

# **TransPecos Banks Consumer Deposit Account Agreement**

***Last updated: March 20, 2024***

This TransPecos Banks Consumer Deposit Account Agreement, together with the TransPecos Banks Consumer Deposit Agreement Disclosures (“Disclosures”), constitutes the “Agreement” that governs your demand deposit account (“Account”) with TransPecos Banks, SSB, a Texas state savings bank (“Bank”) established in connection with the Program specified in the Disclosures. The Bank is a member of the Federal Deposit Insurance Corporation (“FDIC”) chartered under the laws of the State of Texas. The Program Partner, as defined in the Disclosures, is the company responsible for assisting the Bank with the administration of your Account on behalf of the Bank.

Read this Agreement carefully and retain it for your future reference. By opening and continuing to hold an Account with us, you agree to be bound by this Agreement, including any updates. This Agreement becomes effective when you open or use an Account or allow it to be used or, if this Agreement is provided to you to replace a previous agreement governing your Account. You do not need to sign this Agreement.

You agree to be responsible for all uses of your Account(s). This Agreement also refers to and includes other disclosures we may provide to you, including, but not limited to, the Disclosures. This Agreement, together with the Disclosures and any other amendments or agreements related to the Account that you may receive from us or Program Partner, establishes our and your rights and obligations with respect to the Account.

When you see the words “we,” “us,” or “our” in this Agreement, it refers to Bank and any of Bank’s affiliates, successors, or assignees. When you see the words “you” or “your,” it refers to the individual who opens an Account and in whose name an Account is maintained on our records, any joint owner of each Account, any Authorized User, and any other authorized agent. When you see the word “person,” it includes both natural persons and legal entities. When you see references to an Account (including the use of or authorization to use an Account), it includes the Account, Account number, and any associated debit card, debit card number, and debit card person identification number (“PIN”).

**IMPORTANT NOTE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTIONS AND YOUR RIGHT TO A JURY. THE TERMS OF ARBITRATION AND THE WAIVER APPEAR IN THE SECTION OF THIS AGREEMENT TITLED “ARBITRATION AND WAIVERS” BELOW.**

## **1 Account Overview**

### **1.1 How to Contact Us**

You may contact us with any questions or concerns regarding your Account, including to access your statements and transaction history, by following the instructions set forth in the Disclosures. Most communication between you and us will be handled by the Program Partner. Please refer to the “How to Contact Us” section of the Disclosures to find the specific contact information related to this Program and other matters related to your Account.

To opt out of mandatory arbitration, please contact us at [customercare@transpecos.bank](mailto:customercare@transpecos.bank).

## 1.2 Account Type and Eligibility

The Account is a demand deposit account used to hold your deposits and make certain types of payments and transfers.

To open an Account, you must have a physical address within the fifty (50) United States, or the District of Columbia, be at least 18 years of age, have a U.S. physical address or military address (APO or FPO), and have a valid Social Security Number or Tax Identification Number. The Disclosures may contain additional eligibility requirements that may be applicable to the Program.

This Account is only available to individuals for personal, family or household purposes and may not be opened by a business in any form or used for business purposes.

We may set such eligibility criteria or decline to open an Account for any reason permitted by law in our sole discretion. We are not liable for any liabilities, costs, expenses (including reasonable fees and expenses for attorneys, experts and consultants, reasonable out-of-pocket costs, interest and penalties), settlements, fines, fees, penalties, equitable relief, judgments, and damages ("Losses") resulting from refusal of an Account relationship. We may also limit the number of Accounts that you have in our sole discretion. Your Account is subject to security and fraud prevention restrictions at any time, with or without notice.

## 1.3 FDIC Insurance

When we receive the funds that you deposit to your Account, the funds will be held and accounted for so as to be eligible for FDIC insurance up to \$250,000, inclusive of any other deposits you may already hold at Bank in the same ownership capacity and subject to applicable limitations and restrictions of such insurance.

## 1.4 Online or Mobile Access To Your Account

When you open an Account, you may also be enrolled in an online banking service or mobile application (collectively, "Online Banking Application") made available by Program Partner that you can use to access your Account, view information about your Account and conduct certain transactions. You may also be given access to various features through the Online Banking Application separate from your Account. If you cancel your enrollment in the Online Banking Application at any time, we may close your Account as detailed below.

Unless otherwise specified in this Agreement, the Online Banking Application and its features are governed by Program Partner's additional terms of service and other agreements, as well as Program Partner's privacy policy, which may be provided to you separately or made available through Program Partner's website or mobile application. Please review these documents carefully because by using the Online Banking Application, you agree to be bound by them. The Online Banking Application is not provided or controlled by Bank or this Agreement.

## 1.5 Paperless Account

To open an Account, you must agree to go "paperless." This means that you must (a) provide us with and continue to maintain a valid email address and (b) accept electronic delivery of all communications that

we need or decide to send you in connection with your Account by agreeing to the ESIGN Consent Document provided in the “Paperless Account” section of the Disclosures.

## 1.5 Joint Accounts

We may allow for the joint ownership of your Account. The ability to open a joint account may not be available in connection with the Program. Please refer to the “Joint Account Applicability” section of the Disclosures to see if joint accounts are available through the Program.

“Joint Accounts” are Accounts that are owned by two people. All deposits made into a Joint Account are owned by both people. Joint Accounts are not community property and are not held as tenants in common. Funds in Joint Accounts are payable to or at the direction of any accountholder (regardless of who contributed the funds or the amount each accountholder contributed). For all Joint Accounts, except for certain retirement benefits like Social Security, if one person dies, the money in the Joint Account then belongs only to the survivor and not to the estate of the deceased person. The owners of the Joint Account are considered “joint tenants” with right of survivorship.

