

**THE COMMERCIAL DEPOSIT AGREEMENT**

**IMPORTANT INFORMATION ABOUT YOUR COMMERCIAL DEPOSIT ACCOUNT(S)**

*Thank you for banking with us. By opening your account(s), you agree to the following terms.*

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## TERMS AND CONDITIONS FOR YOUR COMMERCIAL DEPOSIT ACCOUNT(S)

In consideration of our agreement to make services available to you, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you and we (collectively, the “parties”) agree as follows. By opening your account(s), you agree to the following terms of this Agreement.

### SECTION 1 –GENERAL TERMS

**1.1 This Agreement.** This Commercial Deposit Agreement (“Agreement”) applies to each commercial deposit account we open for you (excluding ). This Agreement includes and incorporates any supplemental attachments, schedules, enrollment forms, resolutions, documents, and applications related to your use of your deposit account(s), which shall not be deemed to alter or amend the terms hereof unless they do so by explicitly referring to the provision of this Agreement being amended. Inconsistencies between this Agreement and any of the foregoing documents shall be construed in favor of this Agreement wherever possible. Please read this Agreement and retain a copy for your records.

**1.2 The Parties to this Agreement.** The words “you,” “your,” and “yourself” refer to all persons named on the application for an account, on the account agreement or Signature Card (defined below in [Section 3.1](#) of this Agreement) for an account, on any checks or cards for an account, or who sign or use any checks or cards on an account. The words “we” and “us” refer to First National Bank of Omaha, FNBO, and FNBO Direct.

**1.3 Relationship of Parties; Third Parties.** The terms of this Agreement are solely for the benefit of you and us and may not be relied upon or enforced by any third party. No third party (including your customers) is a third party beneficiary of the terms of this Agreement. Nothing in this Agreement is intended to impair either party’s rights, claims, or defenses against any third party.

**1.4 Interest and Fees.** If your account is an interest-bearing account and you have maintained the required minimum balance, we will pay interest on the collected balance in the account subject to any required withholding. Depending on the type of account you have with us, the applicable rates of interest, frequency of compounding and crediting of interest, minimum balance requirements, fees and other terms for your account will be established by us from time to time, subject to the maximum rate permissible by law, and will be available on request. Additional terms pertaining to your account may also be set forth on separate disclosures or account schedules and such terms are to be considered incorporated herein by this reference. We may deduct these fees and charges from your account as they are assessed from time to time, even if that assessment may result in an Overdraft (defined below in [Section 8 of this Agreement](#)) on your account. If any taxes are assessed against us with respect to your account (excluding taxes based on our overall net income), you agree to reimburse us. We may deduct any such required reimbursement from your account. If your account has a balance of zero as of the end of any statement cycle period, we may impose a fee. That fee will equal the amount of any accrued interest remaining due on the account.

**1.5 Changes in Terms.** IMPORTANT NOTICE: We may unilaterally change the terms of this Agreement at any time. This includes modifications, deletions and the addition of new provisions, including nonfinancial provisions (for example, we may add provisions relating to our enforcement rights or the resolution of claims and disputes). If we make changes, we will send you a written notice, if required by law. Changes will be automatically effective on the date we specify and without the necessity of any further assent on your part. Unless we specify otherwise, changed terms will apply to the then outstanding balance of your account as well as to future transactions and balances. Each time you use your account, you are confirming your assent to the terms of this Agreement, including all announced changes. Use of your account is not, however, necessary for a change in terms to be effective. If you disagree with a change, you should close your account. Closed accounts remain subject to this provision.

**1.6 Certificate of Deposit Accounts.** If your account is a certificate of deposit account, most of its terms will be set forth in a separate document (which may be entitled “Truth in Savings Disclosure for Time Accounts” or otherwise) (please note that despite references in that separate document to Truth in Savings or other consumer rights, your account is a business account and rights available to consumers under the Truth in Savings Act are not applicable to your account). In the event of inconsistencies between this Agreement and a separate document pertaining to your certificate of deposit account, the separate document pertaining to your certificate of deposit account shall control. Your certificate of deposit account will be repaid at maturity (unless it is renewed) or as otherwise set forth in the separate document we provide to you. [Apart from the separate document that we provide to you with respect to your certificate of deposit account, we are not obligated

to issue any additional certificate, instrument or acknowledgment that a sum of money has been received or promising to repay that sum.] Certain terms of this Agreement are not applicable to certificate of deposit accounts, including, without limitation, the terms in Sections 5, 6, 7 and 8. Certificate of deposit accounts are time deposits; you do not have a right and will not be permitted to make withdrawals prior to maturity unless subject to an early withdrawal penalty. Except for withdrawals at maturity, we reserve the right, at any time, to require at least seven (7) days' advance written notice prior to any withdrawal.

## SECTION 2 –OPENING AND CLOSING YOUR ACCOUNT

**2.1 Opening Accounts.** You must complete paperwork we provide in order to open each deposit account. We may ask third parties about you before we open your account. We may decline to open an account for any lawful reason. When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change in compliance with the procedure under [Section 3.3](#) of this Agreement and we have had a reasonable time to act on the new information. We may rely on the most current information maintained in our records. Any information we collect about you will be maintained by us in accordance with our Privacy Notice, which can be found at <https://www.fnbo.com/privacy/>. Customer's use of the Services constitutes your acceptance of and consent to the terms of the Privacy Notice.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires certain financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means for you: When you open an account, we will ask for your name, physical address, date of birth (if applicable), social security and/or tax identification number, and other information that will allow us to identify you. We may also ask to see your driver's license (if applicable) or other identifying documents. We will let you know if additional information is required.

**2.2 Closing Accounts.** Credits and debits individually or together may be referred to as "Transactions." You may close your account (excluding a certificate of deposit account) at any time and for any reason after we have received final settlement on all items deposited by you, except that we are not required to close your account at your request if you have pending Transactions, the account is overdrawn, or your account is subject to legal process (such as a garnishment, attachment, execution, levy or similar order). We may close your account at any time and for any reason. We also reserve the right, in our discretion, to refuse additional deposits and/or to discontinue or limit the practice of allowing checks, transfers or withdrawals. If we elect to take one (1) of the preceding actions, we will notify you, if required by law. We will not be liable for dishonoring items after notifying you that we have taken one (1) of these actions. If your account is closed, we may issue a check for the balance in the account. You must pay unpaid fees and charges when your account is closed. In the event your account is closed, you are responsible for contacting third parties you have authorized to make deposits to or transfers from your account. In addition to the foregoing, although we are not obligated to do so, if we determine that an unauthorized Transaction has occurred or been attempted with respect to your account, we may freeze activity on your account or we may close the account, reopen a new account on the same terms, and so note the same on our records. After your account is closed, you remain obligated to comply with all terms of this Agreement relevant to anything that relates to or arises out of an occurrence prior to account closure. You specifically agree to reimburse us for the amount of all subsequent claims concerning items deposited prior to account closure (including subsequent warranty claims and returns of those items).

