufficient time prior to presentment of the check. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment. Refer to our Schedule of Fees.

You must give us timely, complete, and accurate information as prompted by the Service, including the check date, payee, EXACT amount of the check, reason for the stop payment and the check number. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check.

You may not use the Check Stop Payment Service to stop payment on any ACH/EFT transaction, point-of-sale ACH/EFT transfer; any cashier's check, certified check or other official institution check you have purchased from us or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

A Check Stop Payment request against a check is effective only against the check that is described in the Check Stop Payment request form; and does not cancel or revoke any authorization for future or recurring ACH/EFT transfers by you or by the same biller or originator. A Check Stop Payment request expires after six (6) months unless you request it to be renewed. Each request for a renewal is treated as a new Check Stop Payment request.

You assign to us your rights against the payee or any other holder of any check on which you have requested a Check Stop Payment, and you agree to cooperate with us in any legal action we may take against such persons. You should be aware that a holder of a check may be entitled to enforce payment against you notwithstanding a stop payment order. Your obligations under this subsection will survive termination of this Agreement.

## Mobile Banking

Mobile Banking provides wireless access to the Services, as well as the ability to deposit checks to your linked Accounts ("Mobile Deposit"). Some Services may not be accessible while using your wireless access device



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("Wireless Access Device"). Additional Mobile Banking Services may be added to or removed by us from time to time. Some Mobile Banking Services may not be available without special application to and approval by us, may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated.

## Access and Use

To utilize Mobile Banking, you must download the F&M Bank mobile application. Once you have downloaded the mobile application for Mobile Banking, designated accounts linked to your Security Codes will be accessible through your Wireless Access Device. Additionally, to access and utilize Mobile Banking you will need a compatible Wireless Access Device. Your Wireless Access Device must be internet enabled and connected to the internet through your mobile communications service provider. You agree to accept responsibility for learning how to use Mobile Banking in accordance with the online and mobile application instructions and agree that you will contact us directly if you have any problems with Mobile Banking. You also accept responsibility for making sure that you, and anyone acting on your behalf, know how to properly use the Wireless Access Device. If you obtain a different Wireless Access Device, you will be required to download and install software to that different Wireless Access Device, under the same terms set forth in this Agreement, as amended. You agree to delete all such software from your Wireless Access Device promptly if the licenses or this Agreement terminate for any reason. We reserve the right to change, add to, or terminate services with our third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Services by other licensors and third-parties.

You agree to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by us or otherwise required for use of Mobile Banking and shall further prevent the use of Mobile Banking by unauthorized persons. You assume full responsibility for the consequences of any missing or unauthorized use of or access to Mobile Banking or disclosure of any confidential information or instructions by you, or anyone acting on your behalf.

## Hardware and Software

You are responsible for obtaining and maintaining the compatible Wireless Access Device required to use Mobile Banking. To the extent we, in our sole discretion, provide any hardware in conjunction with Mobile Banking, the hardware will at all times remain the sole property of Bank. Upon termination of Mobile Banking, you must promptly return any hardware that we provided to you.

To the extent Mobile Banking involves our having granted you software license ("software") usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use Mobile Banking in connection with your use in accordance with this Agreement. Mobile Banking does not involve the sale of software. Nothing in this Agreement will entitle you to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, you agree to immediately destroy all copies of any software which had been downloaded to your Wireless Access Device or otherwise in your possession and control as part of your access and use of Mobile Banking. You acknowledge that your license to use any software that may be required for Mobile Banking is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you. By enrolling in portions of Mobile Banking relating to those software systems and programs, and by downloading and installing Mobile Banking software, you will be evidencing your acceptance of the terms and conditions of those licenses. We may also condition your use of Mobile Banking upon you affirming such licenses by the use of "I Accept" or similar dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

## Mobile Deposit

The Mobile Deposit feature enables you to use a software application together with your Wireless Access Device to create electronic images of the front and back of certain Original Checks (defined below) and transmit those images



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and other information, including, without limitation, information captured from the magnetic ink character recognition ("MICR") line, to us for review and processing in accordance with this Agreement.