Any owner of a Joint Account may: (a) tell us to pay a person or company; (b) withdraw, transfer funds, or close the Joint Account without the other owner's consent; (c) pledge the Joint Account to us as collateral for a debt owed to us; and/or (d) deposit checks payable to any joint owner. In addition, we may pay all or any part of the funds in a Joint Account to a court or government agency if we receive a garnishment, levy, or similar legal process that identifies any of the Joint Account owners.

Your liability as an owner of a Joint Account is joint and several. This means that we can enforce this Agreement against, as well as seek repayment of any amount owed from, any one of you, some of you, or all of you, including for any overdrafts.

Each Joint Account owner can enter a stop payment order on any payments or other orders of withdrawal, even if authorized by the other accountholder. If one joint owner requests that we not pay items authorized by a different accountholder, we may restrict the Account and refuse to pay all items (including items authorized by the owner making the request), but we are not required to do so. If we restrict the Account, we may not release the restriction unless all Joint Account owners agree in writing to remove it. No request to restrict the Joint Account will affect items that we paid before the request. If we decide not to restrict the Account, all joint owners remain responsible for items paid from the Account.

## 1.6 Authorized Users

You may be given the ability to designate individuals (“Authorized Users”) whom you authorize to access your Account and/or conduct transactions through your Account. If so, you are responsible for determining the scope of rights and capabilities that the Authorized User will have with respect to your Account and to establish appropriate controls to ensure the Authorized User’s activities remain within the authorized scope. If you permit another person to have access to your Account number, debit card number, PIN, Online Banking credentials (including passwords), or other Account information, we will treat this as if you have authorized such person to Access your account, and you will be liable for all transactions and fees incurred by such person, even if they exceed the authorization granted.

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By adding an Authorized User, you understand that any transaction authorization, instruction, or any other action concerning your Account that your Authorized User engages in will be deemed authorized by you and valid, even if it exceeds the authorization you granted, and we are under no obligation to investigate the authorization, instruction, or activity. You agree that you are responsible for all authorized transactions initiated and fees incurred by use of any of your Account. Transactions will be considered unauthorized only after you notify us that the person is no longer authorized to use the Account as described below. To the fullest extent permitted by applicable law, you hereby waive demand, presentment, protest, notice of protest or dishonor, and all other notices relating to any instrument made, drawn, or endorsed in your name, when such instrument is signed, accepted, or endorsed by an Authorized User, and agree that you will not hold us liable for acting upon any such authorization, instruction, or activity.

We reserve the right to terminate any Authorized User's access to the Account for any reason and without advance notice.

We may ask you to provide additional documentation evidencing an Authorized User's authority to take actions with respect to the Account and you agree to provide such information promptly upon request.

You must notify us immediately of any change in the status of any Authorized User. We will continue to treat all actions taken by an Authorized User as authorized by you until you revoke the Authorized User's access to your Account by notifying us using the contact information in the "How to Contact Us" section of the Disclosures. Until we have been properly notified in writing of any change in such authorization and we have had a reasonable period of time to act upon such notice, we may pay, apply, or otherwise honor and charge your Account, without inquiry, without limit as to amount, and without regard to the application of the proceeds thereof all orders for payment or transfer of money for whatever purpose. No action taken by us before we receive proper notification in writing of any such change and have had a reasonable period of time to act upon such notice will be affected by any such notice.

### **1.7 How To Open an Account**

You may open an Account by following the instructions in the "How To Open an Account" section of the Disclosures.

Each person completing the Account opening process or any Account opening requirements represents and warrants that he, she, or they:

- Has received a copy of this Agreement and agrees to be bound by and comply with it.
- Is/are authorized to execute all documents or otherwise complete our requirements in his, her, or their stated capacity;
- Has/have furnished all documents or other information necessary to demonstrate that authority;
- Will furnish other documents and complete other requirements as we may request of him, her, or them;

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- Certifies that, to the best of his, her, or their knowledge, all information provided to us is complete and correct; and
- Has/have read this Agreement and agree to be bound by and comply with its terms.

We may refuse to recognize any document affecting the Account that appears to us to be incomplete, improperly executed, or fraudulent.

**Important information about procedures for opening a new Account:** To help the government fight the funding of terrorism and money laundering, federal law requires all financial institutions to obtain, verify and record information identifying each person who opens an Account, or establishes a customer relationship with us. This means that when you open an Account, we will ask for information that allows us to identify you, including your name, legal address, Social Security Number or Tax Identification Number, date of birth, and other information that will allow us to identify you. We may also ask to see your identifying documents, such as a driver's license or passport. You agree to provide such documents promptly upon request and that you may not be permitted to open an Account if you do not provide such documentation.

We may also ask for additional information and documents to help us verify your identity after an Account has been opened for you. You agree to provide any such information or documents promptly upon request and that we may close your Account if you fail to do so.

### **1.8 Minimum Deposits and Balances**

Your Account may have minimum opening deposits or ongoing minimum balances that you must maintain to avoid fees. Please refer to the "Minimum Deposits and Balances" section of the Disclosures to find the minimum deposits and balances that may be applicable to your Account.

### **1.9 Interest Disclosures**

Your Account may be interest-bearing. Please refer to the "Interest Disclosures" section of the Disclosures for the interest rate disclosures applicable to your Account.