**2.3 Dormant Accounts.** If three (3) consecutive statements are returned to us, and there is no activity by you on your account, we may consider your account dormant. If your account becomes dormant, we may cease sending statements. To the extent permitted by law, we may also assess our then current service charge. Depending on the type of account you have with us, current charges are set forth either on separate disclosures or account schedules, the relevant portions of which are incorporated by this reference. You may request a copy of such disclosures and schedules at any time.

**2.4 Escheatment.** If applicable, in situations such as extended periods of inactivity on your account or no expressed interest by you on the account over a period of time, or such other situations as covered by law, applicable state law may deem the account abandoned and require us to turn over funds in your deposit account to the applicable state government. The applicable state law will be the state of the owner's last known address as we have it on file. If funds have escheated, you may have to file a claim with the state to recover them.

**2.5 Deposit Account Control Agreements.** We are not obligated to enter into deposit account control agreements with respect to your account. If we agree to do so, you are responsible for allowing sufficient time for us to review and negotiate that agreement and you agree to reimburse us for our costs and expenses (including reasonable attorneys' fees) in reviewing, negotiating and carrying out our obligations under that agreement. We are not liable to you for any action that we take in a good faith effort to comply with such an agreement.

### SECTION 3 –ACCOUNT OWNERSHIP

**3.1 Description of Commercial Deposit Account Ownership.** Ownership refers to who owns the funds in an account. If there is only one entity or person named on the form identifying who is authorized to make withdrawals, write checks, transfer funds, stop payments, maintenance or give us instructions on your account (the "Signature Card"), that entity or person is the owner of the account. If more than one entity or person is named in an ownership role on the Signature Card, then all named entities and persons are owners of the account. Generally, you will each own in proportion to your contributions to the account. However, we may distribute any or all of the funds in the account to any owner at any time. This Agreement governs commercial deposit accounts, which are for use by businesses and not intended for personal purposes. You agree to use your commercial deposit account only for business purposes. The commercial deposit account is payable to each corporation, unincorporated association, limited liability company, partnership, or any other business, government or non-profit organization, with the exclusion of a sole proprietorship, ("Business Organization") that is listed in our records as an owner of the account, and the account will not be payable to any individual director, shareholder, member or partner. If the account owner is a sole proprietorship, meaning that one person conducts business as his or her own property instead of through a Business Organization, then the sole proprietor is the owner of the account. We may rely on the accuracy and completeness of all resolutions, Signature Cards and other documents you deliver to us in connection with the account. We make no representations as to the appropriateness or effectiveness of any particular ownership or beneficiary designations. Our only responsibility is to permit access to the account as provided by withdrawal rights, which vary by account type and determine who has the right to access funds in the account for all purposes.

**3.2 Authorized Representatives.** "Authorized Representatives" are persons with authority to act on your behalf. Unless a restriction that we have acknowledged in writing is specifically stated in your authorizing resolution: (i) an Authorized Representative will have authority to appoint the authorized signers on your accounts, to add or delete authorized signers on your accounts, to open additional accounts, to close accounts, and to give us any other instructions on your behalf with respect to your accounts; and (ii) each Authorized Representative may do these things acting alone, unless we require otherwise. We may, but are not obligated to, accept oral instructions from your Authorized Representatives. As between you and us, all actions of an Authorized Representative shall be deemed within the scope of such person's authority. We are not required to verify or confirm the purpose or propriety of any actions by your Authorized Representatives and are not responsible for any misapplication or misappropriation of funds by your Authorized Representatives. Authorized Representatives and the authorized signers they appoint shall have the authority: (i) to make withdrawals and to draw checks, drafts or other orders for the payment of money on your account(s); and (ii) to issue or cancel stop payment orders on your account(s). We are authorized to honor checks when bearing or purporting to bear a facsimile signature that you have previously used or if you have filed a specimen of such signature with us. We are entitled to honor checks and charge your account even if the facsimile signature on a check was obtained or used without your actual authority and regardless of by whom or by what means the actual or purported facsimile signature resembles the specimen filed with us. Each authorization that we receive from you or your Authorized Representatives shall remain in effect until we receive written notice of revocation and have a reasonable opportunity to act on such notice.

**3.3 Account Changes.** Generally, you may make changes to your account as deemed acceptable by us and applicable law. Changes may not take effect immediately. You agree that we may accept requests to make changes to your account (e.g., change of address, change in the type of account, etc.) without requiring your signature or a written confirmation. If three (3) consecutive statements are returned to us and there is still activity by you on your account, we may stop sending statements to that address.

**3.4 Transferring Ownership.** Your account is non-transferable and non-negotiable. Ownership of your account is transferable only on our records with our consent. You may not grant, transfer or assign any of your rights to your account without our written consent. Even if we consent, we may require that you close the account and that the new account owner open a new account in the new account owner's name. We may refuse to acknowledge or accept your attempted

pledge or assignment of your account or any interest in it, including a notice of security interest.

## SECTION 4 –DEPOSITS

**4.1 Receipt of Deposits.** We are not responsible for deposits (such as deposits by mail or at unstaffed locations or night depositories) until they are actually received and verified by us and we issue a receipt. Deposits received on weekends or federal holidays or received after our cutoff times will be considered received on our next Business Day. Business Day means Monday through Friday, and does not include Saturdays, Sundays, or federal holidays. Our counts of money deposited shall be conclusive. We may impose additional requirements for certain deposits (e.g. very large cash deposits).

**4.2 Processing of Deposits.** We reserve, to the extent permitted by law, the right to reverse all credits and to make corrections and adjustments to your account (including corrections and adjustments for errors that are reflected on deposit tickets or receipts). We reserve the right to refuse to accept particular deposits, including the deposit of items on which endorsements are obscured or on which restrictive endorsements are missing, which we otherwise have reason to question. If you are permitted to pre-encode items, you agree not to use carrier documents (items placed inside envelopes) in high speed forward or return cash letters. If you do so, you will be responsible for all related losses and claims. You may not deposit “substitute checks” (as defined in the federal Check Clearing for the 21st Century Act) or checks bearing a substitute check legal equivalence statement (such as “This is a legal copy of your check. You can use it in the same way as you would use the original check.”) unless we have otherwise agreed in writing. Unless we agree otherwise in writing, our acceptance of such checks shall not obligate us to accept such items at a later time, and we may cease doing so without prior notice. If you submit images or data to us, you: (i) shall limit submissions to items which are eligible for such processing (for example, you may not submit savings bonds, foreign checks or checks in carrier documents in this manner); (ii) are responsible to assure that each file you transmit to us accurately reflects the items referenced therein (including all MICR line information), contains the information we need to produce a substitute check in compliance with Regulation CC, and identifies the bank of first deposit in the twenty-six (26) record, (and you understand that scanned checks are subject to return and adjustment if they do not satisfy applicable image quality acceptance standards); (iii) further understand that we are not responsible for detecting errors in the files or data that you transmit to us, information which duplicated information you previously provided to us or that contains information with respect to checks that you have previously transferred to, deposited with or attempted to clear through us or a third party to make payment based on, the checks reflected in the files you transmit to us; (iv) shall assure that the images you create accurately represent all of the information on the front and back of your checks, including all endorsements; (v) shall not alter any data you send us so that it does not accurately reflect the checks you received; (vi) shall retain the original scanned checks in a secure setting for no less than sixty (60) days, and make such checks available to us within five (5) Business Days of such request; (vii) shall destroy, by shredding, the original checks within one hundred twenty (120) days after scanning (unless otherwise agreed by the parties or unless doing so would be a violation of law, rule or regulation); (viii) agree that all Transaction data you transmit to us reflects the result of bona fide business Transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context.