## Definition

In addition to the terms otherwise defined in this Agreement, the following terms will have the meaning provided in this "Mobile Deposit" Section:

- "Check" means an Original Check, as defined in Regulation CC.
- "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Imaged Items or Substitute Checks.
- "Imaged Item" means the digitized image of a Check that is created by you and transmitted to Bank using the Mobile Deposit Service.
- "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.
- "Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or indorsed to you, and includes Original Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States money.
- "Mobile Deposit Services" means the Mobile Deposit Services described in this Agreement, to be provided by Bank to you to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items.
- "Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.
- "Non-qualifying Item" means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post-dated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds your transaction limitations as established by us from time to time.
- "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
- "Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.
- "Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.
- "Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.
- "UCC" means the Uniform Commercial Code as enacted and amended in California.
- "United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

## Your Responsibilities

In connection with the Mobile Deposit Services, you agree to comply with the following:

- Each processed Imaged Item must be transmitted in compliance with the terms and conditions of this Agreement;



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- The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time you converted the Original Check to an Imaged Item;
- The Imaged Item contains all indorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and you will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. You agree to indemnify and defend us against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check;
- Except as otherwise specifically disclosed in writing to us, you are not now engaged, and will not during the term of this Agreement engage, in any business that would result in you being or becoming a “money service business” as defined in the Federal Bank Secrecy Act and its implementing regulations;
- You will not engage in any activity directly or indirectly related to the use of the Mobile Deposit Service that is illegal or fraudulent;
- You will only submit Checks for processing to us that meet the definition of “Item” as provided in this Agreement and will ensure that the Items scanned meet the standards for image quality established by the American National Standard Institute (ANSI) required by Regulation CC, or other standards established or required by us or applicable law, as amended from time to time. You will not process any Non-qualifying Items. Our processing of any Non-qualifying Items shall not constitute a waiver by us or obligate us to process such Non-qualifying Items in the future. You agree that we may discontinue processing of Non-qualifying Items at any time, without cause or prior notice;
- You will not attempt to scan and transmit to us any third party checks, or any Item which is drawn on a deposit account of yours with us or any other financial institution, or a deposit account of any company of which you are a principal, officer or authorized signer;
- You will not attempt to scan and transmit to us any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with us. Notwithstanding the foregoing, we may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Deposit Agreement;
- You will (i) ensure that, prior to scanning, Items are restrictively indorsed “FOR MOBILE DEPOSIT AT FARMERS & MERCHANTS BANK” (ii) handle, process, maintain and destroy Original Checks as set forth in this Agreement and in the supporting documentation, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or indorser receives presentment or return of, or otherwise is charged for an Item more than once in any form (no second presentment);
- You will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to us;
- You will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous day and immediately notify us of any error or discrepancy discovered;
- You are be responsible for verifying our receipt of your transmission(s) by verifying that deposits have been posted to the appropriate accounts, in addition to cooperating with us in any investigation and resolving any unsuccessful or lost transmissions;
- You are responsible for installing and implementing any changes and upgrades to the Mobile Deposit Service as required by us within five (5) days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Mobile Deposit Services. You will ensure that your Wireless Access Device is clean and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes;
- If not directed otherwise by us, you will store Original Checks in a safe and secure environment for fourteen (14) days after such Item has been digitized and processed. You shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks, (ii) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties; (iii) such Checks will not be duplicated or scanned more than one time; and (iv) such Checks will not be re-deposited or renegotiated in any form. You will promptly (but in any event within five (5) business days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check) to us as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as we otherwise deem necessary. You will use a commercially reasonable method which is consistent





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with any requirements of Regulation CC and the Bank to securely and permanently destroy Original Checks after your retention period has expired;