### **1.10 Authorized Agents**

"Authorized agents" include Authorized Users and any person who has signed a signature card; is authorized by this Agreement, any resolution or otherwise to access or use the Account; or has been authorized or permitted by you or by another authorized agent to provide information or documents to us in connection with the Account or otherwise to act on your behalf in dealing with us.

You agree that your authorized agents are bound by this Agreement to the same extent as you and any Authorized User and that you will use reasonable efforts to ensure that all authorized agents comply fully with this agreement. You also agree that we may, at our discretion, request information and documentation concerning any authorized agent to verify their identity before we permit them to access your Account.

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You further agree that we may honor and rely upon the instructions or the execution, delivery and/or negotiation of any check, substitute check, draft, withdrawal order, instruction or similar instrument (collectively, "items") and any document provided by any of your authorized agents, regardless of the necessity or reasonableness of such action, the circumstances of any transactions affected by such action, the amount of the transaction, the source or disposition of any proceeds, and regardless of whether the relevant items or documents result in payment to the authorized agent or an individual obligation of the authorized agent or anyone else.

You will not deny the authenticity, validity, binding effect, and authorization of any action we take in reliance upon the instructions, items or documents provided by an authorized agent unless you have previously revoked such person's authority to access or use your Account by notifying us as specified in the Disclosures and we have confirmed our acceptance of your notice.

### **1.11 Power of Attorney and Attorneys-In-Fact**

We may allow you to give another person (known as an "attorney-in-fact") power of attorney to act on your behalf for your Account. You must obtain written approval from us before we will honor any power of attorney. Email us at the email address specified in the Disclosures for approval if you plan to create a power of attorney. Please be aware that we require a reasonable amount of time to review your request. If approved, we will honor orders and instructions from your attorney-in-fact until (a) we receive a written revocation from you; (b) we are notified that you or your attorney-in-fact have died or become incapacitated; or (c) we terminate our acceptance of the power of attorney. We may terminate our acceptance at any time, for any reason and without notice to you, and you will not hold us liable for any Losses (as defined in Section 1.2) that may result from such action.

### **1.12 Death or Incapacitation**

You agree that if we receive notification or if we have reason to believe that you have died or become legally incapacitated, we may place a hold on your Account and refuse all transactions until we know and have verified the identity of your heir, devisee, or successor. Until we receive notice and any required proof of death or incapacitation, we may continue to accept deposits and process transactions to your Account. Your estate will be responsible for repaying us for any tax liability resulting from payment of your account balance to your estate. You will hold us harmless for any actions we take based on our reasonable belief that you have died or become incapacitated. If certain payments originating from government entities are deposited into your Account after your death, we may be required to return those payments to the originator upon notice from the government entity.

### **1.13 Our Relationship With You**

By opening an Account, we are establishing an Account relationship with you and committing to act in good faith and to exercise ordinary care in our dealings with you as defined by the Uniform Commercial Code as adopted by the State of Texas. This Agreement and the Account relationship do not create a fiduciary relationship or any other special relationship between you and us.

### 1.14 Third-Party Service Providers

We work with one or more third-party service providers, including Unit Finance Inc. (“Unit”) and Program Partner, in connection with your Account. You acknowledge that we, in our sole discretion, may use third-party service providers to fulfill any of our obligations under this Agreement, including by performing functions that you have otherwise authorized us to perform, such as processing transactions, handling account operations including account set-up, transaction monitoring, and customer support, and providing technological connection to Program Partner and Bank. Each of these third-party service providers may in turn use their own third-party service providers.

### 1.15 Confidentiality and Our Privacy Policy

Information about your Account and your transactions is collected by us, Program Partner, and our service providers, including Unit. To the extent this information relates to a particular individual, this information is used and disclosed by the Party that collected the information according to its published privacy policy, available at <https://www.transpecos.bank/privacy> (for Bank), <https://www.unit.co/privacy-policy> (for Unit), and the Program Partner’s privacy policy, available at the “Confidentiality and Our Privacy Policy” section of the Disclosures.

### 1.16 Cell Phone, Text, and Other Communications

By providing us with your cellular phone or other wireless device number, you are expressly consenting to receiving communications at that number – including but not limited to prerecorded or artificial voice message calls, text messages, app notifications and calls made by an auto-dialer – from us and our affiliates, service providers, and agents (including Unit and Program Partner). This consent applies to all telephone numbers that you provide us now or in the future. The telephone or mobile service provider may charge for these calls or messages. We are not liable for delayed or undelivered messages.

You agree that we may record or monitor any communications for quality control or training purposes.

### 1.17 Our Business Days

Our business days are Monday through Friday, excluding federal holidays and banking holidays observed in San Antonio, Texas.

## 2 Your Account Responsibilities

We strive to keep your Account secure and provide you with tools and services to help you manage your Account. However, there are certain things you should do to protect your Account and your funds.

### 2.1 Notify Us If Your Information Changes

You must notify us immediately if there is a change to your name, the names of any individual or Authorized User with access to your Account, telephone number, legal address, email address or any other information you have provided us so that we can continue to service your Account and provide you with statements and important notices concerning your Account. We are not liable for any Losses resulting from your failure to notify us of any change to such information.



## 2.2 Keep Track of Your Transactions and Available Balance

It is important that you keep track of your transactions and the funds in your Account that are available for you to use (“Available Balance”) by reviewing your transaction history. It is also important to understand that your Available Balance may not reflect transactions you have authorized that have not yet been presented to us for payment.