**4.3 Cashing Checks for You.** We may require you to deposit an item rather than permitting you to cash it. If we do cash a check for you, you have the same responsibilities as you would if it had been deposited. If the check is returned to us for any reason, we may deduct that amount from any of your accounts.

**4.4 Incoming Transfers.** You understand that we may credit incoming funds transfers based solely on the account number provided to us, regardless of whether that number matches the other information provided with the transfer. Incoming transfers will be noted on your statement. We may not notify you separately of receipt of incoming transfers.

**4.5 Endorsements.** If you do not endorse a deposited item, we may supply your endorsement, but we are not required to do so and we may require your specific endorsement. Your endorsement and any other endorsement information that you place or have preprinted on the back of your check must be in blue or black ink within the designated payee endorsement area, which is limited to 1 ½ inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front. The remaining area on the back of the check is reserved for bank use only for processing purposes. You agree to assume responsibility for any loss, delay, liability, claim or damage resulting from endorsing or otherwise marking the back of any deposited item outside of the designated payee endorsement area. You agree to reimburse us for all claims, costs, losses or damages we incur because you fail to endorse an item exactly as drawn or because your endorsement obscures our endorsement. You agree that we are not responsible for delayed or inaccurate



chargebacks to your account(s) if your endorsement on a deposited item does not enable us to clearly identify the account into which it was deposited.

**4.6 Restrictions; Legends.** Because of the automated processing of the large volume of checks we receive, we cannot inspect or look at restrictive endorsements or other restrictions or notations on checks. We are not responsible for any restrictive endorsement or other restriction or notation on an item you cash or deposit. For example, we are not responsible for accepting a deposited item marked "paid in full." If using Remote Deposit Capture or mobile banking services, you must supply a restrictive endorsement. You agree to reimburse us for all claims, costs, losses or damages we incur that could have been prevented because you fail to supply a restrictive endorsement where required. You shall not submit items to us that contain information which duplicates information you previously provided to us or that contains information with respect to checks you have previously transferred to, deposited with or attempted to clear through the Bank or a third party. You shall assure that items are not deposited or processed a second time. We are not required to honor any restrictive endorsement, legend, or endorsement, or other special instruction placed on checks you write.

**4.7 Credit for Deposits.** All deposits (including checks and electronic deposits) are received and credited by us provisionally and subject to final payment. The Bank may reverse a credit (i) any time before final payment of the deposited item, (ii) if a deposited item is returned to us, (iii) for a transfer into your account if that transfer is returned or reversed, upon which we may also place a hold on your account for the amount of any return or reversal, (iv) if a claim is made against us that relates to the deposited item or transfer, or (v) if we do not receive final payment in a reasonable time. We may do these things even though another party was late in making its return, reversal, claim, or was considered to have finally paid the item. Even though we have issued a receipt, we may make reversals, corrections and adjustments if we determine they are appropriate (i.e., we may correct errors). Credits may be reversed even though we permitted you to make withdrawals or transfers of the credited funds. We may credit deposits and incoming transfers solely on the account number provided to us (even if that number does not match other information we receive). We are not responsible for your errors in identifying the account to credit for a deposit.

**4.8 Direct Deposits.** If funds from a direct deposit are returned to the originator of that deposit, we may deduct that amount from your account.

**4.9 Our Responsibility for Items You Deposit.** We act only as your agent in receiving and handling items for deposit or collection. We are not responsible for other banks' actions or for their insolvency. We may select the methods used for collection of items, including the use of other banks and clearinghouses, and we may agree to vary collection policies, procedures and deadlines with such other banks and clearinghouses. We may also convert the checks that you deposit into substitute checks or otherwise collect them electronically.

**4.10 Loss or Destruction of Items.** We are not responsible for the actions of other banks, for the loss or destruction of items in transit or items held in your possession. If items are lost or destroyed, you agree to cooperate with us by (i) researching and providing information to us about those items, (ii) asking the issuers of those items to stop payment on them, (iii) using reasonable efforts to obtain replacements and providing copies of those items to us, and (iv) completing any other action that we request.

**4.11 Returned Items.** We may deduct the amount of any returned item from your account or place a hold on your account for the amount of any return as soon as we are made aware a return is being sent. We may charge back to your account the amount of any: (i) item which is returned unpaid or which is not paid within a reasonable time; or (ii) any electronic deposit for which we do not receive settlement within a reasonable period of time. We are not responsible for other banks' actions (i.e., misrouted returns or notices of return) in returning items. We will not necessarily give you separate notification of a return. You waive notice of dishonor, nonpayment or protest of any such item or deposit and authorize us to attempt to reclear that item if we wish (but we are not required to do so). If you do not include your account number in your endorsement, we will be excused from any delayed or inaccurate processing if the item is returned. If a check you deposit is returned to us and you request it to be returned to you, we may return it to you in the form of a substitute check (or a paper or electronic representation thereof). We may charge any account of yours for any returned item.

**4.12 Foreign Items.** If you deposit an item drawn on a non-U.S. bank or payable in a foreign currency, and we agree to collect it, we may convert the item to U.S. Dollars using our exchange in effect on the date we select and may charge your account for the amount of any third party fees we are required to pay in connection with such item. You accept all risks of

currency fluctuation and late return.

**4.13 Remotely Created Checks.** We are not required to process remotely created checks. You warrant and agree to the following for any remotely created check that we process for you: (i) you received express, verifiable authorization to create the check in the amount and to the payee that appears on the check, (ii) you will maintain proof of such authorization for at least two (2) years from the date of authorization, (iii) will supply such authorization to us upon our request, and (iv) agree you will reimburse us the amount of the check in the event the check is returned, regardless of when the check is returned. We may fulfill reimbursement using funds from your account, and if there are insufficient funds in your account, you remain obligated to remit the remaining balance to us. If you deposit checks that are not actually signed by the drawer, we may close or suspend your account. This includes, for example, checks that simply state they have been authorized by the drawer.