- You understand and agree that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will in our discretion be: (i) re-presented to the Payor Financial Institution; or (ii) returned to you and your account charged for the amount of the Item plus any associated fees as disclosed in our Schedule of Fees, which may be changed from time to time in our discretion. You agree that Items may be returned as Image Exchange Items, rather than Substitute Checks. Our right to charge your account will apply without regard to whether the Item is timely returned to us or whether there is any other claim or defense that the Item has been improperly returned to us; and
- You agree to make all encoding, transfer, presentment and other warranties made under applicable law as we are deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

## Processing

For all Imaged Items processed pursuant to this Agreement, either: (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. We may in our sole discretion determine the manner of processing. Your account will be provisionally credited upon our acceptance of Imaged Items for deposit which are received by us from you through the Mobile Deposit Service.

We will process any returned Items in accordance with applicable law and the Deposit Agreement. Checks deposited using the Mobile Deposit feature will generally be available on the first (1st) business day after the business day we receive your deposit. In some cases, we may delay availability of your deposit until the seventh (7th) business day after the business day of your deposit. Availability of credit from Items processed under this Agreement will be subject to our then current availability schedule, which may be amended by us from time to time. We may at our sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. We may from time to time establish and amend exposure limitations and assign them to you.

Notwithstanding any provisional credit that may be applied to an account in connection with your transmitted Imaged Items, Imaged Items processed for deposit through the Mobile Deposit Service will be deemed to have been received by us for deposit at the time the Imaged Items are actually received and accepted at the location where we or our designated agent posts the credit to the account. A deposit of Imaged Items will be deemed to have been received and accepted by us for deposit when all of the following have occurred: (i) we have preliminarily verified that the image quality of the Imaged Item is acceptable to us in our discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) we have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by us for deposit may be rejected by us in our sole discretion.

You agree to view the images of each scanned Item that is sent to us. If Item information received by us is not complete or cannot be processed by us for any reason, we may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to your account. You will be responsible for verifying our receipt of your transmissions by verifying that deposits have been posted to your account.

If an Imaged Item is not accepted for deposit, you may then submit the Original Check to us for processing or contact the maker to reissue the Check. If you submit the Original Check for processing, we reserve the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require you to have the maker reissue the Check.

## Reserves; Security Interest; Held Funds

In addition to any other rights we may have under this Agreement and otherwise with regards to your accounts, we may hold and use funds in any account following termination of this Agreement for such time as we reasonably determine that any Item processed by us prior to termination may be returned, charged back or otherwise be a



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cause for any loss, liability, cost, exposure or other action for which we may be responsible. Without limitation, you recognize that under the UCC, Regulation CC, the Electronic Check Clearing House Organization™ ("ECCHO") Rules (as applicable), and the rules of any image exchange network, our representations and warranties with regards to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

## Your Indemnification Obligation

In addition to any indemnification obligations you have under the Agreement, and except to the extent expressly prohibited by applicable law, you agree that you will indemnify and hold us harmless against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) any fine, penalty or sanction imposed on us by, any clearing house, or any governmental entity, arising out of or connected with any Imaged Item processed by us for you or at your instruction; (ii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to us; (iii) any loss or corruption of data in transit from you to us; (iv) any claim by a third party resulting from our breach of warranty regarding the paid status or image quality of a check you have presented through the Service; or (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by you under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check.

## Our Liability

In addition to our limitations on liability that may be stated elsewhere in the Agreement and the Deposit Agreement, and except to the extent prohibited by applicable law or regulation, we will not be liable to you for any refusal of a Payor Financial Institution to pay an Image Exchange Item or Substitute Check for any reason (other than our breach of contract, gross negligence or willful misconduct), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

## Relationship to Third Party Agreements

You agree that, when you use Mobile Banking Services, you remain subject to the terms and condition of your existing agreements with any unaffiliated service providers, including, but not limited to your mobile service provider. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (such as data usage or text messaging charges imposed on you by your mobile service provider), and you agree to be solely responsible for all such fees, limitations and restrictions. You also agree that only your mobile service provider is responsible for its products and services. Accordingly, you agree to resolve any problems pertaining to your Wireless Access Device or mobile services with your provider directly.