You are also responsible for reviewing your Account statements as they are made available to you for errors or unauthorized activity. If you identify an error or unauthorized activity, you must notify us promptly. Please refer to the applicable sections below for information concerning applicable deadlines for notifying us if you believe there are errors or unauthorized activity affecting your Account.

## 2.3 Protect Your Account Information

It is important that you protect your Account information to prevent unauthorized transactions and fraud. Keep your Account number, debit card, debit card number, personal identification number (“PIN”), checks, and statements secure at all times, and be careful about who you share this information with. If Program Partner provides you with access to the Online Banking Application, make sure to also keep your computer/mobile device and all login credentials and security codes secure at all times and avoid accessing the Online Banking Application when others can see your screen.

If any of the above items are lost, stolen, or compromised, notify us immediately to keep your losses to a minimum. Please refer below for information and applicable deadlines for notifying us of losses or theft.

# 3 General Rules Governing Your Account

You understand and agree that any payment instruction or activity performed using any Online Banking Application made available by Program Partner will be deemed authorized by you and valid and we are under no obligation to investigate the instruction or activity. Use of the Account is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions.

## 3.1 Deposits Into Your Account

You may make deposits into your Account using any of the methods described in the “Deposits Into Your Account” section of the Disclosures. We do not charge you any fees for making deposits.

**We do not accept (i) cash deposits in person or by mail at any Bank branches or offices, (ii) paper check deposits, or (iii) foreign currency deposits:** We are not liable for deposits of any kind that you mail to us, including if it is lost in transit, lost in the mail, or otherwise not received by us or returned to you.

- **Cash:** If you mail us a cash deposit, we will send the cash back to you.
  
- **Paper Checks:** If you mail a paper check to us, including personal or business checks, money orders or cashier’s checks, we may apply the check to any negative balance you have on your Account or send the check back to you.



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- **Foreign Currency:** If you send us any deposit in a foreign currency, including in the form of cash or check, we will send it back to you.

We will send all items back to the address we have for you. We are not liable if you do not receive the items.

You may only deposit with us funds that are immediately available, which under applicable law are irreversible and are not subject to any lien, claim or encumbrance.

For more information about deposits and when funds from a deposit will be made available to you, please refer to Sections 3.2 and 3.6 below.

### 3.2 Our Funds Availability Policy

It is our policy to make deposits to your Account available for withdrawal according to the table below, except where limited by us herein. Please refer to the “Our Funds Availability Policy” section of the Disclosures to see the deposit methods that are applicable to your Account.

If you make a deposit before our cut-off time (as set forth in the table below) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after our cut-off time or on a day we are not open, we will consider the deposit to be made on the next business day that we are open.

If you make or receive a deposit via...	The cut-off time is...	And those funds are available...
Internal transfers between eligible Accounts managed by the Program (see Section 3.4)	N/A	Immediately
Direct Deposits and other ACH transfers initiated by a third party	6:00 PM ET	Same business day
Domestic wire	6:00 PM ET	Same business day
Cash deposit at in-network ATM	3:00 PM ET	Next business day
Checks (via the Check Deposit Services)	5:00 PM ET	Within five (5) business days

The availability of funds transferred to your Account from a connected bank account held by another financial institution follows different rules. Please refer to the section titled “Transfers To or From Connected U.S. Bank Accounts” below for more information on connected accounts.

### 3.3 Problems that Could Occur With Deposits

If a deposit or transfer to your Account is returned or rejected by the paying financial institution for any reason, or if there is an error or mistake involving a deposit or transfer, we may deduct the amount of the deposit, transfer, or error without prior notice to you. If there are insufficient funds in your Account at the time, your Account may become overdrawn. Please refer to the section below concerning overdrafts for more information.

### 3.4 Transfers To or From Accounts You Have With Us

If you hold multiple accounts with us that are managed by the same Program, we may permit you to transfer funds from one Account in your name to another account in your name (an “internal transfer”). The Program may impose limits on such transfers. Please refer to the “Deposits Into Your Account” and “Withdrawals From Your Account” sections of the Disclosures for any limits that apply to your Account.

### 3.5 Withdrawals From Your Account

You may withdraw funds up to the amount of your Available Balance less applicable fees using any of the methods and subject to the limits described in the “Withdrawals From Your Account” section of the Disclosures.

Before permitting a withdrawal or other transaction, we may request that you provide us with additional information or documentation that we deem necessary to confirm your identity or to prevent illegal activity. We may refuse the transaction if we cannot confirm your identity or suspect illegal activity, as further discussed below.

### 3.6 Transfers To or From Connected U.S. Bank Accounts

You may be provided with the ability to link another U.S. bank account you have with another financial institution (“connected bank account”) to your Account with us to make inbound and/or outbound ACH transfers between the connected bank account and your Account through the Online Banking Application. An “inbound transfer” moves funds into your Account from a connected bank account. An “outbound transfer” moves funds from your Account to a connected bank account.

For inbound transfers you initiate through the Online Banking Application, we will debit your connected bank account and credit your Account with us on the next business day after you initiate the transfer. The funds you transfer to your Account will typically be made available to you by the fifth (5<sup>th</sup>) business day after the business day that we debited your Account.

For outbound transfers, we will debit your Account with us and request the financial institution that holds your connected bank account to credit your connected bank account no later than the next business day after you initiate the transfer. The financial institution that holds your connected bank account determines when those funds will be made available to you in your connected bank account.

The cut-off time for both inbound and outbound transfers is 6:00 PM ET. Transfer requests that you make on a business day before the cut-off time will be considered initiated on that day. Transfer requests that you make after the cut-off time, or on a day that is not a business day, will be considered initiated the following business day that we are open.