**4.14 Claims that Third Parties Make Against Us.** You understand that we are required to make certain warranties and have certain indemnity and other responsibilities to third parties with respect to deposits made to your account (for example, we may have responsibility to third parties for items that you deposit with forged, unauthorized or missing endorsements, and items that have been altered or improperly encoded) and that other claims may be made against us by third parties arising out of handling your deposits (all such claims referenced in this sentence are referred to collectively as “Warranty Claims”). Warranty Claims include claims: (i) that are made after the drawee’s midnight deadline; and (ii) asserted by electronic, paper or other means. If we receive notice of a Warranty Claim, we may place a hold on your account for the amount of the claim. If you request us to, or if we are otherwise required to, dispute or defend against any Warranty Claim (for example, by asserting that the paying bank is required to assert its defenses against its customer), and if we agree to do so, you are responsible for reimbursing our costs and expenses (including reasonable attorneys’ fees). We may deduct from your account the amount of any Warranty Claim that we pay in good faith. We may exercise the rights set forth in this paragraph, even if doing so may create an Overdraft in your account. If sufficient funds are not available in your account, you agree to reimburse us for the amount of such claim. Our rights of deduction and reimbursement are absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment or right of recoupment. We are not required to give you notice prior to exercising our rights under this section. These rights apply to, among other things, direct deposits of government benefits, wire transfers into your account, other direct deposits coming from third parties, deposits made after dissolution (including deposits of checks made payable to you), and deposits that are claimed to have been altered, improperly endorsed, mis-encoded or otherwise in violation of applicable warranties under the Uniform Commercial Code, and items you created (or instructed us to create) that were not properly authorized.

## **SECTION 5 –AVAILABILITY OF DEPOSITED FUNDS\***

**5.1 Funds Availability Policy.** Some deposits are not available for immediate withdrawal. Our current policy is to make funds from your deposits available to you on the first Business Day after the day we receive your deposit. Funds from deposits of cash made in person to one of our employees, electronic direct deposits and wire transfer deposits will be available on the day we receive the deposit. Funds from the first \$250 of deposits of checks made at a branch, at an ATM or via mobile deposit will be available on the day we receive the deposit (cash back that you receive from a deposit will not count against this \$250). Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written. Funds from a check deposit being sent via wire will require up to three (3) business days to collect before the wire can be sent. In some cases, additional time may be required to collect the funds.

For determining the availability of your deposit, Business Day means Monday through Friday, and does not include Saturdays, Sundays, or federal holidays. If a wire transfer is received by 5:45 p.m. CST on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if a deposit is received on a day we’re not open or we receive a wire transfer after the applicable time mentioned above, we will consider those next Business Day Transactions.

\*For customers on account analysis, we make your funds available in accordance with Federal regulatory requirements and our check clearing schedule. Please contact your account representative for a copy of the check clearing schedule.

**5.2 When Longer Delays May Apply.** In some cases, we will not make all of the funds that you deposit by check available to you on the first Business Day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second Business Day after the day of your deposit. However, the first two hundred twenty-five dollars (\$225) of your deposit will be available on the first Business Day after the day we receive your deposit.



If we are not going to make all of the funds that you deposit by check available on the first Business Day after the day of your deposit, we will notify you at the time you make your deposit. We will also tell you when the funds will be available.

If your deposit is not made directly to one (1) of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available. In addition, funds you deposit by check may be delayed for a longer period under the following circumstances: (a) we believe a check you deposit will not be paid; (b) you deposit checks totaling more than \$5,525 on any one (1) day; (c) you redeposit a check that has been returned unpaid; (d) you have overdrawn your account repeatedly in the last six (6) months; (e) there is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh (7th) Business Day after the day of your deposit.

**5.3 Special Rules for New Accounts.** If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open. Funds from deposits of cash made in person to one (1) of our employees, electronic direct deposits and wire transfer deposits to your account will be available on the day we receive the deposit. Funds from the first five thousand five hundred twenty-five dollars (\$5,525) of a day's total deposits of cashier's, certified, teller's, travelers and federal, state and local government checks will be available on the first Business Day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you. The excess over five thousand five hundred twenty-five dollars (\$5,525) may not be available until the ninth Business Day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one (1) of our employees, the first \$5,525 may not be available until the second Business Day after the day of your deposit. Funds from all other check deposits will generally be available on the ninth Business Day after the day of your deposit.

**5.4 Limitations on Transfers and Withdrawals.** We reserve the right, at any time, to require at least seven (7) days' advance written notice prior to any withdrawal from your savings or NOW account. If your account is a savings account or money market deposit account (MMDA), it is subject to additional limitations set forth below. If we authorize a withdrawal or transfer from your account (for example, through the use of a banking or check card) we may, at that time, debit or place a hold on your account for the amount authorized.

**5.5 Additional Limitations for Savings Accounts and MMDAs.** If your account is a savings account or a money market deposit account (MMDA), you may make no more than six (6) transfers and withdrawals from the account during any calendar month. Transfers do not include (i) loan payments to us; (ii) transfers to another of your accounts with us that you make if made by mail, automated teller machine or in person at a branch; or (iii) withdrawals that you make if made by automated teller machine or in person at a branch. Transfers include, but are not limited to, (i) checks; (ii) preauthorized withdrawals with third parties; or (iii) transfers made by phone or online banking. We will count transfers in the month in which they are paid. If the limitations are exceeded, you will be notified by a letter from the bank. If you receive three (3) notification letters within a rolling calendar year, your account will be closed.

**5.6 Cash Withdrawals.** We may require advance notice and impose additional requirements on very large cash withdrawals. This also applies to cashing checks for very large amounts.

## SECTION 6 –CHECKS DRAWN ON YOUR ACCOUNT

**6.1 Check Forms.** If your account has check writing privileges, you agree to use the forms that we have approved. You should not issue checks in a form that obscures endorsements; if you do so you are responsible for any losses that result.

**6.2 Signatures.** If your account has been established with restrictions that require two (2) or more signatures on items or limits the maximum amount of an item that a person can sign, you acknowledge and agree that these restrictions have been established solely for your internal control purposes and that non-complying items will nonetheless be considered properly payable if executed by any authorized signer.

**6.3 Returning Checks.** We may return any other form, any item that does not include your manual or facsimile signature (even though the item might indicate you have authorized it), any item that appears to us to be irregular, incomplete, forged or altered, or any item or transfer that we otherwise suspect may not be properly payable. If items are presented which appear to be duplicates, we may return either or both duplicates. We may convert your paper checks into substitute checks

for purposes of return. Unless the context indicates otherwise, references in this Agreement to a “check” or an “item” include any relevant substitute check and any paper or electronic representation thereof.

**6.4 Restrictions, Legends, etc.** We may disregard all conditions, restrictions, legends and other extraneous information present on any check (such as a "void after" or "not good in excess of" legend). Please see [Section 4.6](#), which also applies to checks drawn on your account.

**6.5 Stale Dated Checks.** If any check is presented to us more than six (6) months after its date, we have the option to either pay or dishonor that check.