## Security of Data in Transition and Storage

You expressly acknowledge that any wireless access to your accounts may not be secure and, as such, you assume the risk associated with unauthorized access to Mobile Banking and any information contained therein, resulting from such wireless connectivity. You assume all risk that any information you download or otherwise stored on your Wireless Access Device may be accessed by unauthorized third parties. Without limiting the foregoing, you acknowledge that your Wireless Access Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

We are not responsible for the security and confidentiality of information when you: (i) use wireless connections to download your account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded, or (ii) allow other persons access to your Wireless Access Device. You agree that any account information that you download is done at your own risk, and you are solely responsible for



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any damage that might occur to the electronic device to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

YOU AGREE TO NOTIFY THE BANK IN THE EVENT YOUR REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY YOU.

## AMENDING/CANCELING A TRANSACTION

Except to the extent this Agreement provides otherwise, you do not have the right to amend or cancel a payment or transfer instruction once we have received it. If we attempt to reverse a transaction at your request, we assume no liability for any interest or losses that result if the reversal is not effected. If we attempt to effect a change or cancellation, you agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any such change or cancellation. You assume sole responsibility to providing notice to the receiver/beneficiary that a reversal is being transmitted, as applicable, and the reason for the reversal no later than the settlement date of the reversing entry.

## THIRD PARTIES

### Our Use of Third Parties

You acknowledge and agree that we may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including our affiliates. You further agree that any such party is a third party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were us, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Our ability to provide certain Services may be dependent upon our ability to obtain or provide access to third party networks. In the event any third party network is unavailable or we determine in our sole discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, we will have no liability for the unavailability or delay of access.

### Your Use of Third Parties

Notwithstanding the limitations described above pertaining to third parties, if you authorize a third party to access the Services on your behalf, you will be solely responsible and liable for all actions and inactions of said third party. You expressly assume the risks associated with providing Service access rights to your agents or third party vendors, including but not limited to the risk of unauthorized or erroneous transactions. We will not be responsible, nor have any liability whatsoever for any services you receive from your agents or third party vendors. We reserve the right to require you to agree to additional terms and conditions as a condition precedent to your use of any agent or third party vendor in connection with your access to the Services

### Your Use on Behalf of a Third Party

You will not use the Services or any Accounts to process for third parties or any other person unless we provide advance written approval which may require you to enter into additional terms and conditions. If any such approval is given, except as may otherwise be specified in writing by us in such approval, you represent and warrant that: (i) you are duly authorized by each third party to act on that party's behalf for all purposes necessary under this Agreement, and the third party is bound by and responsible for all acts or omissions taken by you; (ii) you have obtained from the third party agreement to terms and conditions substantially similar to those contained in this Agreement; (iii) the security interest given in Accounts is legal, valid and binding on the third party (to the extent of any property rights the third party may have in the Accounts or funds in them); (iv) the third party will cooperate with us in all ways reasonably requested by us, including the execution and delivery of such contracts and agreements between us and the third party as we may reasonably request; and (v) you and the third party are in compliance with



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all applicable Laws and Rules as may apply to your processing for the third party. You will from time to time provide us evidence reasonably satisfactory to us of the accuracy of each of the foregoing if requested by us.

## AUDIT AND INSPECTION

We reserve the right, with prior notice to you, to enter upon your premises from time to time during regular business hours to verify that your operations and procedures are in compliance with the terms of the Agreement.

In connection with any such audit, you agree to furnish us with any documentation or information as is reasonably necessary to establish your compliance with the terms of the Agreement. If it is determined by us that additional procedures or controls need to be implemented by you, you agree to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.