There are limits to the dollar amount of both inbound and outbound transfers you can make. Please see the “Withdrawals From Your Account” and “Deposits Into Your Account” sections of the Disclosures for the withdrawal and deposit limits applicable to your Account.

You agree that you will only attempt to connect a bank account for which you have the authority to transfer funds. You may only link a bank account that is a deposit account, such as a checking, savings, or money market account.

### 3.7 Checks Drawn Against Your Account

You may be given the ability to write checks drawn against your Account. Please refer to Section 6.3 for information concerning check writing and obtaining checks for your Account.

### 3.8 No Illegal Activity, Internet Gambling and Right to Refuse Transactions

You must not use your Account for any illegal purposes or, regardless of whether it is legal or illegal, for online gambling of any sort, including any betting transaction, purchase of lottery tickets, casino chips, or off-track betting and wagering. We may deny any transaction or refuse to accept any deposit that we believe is related to illegal activity, online gambling, or for any other reason at our discretion. However, in the event that a charge or transaction described in this section is approved and processed, you will still be liable for the charges.

### 3.9 Funds Transfer Services

Funds transfers to or from your Account will be governed by the rules of the funds transfer system(s) through which the transfers are made ("system rules"), including Fedwire, the National Automated Clearing House Association ("NACHA"), the Clearing House Interbank Payments System ("CHIPS"), and the Society for Worldwide Interbank Financial Telecommunication ("SWIFT"), as applicable based on the type of funds transfer. We are under no obligation to honor, in whole or in part, any payment order or other instruction that could result in our contravention of applicable law, including requirements of the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the Financial Crimes Enforcement Network ("FinCEN"). For additional information on electronic fund transfers generally, see below. For additional information specifically on (a) ACH transactions, (b) check deposits and mobile deposit services, and (c) wire transfers, see the relevant titled sections below.

If your Account receives incoming ACH transactions (either credits or debits) or wire transfers initiated from within or outside of the United States, both you and we are subject to the Operating Rules and Guidelines of NACHA, or the rules of any wire transfer system involved, and the laws enforced by OFAC.

We reserve the right to temporarily suspend, block or reject the processing of any transaction, to freeze or block certain funds or the full balance of any Account, account owner, account beneficiary, or Authorized User (each, a "Restricted Person"), in each case to the extent we deem reasonably necessary to comply with any notice, order, regulation, rule, requirement or restriction issued or promulgated by OFAC (collectively, the "OFAC Rules"). To comply with OFAC Rules, we may temporarily suspend processing of a transaction or the availability of a balance for greater scrutiny or verification, which may result in delayed settlement, posting and/or availability of funds. If we determine there is a violation or potential violation of the OFAC Rules, or if we cannot satisfactorily resolve a suspected or potential violation, we may reject such transaction or freeze or block the subject funds or full balance of any Account or Restricted Person. If we block the subject funds and you believe you have adequate grounds to seek the return of any blocked funds, it is your sole responsibility to pursue the matter with the appropriate governmental authorities. Please see the OFAC website for the procedures and form required to seek a release of blocked funds.

You agree to observe (and ensure all Authorized Users observe) all anti-money laundering and exchange control laws and regulations, including economic and trade sanctions promulgated by OFAC, in relation

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to any funds transfer, and to use all reasonable efforts to assist us to do likewise. You warrant that the information given to us by you and your Authorized Users is accurate. We may disclose any information given to us that we in our sole discretion think necessary or desirable to disclose to combat, prevent, or investigate issues arising under anti-money laundering laws, economic sanctions, or criminal law in accordance with applicable law and our privacy policy.

Sometimes legal, regulatory, or governmental authorities require additional information, either in respect of individuals, entities, or particular transactions. You warrant that you will promptly supply all such information, which any such authority may require, and/or which we may be required to supply, in relation to the individual, entity, or particular transaction.

If you, or any Authorized User, breaches any such laws or regulations, you irrevocably agree that we may retain any monies or funds transmitted to us pursuant to this Agreement and/or not fulfill any funds transfer request if we are required to take or refrain from such action by any legal, regulatory, or governmental authority or if we reasonably believe that such action may violate any laws or regulations, and such monies will not bear interest against us. You further agree that we may pay such monies to the appropriate legal, regulatory, or governmental authority, when required by law or regulation.

### **3.10 How We Post Transactions To Your Account and Determine Your Available Balance**

#### **3.10.1 Posting Overview**

To understand how we post transactions to your Account, it is important to first understand the difference between your Available Balance and your ledger balance. Your Available Balance is the amount of money you have in your Account at any given time that is available for you to use. Your ledger balance is the balance in your Account at the beginning of the day after we have posted all transactions to your Account from the day before. We use your Available Balance to authorize your transactions throughout the day and determine whether you have sufficient funds to pay your transactions. Here are some additional terms that are helpful to understand:

- Credit and debit – A credit increases your balance and a debit decreases your balance.
- Post or posted – Transactions that are paid from or deposited to your Account. Posted transactions will either increase or decrease both your Available Balance and your ledger balance.
- Pending – Transactions that we receive notice of and are scheduled to post to or be debited from your Account. Pending debit transactions affect your Available Balance, but not your ledger balance. Pending deposit transactions do not affect your Available Balance or your ledger balance.
- Card authorization and settlement – When you use a debit card to make a purchase, the transaction occurs in two steps: card authorization and settlement. Card authorizations reduce

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your Available Balance, but not your ledger balance. Settlement reduces both your Available Balance and your ledger balance. Card authorizations are removed when settlement occurs or after a certain number of days have passed, whichever is sooner. See below for more information about card authorizations and settlement.