**6.6 Stop Payment Orders.** You may order us to stop payment on a check, but we must have a reasonable opportunity to verify that the item is unpaid and to act on the order after receiving it. Because we rely upon computer systems to implement stop payment orders, you understand that your order must provide the exact amount, check number and account number on the item you want stopped. We are not responsible for paying items that do not exactly match your stop payment order. Your stop payment order should also identify the payee of the item so that we may verify we are stopping payment on the correct item. A stop payment order is only effective for six (6) months, unless renewed in writing. When the stop payment order expires, we may pay the item and have no duty to notify you. If we give you a confirmation of your stop payment order, you agree to notify us immediately if it is inaccurate and in the absence of such notification, you agree that we will not be responsible for relying on the information in the confirmation. You understand that we may not be able to stop payment on items that you have enabled third parties to create and send to us. If you have authorized a third party to initiate recurring deductions from your account, you should order the third party to stop them, and agree that we are not responsible therefor except to the extent required by law. You may not stop payment on certified checks, teller’s checks or cashier’s checks or money orders and understand that we may refuse to issue a replacement or to refund the check amount before the expiration of a period of time specified by applicable law. You understand that a stop payment order on any check will not preclude a holder-in-due course from making a claim against you. You assign to us all rights against the payee or any other holder of the item. You agree to fully cooperate with us in any legal actions that we may take against such persons. A fee may apply.

**6.7 Postdated Checks.** If you issue a postdated check, you should give us notice of the postdating in the same manner specified above for stop payment orders; otherwise we may pay a postdated check when it is presented.

**6.8 Cashing Checks.** You agree that we may impose conditions on persons who request us to cash a check drawn on your account (for example, by requiring payment of a fee, the presentation of appropriate identification, and/or placement of a fingerprint on the check); we may also refuse to cash the item. You agree that we may dishonor the check if these conditions are not satisfied.

**6.9 Check Safekeeping.** Checks and/or check replacement items may not be returned with your statement. Your statement will, however, indicate the number, amount and date of payment of each check or item. Even if you were previously provided with an election as to how checks would be returned to you, we will not be considered in default thereof, so long as images of such checks are made available to you on request. Copies of checks will be available on request for seven (7) years after we receive them (unless applicable law requires that they be kept longer). We may dispose of or destroy all checks that are not returned to you.

**6.10 Your Rights Regarding Checks Drawn on Your Account.** In some situations, we may re-credit your account for an item we pay. If we do, you agree that we will be entitled to assert your rights against any payee or holder of that item.

## SECTION 7 –TRANSACTIONS ON YOUR ACCOUNT

**7.1 Our Responsibility for Honoring Transactions.** You acknowledge and agree that we will not be liable for honoring drafts, automated clearinghouse Transactions and other transfers from your account that purport to have been authorized by you or that we otherwise receive in the ordinary course of business (“Incoming Items”). These Incoming Items may include, but are not limited to: (i) substitute checks (and you agree that even if a substitute check does not satisfy all technical requirements for that status, such check may be deemed properly payable if the original check would have been properly payable had it been presented) and check images; (ii) transfers that appear to have been authorized by you, such as a preauthorized electronic funds transfer, a transfer initiated over the Internet or the telephone or a point of purchase Transaction where the merchant has converted your paper check into an electronic Transaction; or (iii) transfers that a third party may be permitted to initiate under applicable rules, such as a transfer that represents a permitted reversal or

reclamation of an earlier transfer, a transfer pertaining to a destroyed or insufficient funds check, a transfer where a payee is permitted to convert your check into an electronic check Transaction and transfers pursuant to check truncation programs in which we may participate. None of this, however, is intended to excuse us from reimbursing you as required by applicable law for the amount of any such transfers that are in fact unauthorized.

**7.2 Transfers by Third Parties.** Please exercise caution when deciding to give your account number to a third party. If a third party has your account number, we will ordinarily presume that you authorized the third party to use it to initiate a transfer from your account. We are not required to inquire into the circumstances under which: (i) items were issued, endorsed or negotiated; (ii) transfers were authorized; or (iii) proceeds will be disposed of (even if an item is payable to cash, bearer, the order of an authorized signer or a lender of an authorized signer).

**7.3 Claims Concerning Items Paid.** Unless applicable law gives you the right to raise the issue with us, if you have a dispute with a third party, you agree to resolve that dispute directly with the third party even though we handled the check or other transfer by which the third party was paid. If a claim is made that any item drawn on your account was forged or altered, bore a forged or unauthorized endorsement or was otherwise not properly payable, we may deduct and/or withhold the amount from your account until final determination of the claim. You agree that we will not be liable for paying items unless we could have detected that they were not properly payable through the exercise of ordinary care. Use of automated processing of items means that we do not individually examine all of your items to determine if the item is properly completed, signed, and endorsed or to determine if it contains any information other than what is encoded in magnetic ink. If you write a check to multiple payees, we can properly pay the check regardless of the number of endorsements. You should use our positive pay services to enable you to check for multiple endorsements if you want to ensure all endorsements are actually received prior to payment. Failure to use the services to check the endorsements will result in any loss being your responsibility. You acknowledge and agree that we will not be considered to have failed to exercise ordinary care because we rely upon automated processing of items, because we do not conduct sight examination of items below a certain threshold amount, because we rely upon encoded information on checks or because we do not review endorsements on items drawn on your account. If any item paid on your account gives rise to a claim against a third party (for example, third party liability for breach of a presentment or transfer warranty), you may request us to take reasonable action to enforce against prior parties whatever rights you or we may have against such prior parties. If we take such action, you agree to reimburse us for our costs and expenses (including reasonable attorneys' fees) in doing so.

**7.4 Disputed Transactions.** If you dispute a Transaction posted to your account, then (i) you must notify us of your dispute as soon as you become aware of it, (ii) you must provide the information we request to investigate your dispute, including your affidavit and/or a police report, (iii) you agree to cooperate in our investigation and in our efforts to recover any loss, and (iv) you agree to cooperate with law enforcement. We may withhold the amount of a disputed Transaction from your account until we complete our investigation. We may credit your account before completing our investigation. We may reverse that credit later if we determine the Transaction was properly posted.

**7.5 Transactions from Outside the United States.** If we pay an item which has been transferred or negotiated outside the United States, you will be deemed to make all U.S. Uniform Commercial Code presentment and transfer warranties to us with respect to that item.

## SECTION 8 –OVERDRAFTS

**8.1 Your Responsibilities.** You agree to maintain a sufficient balance in your account to cover the checks you write and the other withdrawals and transfers that you make or authorize.

**8.2 Our Options.** An “Overdraft” is any Transaction that causes your account to have a negative balance. If available funds are not on deposit at the time we review your balance after any check or transfer request is presented, we may, without prior notice, refuse payment or transfer and then return the check, or we may (but need not) pay the check or transfer. We need not review your account more than once in making this determination. If payment of the check or transfer causes your account to become overdrawn, an Overdraft fee may be assessed. If we pay an Overdraft, you agree to immediately deposit sufficient funds to cover the Overdraft and any related fee. Even if we have a history of paying Overdrafts for you, we may stop doing so at any time.