In connection with our entry on your premises for the purpose of conducting an on-site audit or inspection, or in connection with providing support to you, we shall not be liable or responsible to you or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into your system, including any which allegedly delay, alter or corrupt your data, whether related to the transmission of check images or other data or whether caused by the equipment, software, internet service providers, internet browsers, or other parties providing communication services to or from us to you.

## SERVICE FEES AND CHARGES

We may impose new fees and charges, or increase or change existing fees and charges. We will provide advance notice of these changes to you if required by law. Other fees may be assessed and billed separately by your internet and/or mobile communications service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then-current Schedule of Fees.

## BUSINESS DAYS

Except to the extent otherwise provided in this Agreement and for the purpose of this Agreement, our business days are Monday through Friday, except federal holidays.

## HOURS OF OPERATION; INTERRUPTION IN SERVICES; CHANGES

You will be able to use Services seven (7) days a week, twenty-four (24) hours a day. However, a Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by law).

## HARM TO COMPUTER SYSTEMS/DATA

You agree that we will not be liable for viruses, worms, Trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental or consequential damages that may result from such harmful components.

## CONFIRMATIONS AND PERIODIC STATEMENTS; DUTY TO EXAMINE

You agree to examine any confirmations or periodic statements promptly. Except to the extent expressly provided otherwise for consumer account holders under "Additional Disclosures Specific to Electronic Fund Transfers to and from Consumer Accounts," you will notify us immediately, and in no event later than fourteen (14) calendar days after you have received the confirmation or periodic statement, whichever is received earlier, of the existence of any





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errors, unauthorized transactions, or irregularities reflected on the confirmation or on the periodic statement. If you fail to notify us of any such discrepancy with fourteen (14) calendar days of receipt of the confirmation or statement containing such information, you agree that we will not be liable for any other losses resulting from your failure to give such notice or for any loss of interest with respect to a transaction that is or should have been shown. Except to the extent expressly limited by applicable law, if you fail to notify us of any such discrepancy within one (1) year of receipt of such confirmation or periodic statement, you will be precluded from asserting the discrepancy against us. For purposes of this Section, you will be deemed to have "received" a periodic statement at the earlier of the time that: (i) we first make it available to you for pick-up; or (ii) the statement or the information is mailed or otherwise made available to you electronically.

Consumer account holders refer to additional disclosures that also apply to your duty to review periodic statements and to otherwise notify us of unauthorized electronic fund transfers, under the "Consumer Liability" and "Errors and Questions" sections of the "Additional Disclosures Specific to Electronic Fund Transfers to and from Consumer Accounts" disclosure below.

## LIMITATION ON LIABILITY

Except to the extent otherwise restricted by applicable law, we are only responsible for performing Services as expressly stated in this Agreement, and will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct.

IN NO EVENT WILL WE OR ANY OF OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOSS OF DATA, FILES, PROFIT OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES, OR THE INABILITY TO USE THE SERVICES, IRRESPECTIVE OF WHETHER WE HAVE OR HAVE NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT TO THE EXTENT RESTRICTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE FEES PAID DURING THE SIX MONTHS PRECEDING THE DATE OF THE ALLEGED ACTIVITY GIVING RISE TO THE CLAIM; OR THE SUM OF \$50,000.00.

You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with the Services. You acknowledge that Service fees have been established in contemplation of: (i) these limitations on our liability, (ii) Your agreement to review statements, confirmations, and notices promptly and to timely notify us of any discrepancies or problems; and (iii) Your agreement to assist us in any loss recovery effort.