### **3.10.2 Posting Order**

For all transactions other than checks, we receive the transactions throughout the day and post them to your Account as they are received and in the order that they are received. Note that for debit card transactions, we consider the transaction received when we settle the transaction with the merchant, which may occur several days after you authorize the transaction. See below for additional information concerning how debit card transactions are processed.

For checks, all checks we receive during the day are posted to your Account during overnight processing prior to the start of the next business day, unless the check cannot be processed through automated check processing. If a check cannot be processed through automated check processing, it will be posted to your Account on the second business day. We post checks to your Account from the smallest dollar amount to the largest dollar amount regardless of the order in which we received the checks.

We may change the order in which we post transactions to your Account upon reasonable prior notice to you and in compliance with applicable law. It is therefore important for you to keep track of the deposits you make and the transactions you authorize to make sure there are sufficient funds in your Account to cover all transactions and any applicable fees.

### **3.10.3 Determining Your Ledger Balance and Available Balance**

Your Account's ledger balance is the current balance of cleared and settled funds in your Account at the beginning of each business day. Your Account's Available Balance is the ledger balance reduced by debits we receive throughout the day and increased by credits we make available to you. Specifically, to determine your Available Balance, we start with your ledger balance at the beginning of the business day, add any pending credits or deposits that we make available to you, and subtract any card authorizations and pending debits, other than checks drawn on your Account. All transactions other than checks drawn on your Account are debited or credited from your Available Balance in the order received. Checks drawn on your Account that we receive throughout the day may not reduce your Available Balance but will be reflected in your ledger balance at the start of the next business day (or the second business day, for checks that cannot be processed through automated check processing).

Your balance is accessible through the Online Banking Application or as otherwise indicated herein. Keep in mind that your Available Balance may not reflect every transaction you have initiated or previously authorized. For example, your Available Balance will not include checks drawn on your Account or transactions you have authorized that we have not received.

### **3.10.4 Debit Card Authorizations**

If you are issued a debit card with your Account, you will be able to use your card to pay for goods or services or to conduct other transactions with a merchant. When you engage in a transaction with a merchant using your debit card, the merchant will request preauthorization ("card authorization") for

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the transaction. If there are sufficient available funds in your Account, we will approve the request and reduce your Available Balance for as long as the card authorization remains on your Account.

Your Available Balance will generally be reduced by the amount of the card authorization. If you use your card at a restaurant, your Available Balance may be reduced by the amount of the card authorization plus up to an additional twenty percent (20%) of that amount, to account for potential tipping.

The card authorization will remain on your Account until we settle the transaction with the merchant ("settlement"). In most cases, the card authorization will automatically be removed after three (3) days even if settlement has not yet occurred. However, for certain merchants such as hotels and rental car companies, it may take up to thirty (30) days for the card authorization to be removed.

It is important to understand that the merchant controls the timing of card authorizations and the timing and amount of settlement. A merchant may request settlement after the card authorization has been removed from your Account. This means that if you use the funds in your Account after the card authorization has been removed and the merchant later requests settlement, your Account may become overdrawn. Similarly, if a merchant requests settlement for an amount that is larger than the card authorization (for example, if you tip more than 20% or have gas, hotel, or rental car charges that exceed the authorization amount), your Account may become overdrawn. Therefore, it is important that you keep track of your transactions and your balance. Once we have approved a card authorization, we cannot stop the transaction and you will be responsible for repaying any negative balance that may occur.

### **3.11 Statements**

Statements will periodically be provided to you through the Online Banking Application if your Account is not inactive. You will receive a statement monthly if you have transactions on your Account during the statement period. If there were no transactions on your Account, we will provide you with statements on a quarterly basis. You will not receive paper statements.

### **3.12 Errors On Your Account and Limitations of Liability**

You should carefully review your statements and promptly report to us any errors or unauthorized activity by email at the address indicated in the "How to Contact Us" section of the Disclosures. You **MUST** report errors and unauthorized activity within sixty (60) days after we make the statement available to you. Unless otherwise specified in this Agreement or required by law, if you do not provide us with timely notice of an error or unauthorized activity, we will deem our records concerning your Account and all cards to be correct and we will not be liable to you for any Loss you suffer relating to the error or unauthorized activity. You further agree that we may debit or credit your Account at any time and without notice to you to correct an error or address unauthorized activity.

Please refer to the relevant section below for additional information concerning errors and unauthorized transactions involving electronic fund transfers and related limitations of liability.

### **3.13 Overdrafts, Nonsufficient Funds and Negative Balances**

An overdraft occurs when you do not have enough money in your Account to cover a transaction, but we pay it anyway. If the Available Balance in your Account is not sufficient to cover any transaction you have

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authorized, we may choose to pay the transaction resulting in a negative balance on your Account (“Overdraft Transaction”), return the transaction, or refuse to process the transaction. Overdraft Transactions may not be available in connection with the Program. Please refer to the “Overdraft Services” section of the Disclosures for information specific to your Account.

### **3.14 Closing Your Account and Account Suspensions**

You can close your Account at any time and for any reason by contacting us as set forth in the “How to Contact Us” section of the Disclosures. We reserve the right to refuse your request if you have a negative balance on your Account. We recommend that you transfer or withdraw any funds you may have in the Account prior to submitting a request to close the Account to avoid delays in receiving your funds.