**8.3 Overdraft Timing.** We are not obligated to evaluate the availability of funds in your account at any particular time or more than once before making a decision. As a result, an Overdraft decision might be made before you make a deposit later

in the day.

**8.4 Credits and Debits.** We use both automated and manual systems to process and post Transactions to your account. We also may refuse to accept a Transaction as prescribed by our procedures and regulatory requirements. If you have more than one Transaction on the same day (and do not have sufficient funds in your account), the order we use to post those Transactions may affect the number and extent of Overdrafts you have that day.

**8.5 Order of Posting.** To the extent that applicable law allows, we may pay checks, transfers and withdrawals in any order we choose (for example, we may pay the largest items first), even if the order we choose results in there being insufficient funds to pay other checks, transfers and withdrawals that might have otherwise been paid. You understand that such order may change from time to time based on regulatory requirements, technology and industry standards. This includes the order in which we decide to authorize, accept, decline, pay or return credits, debits and holds on your account. This may include different timing for categories of Transactions based on how the Transaction is presented and administered by us. The posting order of Transactions to your account may vary based on the types of Transactions presented, their source and the respective cutoff times applicable for the systems utilized. As a result, the posting order to your account may be different from the order in which your Transactions actually occur. All of this will affect when Overdrafts occur, the Overdraft fees assessed and which of your Transactions we pay or return.

**8.6 Explaining the Posting Order of Transactions on Your Account.** Generally, we process Transactions received by the close of our Business Day in the following order: deposits or credits first, then withdrawals or debits. Deposits or credits are Transactions that increase the Balance in your account. Withdrawals or debits are Transactions that reduce the Balance in your account. Transactions received after our Business Day cutoff times will be processed on the next Business Day. Generally, after we have processed all deposits to your account, we process withdrawals. We generally process withdrawals in the following categories and order: (i) Electronic payment Transactions and items such as purchases for cashier's checks, certificates of deposit or foreign currency; (ii) Debit Card Transactions (non ATM Transactions); (iii) ATM withdrawals and checks cashed from your account at one of our branches; (iv) Transactions created by you through either our or any third - party bill payment system; (v) Checks processed as received that day in check number order; and (vi) Miscellaneous adjustments. We or the person, store or financial institution receiving the item, may convert any of your checks you write into an electronic item. **We recommend that at all times you maintain an accurate record of balances and Transactions that you authorize for deposit and withdrawal from your account, so sufficient funds are always available.**

## SECTION 9 –STATEMENTS AND OTHER COMMUNICATION AND NOTICES

**9.1 Statements.** We will make statements reflecting the activity on your account available to you ("Statements"), either by sending periodic Statements to the address you select or, alternatively, to your address contained in our records (if there is more than one (1) of you, we will send Statements to one (1) address that you select) or by making account information available online. Statements may or may not be provided but area always available upon request with respect to certificate of deposit accounts. We will make communications and notices that your Statement is available in the same way. Your statement cycle may vary depending on the product(s) that are associated with your account. You agree to promptly examine your Statements when they are made available to you and to verify that there are no mistakes, we recorded each of your deposits, and the Incoming Items (as defined in [Section 7](#) of this Agreement) identified thereon were authorized. If you need an image or copy of an Incoming Item to do this, you agree to request one promptly. You should not communicate sensitive information to us via unencrypted email. If unauthorized use of your account occurs (e.g., an improper payment, deduction or transfer from your account), if any items deposited into your account are alleged to be forged or altered, or if there is any other discrepancy in your account, you agree to: (i) promptly provide such information as we may request to investigate the problem; (ii) promptly provide such documentation as we may request concerning the problem (including relevant affidavits); and (iii) if relevant, cooperate with us and appropriate law enforcement authorities in recovering any unauthorized payments, deductions or transfers and in prosecuting the perpetrator. If you do not notify us with reasonable promptness, you may be precluded from making a claim against us based on the error; if more than thirty (30) days pass after the Statement was made available to you, you will be precluded from making a claim based on losses caused by the same wrongdoer. Unless you give us written notice within sixty (60) days after the Statement was made available to you, the Statement shall be deemed correct for all purposes and we shall not be liable for any errors shown thereon. No legal proceeding or action may be brought against us to recover payment in respect of an error unless you: (i) give us written notice as provided above; and (ii) commence the action or proceeding within one (1) year after the date of the Statement on which the error was reflected. If Statements are returned to us, we may not send further

Statements until your address is updated. You must let us know if you do not receive or cannot access your Statement. Nothing in this Agreement: (i) is intended to limit rights you are granted by law, which cannot be waived; and (ii) applies to preclude you from asserting a claim on which a third party is liable (for example, third party liability for breach of a presentment or transfer warranty). To the extent that we are requested or required to be involved in the assertion of such claim, however, you agree to reimburse our costs and expenses (including reasonable attorneys' fees) in connection therewith.

**9.2 Communications with You.** We may contact you through phone call, text, or email using live operators, automated systems, automatic dialing devices and recorded messages in order to service your account and for collection and other purposes. Some of these contacts may result in charges to you and our contacts will not be considered unsolicited. If you provide a cell phone number to us or place a cell phone call to us, you agree that we may contact you at that cell phone number. If you provide us with an email address or if you send us an email, you agree that we may contact you at that email address.

**9.3 When Notices to You are Effective.** Our notices to you are effective when they are made available to you when we include the notice on or with your monthly Statement. If we send the notice separately, it will be effective when it is made available to you.

**9.4 Recording.** We may monitor and record all communications with you in accordance with applicable law. You consent in advance on behalf of yourself and Your Personnel to any such monitoring and recording.

**9.5 Phone Number and Address Change.** You must promptly notify us of changes in your phone number, email or address. We may change your address if we receive a change notice from the U.S. Postal Service. We may also rely on other services that update contact information. We may apply address changes to all of your accounts with us. We may rely completely on our account records to determine the ownership of your account.

**9.6 Communications with Others.** You agree that we may contact any source necessary and may obtain credit reports or other information in connection with opening, maintaining and servicing your account.

**9.7 Notices to Us.** You may notify us by calling or writing us at our appropriate contact information. Any notification by phone should be confirmed in writing as soon as possible. Notices to us are not effective until they are actually received in writing by an employee that has authority to act on the notice. You may also visit us at any branch location. You agree that we will have a reasonable opportunity to act on each notice we receive. We may disregard communications we consider unreliable (e.g., communications via fax, unsecured email and voicemail).

## SECTION 10 –OUR OBLIGATIONS AND LIABILITY

**10.1 Legal Obligations.** We have certain obligations to you under applicable law. You agree that we shall have no liability to you other than liability imposed by statute which cannot be waived, or if agreed otherwise, or liability for direct damages resulting from our gross negligence or willful misconduct.

**10.2 Our Standard of Care.** We are obligated to exercise ordinary care as specified by applicable law. Such obligation shall be measured by the reasonableness of banking procedures established for the Transaction involved and general banking usage in the local area served by us; clerical error, inadvertence or oversight, or an honest mistake of judgment shall not constitute a failure to exercise ordinary care. Our policies and procedures are for our own internal purposes only. They may not be taken into account for purposes of evaluating whether we have exercised ordinary care.