In addition to our right to reject transactions as provided elsewhere in this Agreement and our other agreements with you, we will not be obligated to honor, in whole or in part, any transaction or instruction or Communication which:

- Is not in accordance with any term or condition applicable to the relevant Service or Account;
- We have reason to believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to hold, dispute, restriction or legal process we believe prevents their withdrawal, transfer or availability;
- Would result in us exceeding any limitation of our net funds position established pursuant to present or future Federal Reserve guidelines;
- Would violate any applicable law, rule or regulation, or any guidance or directive of any federal or state regulatory authority;
- Is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- We have reasonable cause not to honor for our or your protection.



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## INDEMNIFICATION

Except to the extent that we are liable under the terms of this Agreement or pursuant to applicable law, you agree to indemnify and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from: (i) an Account; (ii) the performance of a Service; (iii) a third party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (iv) any fraud, manipulation, or other breach of these terms; (v) any third party claim, action, or allegation brought against us arising out of or relating to a dispute with you over the terms and conditions of an agreement, purchase or sale of any goods or services; (vi) your violation of any Laws or Rules or of the rights of a third party; (vii) your use, or the provision of Services or use of your Account by any third party; or (viii) any transaction or instruction or Communication from you to us. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without the prior written consent from us. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized agent. This indemnification provision will survive termination of this Agreement.

## COLLECTION

If we initiate collection proceedings against you in an effort to recover any amounts owed, you agree to reimburse us for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.

## REFUSAL TO PROCESS OR DELAY IN PROCESSING

We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you, but are not obligated to do so. We may delay or refuse processing, for example, if: (i) processing would or may exceed the available funds in your affected Account; (ii) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (iii) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (iv) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (v) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (vi) for any other reason under this Agreement. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

## CREDIT CRITERIA; OWNERSHIP CHANGE NOTICE

We may, in our sole discretion, and you hereby authorize us to, perform credit reviews of you in accordance with our credit criteria. You shall, upon our request, provide us with any credit-related information and assistance as we may require to perform any such review. You agree to provide us with financial statements or other information regarding your financial condition upon our request.

Without limiting the foregoing, if you are a commercial account holder you agree to provide us with at least 30 days advance written notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in type, scope or nature of your business; and (iii) any anticipated material (20% or greater) increase in the amount or volume of your use of the Services to facilitate transfers to third parties over the preceding calendar quarter.



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## SERVICES NOT SUBSTITUTE FOR LEGAL, TAX, OR FINANCIAL ADVICE OR PLANNING

You acknowledge that the Bank, its employees and service providers do not provide legal, tax or financial advice or planning. The Service is merely a tool to assist your independent decision-making and has not been designed in contemplation of your specific needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, you represent that you will have obtained appropriate and independent legal and tax advice regarding the same, as you deem appropriate.

## UPLOADED CONTENT, LINKED SITES AND ADVERTISEMENTS

From our website or using the Services, you may be able to access uploaded content provided or operated by third parties. Unless we tell you otherwise in writing, we do not operate or control any such content or any of the information, products or services on such linked websites. You acknowledge and agree that: (i) you access such content and linked sites at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, content on our website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) we make no endorsement of, and assume no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and Services, you may be exposed to content that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. You agree to hold us harmless in connection with all of the foregoing.

We reserve the right, but shall have no obligation, to reject, move, or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including viruses, that may interfere with the operation of our website. We may, but have no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. We shall have the right, but not the obligation, to disclose content to any third party if required by law or if we believe reasonably necessary to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any content violates rights of third parties; or (iv) protect our rights, property, or personal safety, or those third parties.

## THIRD PARTY CONTENT

We may receive, process, and make available to you content that we receive from you and others. In this regard, we are merely a passive conduit for such content, although we reserve the right to block or remove any content that we believe violates this Agreement. We assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that you or others provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. We will not have a duty to interpret or evaluate any content transmitted to us or through our website or Services, except to the limited extent, if any, set forth in this Agreement. We will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on our website, even if we have reason to know of its existence. Use of any content you obtain from our website is at your own risk.