We may also suspend or close your Account, or suspend or disable any service or feature of your Account, at our discretion with or without notice. This includes if we believe you are using your Account for fraudulent or illegal purposes; in violation of law or regulation, this Agreement, or any other agreement you may have with us or our third-party service providers; if multiple transactions are returned on your Account; or if you otherwise present undue risk to us or our third-party service providers.

Accounts with a zero balance will continue to be charged applicable fees until you request to close your Account. We may close an Account with a zero balance on the fee period ending date or at month end without prior notification to you. Once an Account is closed (either by you or us), no fees will be assessed on the Account.

We may also close your Account if you have not made any deposits or withdrawals from your Account in over twelve (12) months. In addition, canceling your enrollment in the Online Banking Application with Program Partner will result in our closure of the Account.

If your Account is closed with a balance greater than \$1.00, we will return any funds you may have in the Account, minus any outstanding fees, to you by paper check to the address we have on file. We may return any funds you have in the Account, minus any outstanding fees, by ACH transfer to another bank account only if you authorize us to return such funds via ACH transfer prior to Account closure. We reserve the right not to return the funds to you if the balance in your Account is \$1.00 or less.

We are not responsible to you for any damages you may suffer as a result of the closure or suspension of your Account.

The closure of your Account or termination of this Agreement does not impact any right or obligation that arose prior to closure or termination, or any right or obligation that, by its nature, should survive termination (including all indemnifications obligation by you, our limitations of liability, and all terms governing arbitration).

### **3.15 Dormancy, Inactivity and Unclaimed Property**

State law and our policy govern when your Account is considered dormant. Your Account is usually considered dormant if you have not accessed your Account, communicated to us about your Account or otherwise shown an interest in your Account within the period of time specified under applicable law. Each state has varying laws as to when an account becomes dormant, and we may be required to send



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the balance in your Account if it becomes dormant to the state of your last known address. We will make reasonable efforts to contact you if required by applicable law before transferring the remaining balance of your Account to the applicable state. After we surrender the funds to the state, you must apply to the appropriate state agency to reclaim your funds. You can avoid the surrender of your funds by simply conducting transactions, contacting us about your Account as set forth in the “How to Contact Us” section of the Disclosures, or replying to any abandoned property notices we may provide to you.

We may also place your Account in an inactive status if you have not had any transactions, contacted us about your Account, or replied to any notices we may provide to you for at least six (6) months. If your Account becomes inactive, you may not receive statements or be able to conduct certain transactions. Inactive Accounts must be reactivated. Contact us as set forth in the “How to Contact Us” section of the Disclosures to reactivate your Account.

### **3.16 Account Fees and Fee Schedule**

There may be fees associated with your Account. Please refer to the “Fee Schedule” section of the Disclosures for the fees applicable to your Account.

You agree to pay all fees and charges applicable to your Account. All fee amounts will be withdrawn from your Account and will be assessed regardless of whether you have sufficient funds in your Account, except where prohibited by law. Fees are subject to change at any time. We will provide you advance notice of any changes where required by law.

## **4 Electronic Fund Transfers**

Your Account allows you to withdraw funds up to the Available Balance or make deposits through electronic fund transfers (“EFTs”) subject to any applicable transaction limits on your Account. EFTs are transactions that are processed by electronic means and include, among others, ACH transfers, debit card transactions, ATM transactions, and direct deposits. This Section provides you with information and important disclosures and terms about the EFTs that are permitted on your Account. You may also receive additional services through Online Banking Application made available by Program Partner, that allow you to initiate EFTs to and from your Account that are not described in this Agreement. In the event Program Partner provides such additional services, you will be provided separate agreements and disclosures applicable to those services by Program Partner.

### **4.1 Types of EFTs Supported by Your Account**

Depending on the features made available for your Account in connection with the Program, your Account may support the following types of EFTs:

- Direct deposits from your sources of income.
- Transfers between your Account and a connected bank account.
- Transfers from your Account to another person’s bank account using the P2P Transfer Service.

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- Transfers to or from your Account by a merchant or other third party to whom you have provided your Account routing number and account number.
- Purchases or other transactions using your debit card.
- ATM deposits or withdrawals using your debit card.

Please refer to the “Types of EFTs Supported by Your Account” section of the Disclosures for the EFTs available for your Account.

### **4.2 Limitations on EFTs**

There are limitations on the frequency and dollar amount of transactions you can make to or from your Account. These limits are different for each type of transaction. For limits that apply to transactions that credit or deposit funds into your Account, please refer to the “Deposits Into Your Account” section of the Disclosures. For limits that apply to transactions that debit or withdraw from your Account, please refer to the “Withdrawals From Your Account” section of the Disclosures. These limits may change from time to time.

If you have been issued a debit card for your Account, there may also be transaction limitations that apply to your use of the card. Please refer to the Disclosures provided to you for information on any limitations and other terms.

### **4.3 Your Right to Receive Information and Documentation of Your Transactions**

You will receive information and documentation concerning any EFTs that debit or credit your Account in the following ways:

- **Statements:** We will provide you information about each transaction that debits or credits your Account on your statements. Please refer above for information about statements. You may also be able to view your transaction history and other information through Online Banking Application made available by Program Partner. You may also contact us as set forth in the “How to Contact Us” section of the Disclosures for information concerning your Account or your transactions.
- **Direct Deposits:** If you receive a direct deposit into your Account at least once every sixty (60) days from your employer or another person or company, you can check if the deposit has been made by contacting us as detailed in the “How to Contact Us” section of the Disclosures.
- **Receipts:** If you are provided with a debit card, you can get a receipt at the time you make a withdrawal at an ATM or a purchase at a point-of-sale terminal. However, for certain small dollar transactions you may not receive a receipt.