**10.3 Warranty Disclaimer.** THE ACCOUNT AND ANY RELATED PRODUCTS OR SERVICES THAT WE PROVIDE, ARE PROVIDED "AS IS." WE DISCLAIM, TO THE EXTENT PERMITTED BY LAW, ALL EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TRADE USAGE, TRADE PRACTICE, OR NONINFRINGEMENT.

**10.4 Limitation of Liability.** IN NO EVENT SHALL WE BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS), REGARDLESS OF WHETHER THEY ARE FORESEEABLE. THE PRECEDING LIMITATIONS APPLY TO ALL CLAIMS, REGARDLESS OF WHETHER ASSERTED IN CONTRACT, TORT, OR OTHERWISE.

**10.5 Force Majeure.** We are not liable for losses due to interruption of communications, computer facilities, and failure of



equipment, emergency conditions or other circumstances beyond our control.

**10.6 Refusal to Take Action.** Except as otherwise required by law, we may refuse to take any action for any reason, including, but not limited to, the right to refuse to violate applicable laws, rules or regulations.

**10.7 Third Party Claims and Disputes Among Owners and Others.** You agree that we will not be liable for, and you will hold us harmless from, claims arising out of third party inquiries about the existence and status of your account or whether any checks drawn on your account will clear. We may, but have no obligation to, respond to such third party inquiries, requests, or claims from any party other than an owner. We are not responsible for taking action over owner disputes. We may choose what to do if there is a claim or dispute on your account. For example, we may: (i) continue to honor Transactions as permitted by this Agreement or we may close your account, (ii) place a hold on your account until any claim or dispute is resolved to our satisfaction, (iii) comply with any legal process we receive regarding any one of your accounts, including garnishments, levies, attachments, forfeitures, seizures, subpoenas, tax levies and withholding orders, search warrants and other requests for information, and any other type of judicial, administrative or legal process or order, (iv) honor any claim that we determine to be justified, even if doing so results in an Overdraft on your account, (v) impose a charge for any third party claim or dispute among owners that we receive, or (vi) pay any claimed or disputed funds into court and ask the court to decide who is entitled to them. We may honor any legal process regardless of where or how we receive it and regardless of which branch your account is associated with. We may apply a separate cutoff time to legal process. Our security interest and Setoff rights will take precedence over any legal process. We are not required to decide the merits of any third party claim or owner dispute. We may not give you advance notice of these actions. You are responsible for our costs and expenses in any of these circumstances.

**10.8 Breaches.** In the event of a security breach with respect to your customers' information, our sole and exclusive obligation will be to inform you of the breach and to provide reasonable assistance in mitigating the effects thereof.

**10.9 Checks.** We are not responsible for information contained on the back of checks that you issue or deposit.

**10.10 Authority in Regard to Individual Accounts.** If your account is an individual account (e.g., a sole proprietorship), your death or legal incompetence does not revoke our authority with regard to items drawn on or deposited to your account until we have actual knowledge thereof and a reasonable opportunity to act (and we may, even with knowledge of your death, pay checks drawn before death for up to ten (10) days after the date of death).

## SECTION 11 –YOUR GENERAL OBLIGATIONS

**11.1 Review Statements and Communications.** You agree to promptly review communications, notices, Statements and other information when made available to you. Please use online access we make available to keep track of current activity in your account.

**11.2 Standard of Reasonable Care.** You agree to use reasonable care in using and handling your account, in safekeeping your blank checks, in writing checks (including checks issued in replacement of previously issued items) and authorizing transfers from your account, and in reviewing your Statements.

**11.3 Your Personnel.** You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, contractors, and third party service providers, including persons granted signature authority on your accounts and personnel who are permitted to initiate and/or give us instructions with respect to your entries (collectively, "Your Personnel"). We are entitled, without further inquiry or investigation, to assume that the actions of Your Personnel are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls (including separation of duties for statement review and other activities) that will prevent and/or allow the prompt detection of fraud or other unauthorized activity by Your Personnel. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of Your Personnel.

**11.4 Safeguarding Your Account.** You agree to safeguard your checks (whether blank or completed), debit and ATM cards, and user ID and passwords. You also agree to protect the computers and mobile devices used to access your account. You agree to notify us immediately if any of your checks (whether blank or completed), cards, user IDs, passwords, computers or mobile devices is lost, stolen or accessed by unauthorized persons. You acknowledge and agree that services, such as positive

pay services, are available that can assist in protecting your account. We recommend that you consider using such services. If a loss occurs which could have been prevented through the use of such services, you will be deemed to have assumed such risk of loss and your failure to use the service shall be deemed negligence contributing to the loss.

**11.5 Electronic Security.** You are solely responsible for maintaining adequate security and control over your user IDs, passwords and computer systems. You should not communicate sensitive information to us via unencrypted email, including your account number. You agree to keep and to require Your Personnel keep your user IDs and passwords secret and you agree to prevent unauthorized access to your computer systems. You agree to notify us immediately if your user IDs or passwords are lost or stolen or if you believe someone else has discovered your user IDs or passwords or if you suspect there has been a breach of your computer system. You should change your user IDs and passwords whenever any person with access to them transfers to a new assignment, leaves your employ or is no longer authorized to use them or if you believe that security of your user IDs or passwords has been compromised. We also recommend that you regularly change your user IDs and passwords. We are authorized to act on, to release your account information to, and to accept as your authentic instructions, any instructions given to us by, any person who has entered a user ID and password assigned to you. If a security breach occurs, unless our internal security is proved to have been breached, there shall be a presumption that your security has been breached.

**11.6 Compliance with Law and Rules.** You: (i) are responsible for complying with applicable laws, rules and regulations in using your account and in making deposits thereto and transfers therefrom, this includes your agreement not to initiate Transactions that violate the laws of the United States (**IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC**); (ii) agree not to use your account in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us to investigation, prosecution or legal action; (iii) agree not to use your account for unlawful internet gambling. We may block any Transaction that we identify as a restricted Transaction under the Unlawful Internet Gambling Enforcement Act of 2006 or other applicable law; and (iv) agree to be bound by the rules of the National Automated Clearinghouse Association and other relevant clearinghouse associations as in effect from time to time, to the extent that we process Transactions for you that are subject to those rules. If we provide you with our “Compliance Update for ACH Originators” you agree to comply with it, as revised and provided to you from time to time.

**11.7 Indemnity.** You agree, to the fullest extent permitted by law, to indemnify, defend and hold us harmless from and against all third party claims asserted against us that arise out of or are related to: (i) our receipt, handling, presentment, payment or return of any item drawn on or deposited in your account (including our status as a “reconverting bank” in respect of substitute checks and our retention of items past our midnight deadline); (ii) our maintenance of your account; (iii) us following your requests or instructions (including stop payment orders); (iv) your breach of this Agreement or any other agreement; or (v) your acts or omissions. We have no right to be indemnified for our own gross negligence or willful misconduct. This provision shall survive the termination of this Agreement. We may deduct our losses, costs and expenses for these matters from your account.