## USER COMMUNICATION AND PERSONALIZATION SETTINGS

Our website and Services may permit you to send or receive communications and to store content and personalized settings for various options. We are not responsible for any delay, deletion, alteration, misdelivery or failure to deliver or store any such communications, content or settings.



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## IDEA SUBMISSION

If you submit any materials or other information to any public areas of our website (such as bulletin boards, guest books, forums, wish lists and chat rooms), you hereby grant us a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, sub-licensable, assignable, transferable, irrevocable license under copyright and patent, with the unrestricted right to use, self, reproduce, distribute, transmit, create derivative works of, publicly display, and publicly perform any such materials and other information (including, without limitation, ideas contained therein for new or improved products and services) by all means and in any media now known or hereafter developed or commercialized. In addition, you represent and warrant to us that you have the right to grant to us the foregoing license.

## OUR INTELLECTUAL PROPERTY

You acknowledge and agree that the software and content used by us in the operation of our website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by us on our website and as part of the Services and our name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by us and our licensors. As such, you will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise

You may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property (ii) use of our website, Services or Intellectual Property, or (iii) access to our website Services or Intellectual Property. Further, you may not (i) create derivative works of any portion or element of our website, Services or Intellectual Property; (ii) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (iii) deactivate or disable any password protection or other protection, security or reliability technology we incorporate in our website or the Services; (iv) modify or erase any copyright or trademark notice we place at our website; (v) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of our content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (vi) access the Services by any means other than via our website; (vii) frame our website or any Intellectual Property; or (viii) use any circumvention tools, meta tags or any other "hidden text" utilizing our name, trademark, URL, product name or Intellectual Property. You agree to comply with the terms of any license agreement we make available to you with any software.

## USER CONDUCT

You agree not to use the Service or the content or information in any way that would: (i) infringe any third party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (iii) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (iv) be false, misleading or inaccurate; (v) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (vi) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (vii) potentially be perceived as illegal, offensive or objectionable; (viii) interfere with or disrupt computer networks connected to the Service; or (ix) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.

## NO COMMERCIAL USER OR RE-SALE

You agree that the Service is only for the personal use of the individuals authorized to access your account information with us. You agree not to make any commercial reuse of the Service or resell, lease, rent or distribute access to the Service.





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## COMULATIVE REMEDIES

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, ordinance or otherwise.

## DELAYS/FORCE MAJEURE

Our obligations shall be suspended to the extent and for so long as such obligations are hindered or prevented from being performed on account of labor disputes, war, riots, civil commotion, acts of God, fires, floods, failure of suppliers and/or subcontractors to perform, failure of power, restrictive governmental law and/or regulations, storms, accidents or any other cause which is reasonably beyond our control.

## SEVERABILITY

Wherever possible, each provision of this Agreement shall be interpreted in a manner which makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

## ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and no statements, promises or inducements made by either party or agent of either party that are not contained in this written Agreement or other documents referenced by this Agreement.

## CHOICE OF LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California, except where preempted by federal law.

## AMENDMENT OF THIS AGREEMENT

We may amend, add to or change this Agreement (including changes in its fees and charges, or Services). We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.

## WAIVER

We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.

## ASSIGNMENT

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election.

## TERMINATION; SUSPENSION; DELAY



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

We may terminate or suspend this Agreement and any service provided hereunder at any time. We will provide electronic or written notice of termination to you. Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without notice. Without limiting the foregoing, if you do not use this Service for any six-month period, we reserve the right to discontinue your Service without notice to you. To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-deferred deposit. You may terminate this Agreement upon 30 days written notice to us. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination.

## ADDITIONAL DISCLOSURES SPECIFIC TO ELECTRONIC FUND TRANSFERS TO AND FROM CONSUMER ACCOUNTS

**THE FOLLOWING PROVISIONS CONTAIN IMPORTANT CONSUMER DISCLOSURES UNDER THE EFTA.** The following provisions only apply to electronic fund transfers to and from consumer accounts as defined under this Agreement.