**11.8 Errors or Mistakes.** You agree to notify us immediately if we credit your account in error or by mistake or if you receive funds from us in error or by mistake. You have no rights in those funds and you agree to return them to us promptly. If you choose to communicate with us via email, we strongly suggest that you encrypt those communications using a protocol we can accommodate. You assume all risks of using unencrypted communications.

**11.9 Required Notices.** You agree to promptly and directly notify us of any change in (i) address; (ii) state of organization; (iii) type of organization; (iv) Customer name or assumed business name(s); (v) change in management or in the Members of the company; or (vi) change in any other aspect of your company that directly or indirectly relates to any agreements between you and us.

## SECTION 12 –MISCELLANEOUS

**12.1 Additional Legal Rules; Modification.** This Agreement shall be construed to vary by agreement under applicable law, to the maximum extent permitted by law. If a provision of law cannot be varied by agreement, that provision of law shall supersede the conflicting variation to the minimum extent required by such law. Additional limitations on our obligations stated herein are provided under law.

**12.2 Invalidity.** If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other term hereof. If any term is held to be unreasonable in time, scope, or otherwise, it shall be construed by limiting it to a minimum extent so as to be enforceable.

**12.3 Entire Document.** This Agreement supersedes any previous terms and conditions applicable to your account (but does not supersede agreements for services for which the parties have executed written agreements, provided, however, that the provisions of this Agreement shall not be deemed superseded by other agreements, even if those agreements contain general contract integration clauses, to the extent that this Agreement contains additional protections for the parties).

**12.4 Governing Law.** This Agreement, your account and the deposits you make will be governed by federal laws and regulations, applicable clearinghouse rules, and such additional rules, regulations and policies (including banking days and cutoff times) as we may establish from time to time. To the extent, if any, that state law is applicable to this Agreement, Nebraska state law (excluding conflict-of-law principles) shall apply. Any actions arising out of or related to this Agreement shall be commenced and maintained solely and exclusively in the federal or state courts located in the county and state where our nearest branch is located to you. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**12.5 Waivers.** No waiver of the terms of this Agreement by us will be effective unless signed by one (1) of our authorized officers. We reserve the right to waive the enforcement of any of the terms of this Agreement with you and with respect to any Transaction or series of Transactions. Any such waiver will not affect our right to enforce any of our rights with respect to our other customers, or to enforce any of our rights with respect to later Transactions with you, and is not sufficient to modify the terms and conditions of this Agreement on a going forward basis.

**12.6 Interpretation.** Where this Agreement grants us certain rights, they should be considered to do so only to the extent permitted by law. This Agreement should not be considered to imply that we may take actions prohibited by applicable law. Limitations on our liability in this Agreement do not apply to the extent they are prohibited by applicable law. Capitalized words contained in this Agreement are defined terms. The headings and captions in this Agreement are for your convenience and are not part of our defined words. This Agreement says we “may” do certain things. We may not be required to do those things. This Agreement uses the words “include,” “includes” and “including.” What follows those words are only examples, not a comprehensive or exclusive list of what is included. As used in this Agreement, the term “including” means “including, but not limited to. This Agreement indicates we may “assume” certain things, and you agree those things will be considered true unless you prove otherwise. Unless the context indicates otherwise, reference to an “item” may be any form of paper or electronic instructions, which may include a check, draft, electronic Transaction, remotely created check or account deposit.

**12.7 Third Party Providers.** We are entitled to use such agents, contractors, service providers, networks and other third parties as we may deem appropriate in maintaining your account and processing Transactions in connection therewith.

**12.8 Course of Dealing.** Our course of dealing with you will not add to our legal obligations to you. We may discontinue any such course of dealing at any time without notice.

**12.9 Copies.** You agree that we may maintain a copy of this Agreement and any and all other documentation related to your account in electronic form and that we may destroy the originals. You agree that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original and you waive any objection to our use of such copies.

**12.10 Checking Account Subaccounts.** For regulatory accounting purposes, all checking accounts will consist of two (2) subaccounts: a “transaction account” and a “nontransaction account.” All deposits and withdrawals are presented against the transaction account for payment. We aggregate the two (2) subaccount balances for purposes of balance requirements, interest (if any) and service charges (if any) applicable to your account. We may transfer from time to time all or a portion of the balance in the transaction account to the nontransaction account. We also may transfer up to six (6) times each monthly statement cycle all or a portion of the balance in the nontransaction account to the transaction account. The terms and conditions of this Agreement apply to your checking account as a whole, without reference to the subaccounts.

**12.11 Setoff.** To the fullest extent permitted by law, we shall have a lien and right of setoff against any funds you have in

this account or in any other account which you may have with us for purposes of satisfying any liability, indebtedness or obligation you owe to us (including Overdrafts and fees). You grant us a security interest in such funds and in any items in the process of collection to secure payment and performance of, all liabilities, indebtedness and obligations that you may now or hereafter owe to us (whether sole, several, joint, joint and several, absolute or contingent, due or to become due, liquidated or unliquidated, secured or unsecured). We are authorized to exercise against the entire amount of the account whatever setoff or other rights we may have with respect to any one (1) of you, regardless of which of you is in default and irrespective of your contributions to the account. You agree not to pledge or grant a security interest in your account without our consent. If we consent (which we are not obligated to do), our setoff and security interest rights will have priority over the rights of any third party unless we expressly agree otherwise in a writing executed by an authorized officer.

**12.12 Garnishment, Legal Process, Disputes.** You agree that we will not be responsible for complying or refusing to comply with any garnishment, levy, subpoena or other judicial, administrative or legal process we receive regarding your account, any funds in your account, or any item deposited thereto. We may impose a reasonable processing charge in such circumstances. In addition, if the foregoing should occur or if there is any dispute regarding your account (such as a dispute regarding ownership of the account or the authority of any person to take action on the account), or your instructions to us regarding the account (such as stop payment orders), you agree that we may place a hold on your account (i.e., not allow further payments, transfers, or withdrawals) until the situation is resolved to our satisfaction. We are not required to determine the merits of any such disputes. In any of the preceding situations, we may interplead or take similar action with respect to the funds in dispute and you agree to reimburse our costs and expenses (including reasonable attorneys' fees) in doing so and agree that we may charge the same to your account.

#### **Notice With Respect to ACH Credit Transactions and UCC Article 4A.**

Credit given by us with respect to an Automated Clearing House (ACH) credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment via such entry (i.e., the originator of the entry) shall not be deemed to have paid the amount of such entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH Transactions involving your account, we are not required to give next day notice of receipt of an ACH item and we will not do so. However, we will notify you of the receipt of payments in the periodic statements we provide to you. We may accept on your behalf payments to your account which have been transmitted through one (1) or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the State of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and us, Nebraska law shall govern.

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