### Preauthorized Payments

#### *Right to Stop Payment and Procedure For Doing So*

If you have told us in advance to make regular electronic payments out of your Account, you can stop any of these payments. Here's how:

You may follow the directions provided in the Services, to stop the payment through the Services or by contacting us.

We must receive your request at least three (3) business days before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within fourteen (14) days. A Stop Payment Fee will be charged for each stop payment order you give us. A separate process will apply to the extent you wish to initiate check stop payment requests through the Services. Refer to "Check Stop Payment Services," above, for further details.

#### *Notice of Varying Amounts*

If these regular payments may vary in amount, the person you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set).

#### *Liability for Failure to Stop Payment of Preauthorized Transfer*

If you order us to stop one of these electronic payments three (3) business days or more before the transfer is scheduled to be made, and we do not do so, we will be liable for your losses or damages

### Consumer Liability

Tell us AT ONCE if you believe any part of your Security Code, including your password, has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit, as applicable).

If you tell us within two (2) business days after you learn of the loss or theft of any part of your Security Code, including your password, you can lose no more than \$50 if someone used your Security Code without your permission.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

If you do NOT tell us within two (2) business days after you learn of the loss or theft of any part of your Security Code, including your password, and we can prove that we could have stopped someone from using the Security Code without your permission if you had told us, you could lose as much as \$500.

Also, if your periodic statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within sixty (60) days after the periodic statement was mailed to you, you may not get back any funds you lost after the sixty (60) days if we can prove that we could have stopped someone from taking said funds if you informed us in time. If a good reason (such as a long trip or a hospital stay), kept you from telling us, we will extend the time periods.

## Errors and Questions

In case of errors or questions about your electronic transfers, contact us immediately if you think your periodic statement is wrong or if you need more information about a transfer. We must hear from you no later than sixty (60) days after the FIRST periodic statement was made available to you on which the problem or error appeared. You will need to tell us the following:

- Your name and account number (if any).
- Describe the error, payment, or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- The dollar amount of the suspected error.

If you tell us orally, we may require you to send us the complaint or question in writing within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate a complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may request copies of the documents that were used in the investigation.

## Electronic Check Conversion

You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases; and (ii) pay bills.

## Financial Institution's Liability

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- The transfer would go over the credit limit on your overdraft line (if applicable).
- Circumstances beyond our control (e.g., fire, flood, power outage, equipment or technical failure or breakdown) that prevent the transfer, despite reasonable precautions that we have taken.



# ONLINE BANKING ACCESS AGREEMENT & ELECTRONIC FUND TRANSFER ACT DISCLOSURE

- The computer or related system was not working properly and you knew about the breakdown when you started the transfer.
- Your funds are subject to legal process or other encumbrances restricting the transfer.

There may be other exceptions stated in this Agreement and in other agreements with you.

## Preauthorized Credits

If you have arranged to have direct deposits made to your account at least once every sixty (60) days from the same person or company, you can contact us to find out whether or not the deposit has been made.

## Periodic Statements

You will get a monthly account statement (unless there are no transfers in a particular month). In any case, you will get the statement at least quarterly.

## HOW TO CONTACT US

### General Questions:

1-866-437-0011

### Telephone Banking:

1-866-416-5747

### Mobile and Online Banking:

(844) 782-7311

### Debit Card Questions Including Alerts:

(866) 437-0011

### Lost or Stolen Debit Cards:

(866) 833-4257

### Hours

Monday through Friday: 7 AM (PST) – 9 PM (PST)

Saturday: 8 AM (PST) – 9 PM (PST)

Sunday: 8 AM (PST) – 5 PM (PST)

### Electronic Funds Transfers ("ETFs"):

In case of errors or questions about your EFTs call us at (800) 253-6655 or write:

Farmers & Merchants Bank

PO Box 2400

Seal Beach, CA 90740

### Website

[www.FMB.com](http://www.FMB.com)

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