## 4.4 Preauthorized Transfers, Stop Payments, and Notices of Varying Amounts

If you authorize us or another company or person to withdraw from your Account on a regular basis (such as when you sign up for “autopay” to pay a recurring bill or invoice), it is called a “Preauthorized Transfer.” You may ask us to place a stop payment on Preauthorized Transfers. We may charge a fee to stop payment on Preauthorized Transfers (as outlined in the “Fee Schedule” section of the Disclosures). In addition, the person or company you are paying should notify you when the amount of a particular withdrawal will be different from the amount of the last withdrawal.

### 4.4.1 How to Request a Stop Payment

If you authorize a third party to take payments from your Account on a regular basis through a Preauthorized Transfer, you can place a stop payment on those payments by contacting us as set forth in the “How to Contact Us” section of the Disclosures at least three (3) business days before the next payment is scheduled to be made. To be effective, a stop payment request must be received within this time specified, and with all of the information required below, so as to give us a reasonable opportunity to act on it.

You must provide: (a) your name, (b) your Account number, (c) the company or person taking the payments, and (d) the date and amount of the Preauthorized Transfer you wish to stop. If you want all future payments from that company or person stopped, be sure to tell us that as well. If you do not provide us with the correct information, such as the correct payee or the correct amount of the payment you wish to stop, we may not be able to stop the payment.

In the event you make your stop payment request via telephone, we may ask that you put your request in writing and email it to us within fourteen (14) days after your notification to stop such payments with the information directly above. If we request your confirmation in writing and your written stop payment notification is not received within fourteen (14) days, the payment in question will be honored as originally authorized and future payments will not be stopped.

### 4.4.2 Our Liability if We Fail To Stop a Preauthorized Transfer

If you order us to stop one Preauthorized Transfer three (3) business days or more before the payment is scheduled and provide us with all information requested, and we do not do so, we will be liable for your losses or damages proximately caused by the failure. However, we will not be liable if the company or person initiating the payments changes the dollar amount of the payment or makes other changes that cause us not to recognize it as the payment you requested be stopped.

It is your responsibility to ensure that all of the information supplied in your notice is correct and to promptly inform us of any inaccuracies. We are not liable for failing to stop payment if you have not given us sufficient information or if your stop payment request comes too late for us to act on it. If we stop payment, you will indemnify, defend and hold us and our officers, directors, shareholders, employees, successors, predecessors, service providers, representatives, principals, agents, assigns, parents, subsidiaries and/or insurers (collectively, “Indemnified Parties”) harmless from any and all Losses (as defined in Section 1.2) imposed on or sustained, incurred or suffered by any of the Indemnified Parties, whether actual or threatened or proven or not, in respect of any and all actions,

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audits, arbitrations, assertions, suits, mediations, litigations, proceedings, examinations, hearings, inquiries, investigations, charges, complaints, claims (including counter or cross-claims), or demands by whosoever asserted ("Claims"), without regard to the merit or lack thereof, arising from or related in any way to our refusal to pay the transaction on which you stopped payment. The foregoing indemnity will not apply if and to the extent expressly prohibited or restricted by the laws or regulations governing you or your Account.

### 4.4.3 Notices of Varying Amounts

If a Preauthorized Payment varies in amount, the person or company you are paying should tell you ten (10) days before each payment when it will be made and how much it will be. You may be given the option to only get this notice when the payment will differ by more than a certain amount from the previous payment, or when the amount will fall outside certain limits that you set.

## 4.5 Our Liability for a Failure To Complete A Transaction

If we fail to complete a transaction on time or in the correct amount when properly instructed by you in accordance with this Agreement, we will be liable for damages proximately caused by the failure or error. However, there are some exceptions. We are not liable, for instance:

- If the Available Balance in your Account is not sufficient to complete the transaction through no fault of ours;
- If the ATM you use does not have enough cash;
- If the failure is due to an equipment or system breakdown, such as a problem with the Online Banking Application made available by Program Partner that you knew about before you began a transaction;
- If the failure was caused by a refusal or delay by another financial institution to process the transaction, by any merchant or other person to honor your debit card, by a failure of an ATM or network to process your transaction, or a similar act by a third party;
- If the failure was caused by an Act of God, fire or other catastrophe, or any other cause beyond our control despite reasonable precautions we have taken;
- If your funds are not available due to a hold or if your funds are subject to legal process;
- If we do not complete a transaction because we or one of our service providers has reason to believe the transaction may be unauthorized or illegal; or
- If your Account is closed or inactive.

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There are additional limitations on our liability in this Agreement and there may be additional exceptions or limitations stated in our or our service providers' other agreements with you or as permitted by law.

### **4.6 Your Liability for Unauthorized EFTs**

Contact us immediately as set forth in the "How to Contact Us" section of the Disclosures if you believe that an unauthorized EFT has occurred or may occur concerning your Account, Account number, checks, debit card, debit card number, PIN, or Online Banking Application login credentials have been lost, stolen, or compromised.

You could lose all the money in your Account (and any bank accounts with other institutions you have connected to your Account) if you do not notify us immediately if any of these things occur.

For unauthorized EFTs, your liability will be as follows if you notify us of the loss:

- If you tell us within two (2) business days after learning of the loss, theft, compromise, or unauthorized use of your Online Banking Application login credentials (or, where applicable, your Card, Card information, or PIN) you can lose no more than \$50 if someone uses your Account without permission.
- If you do NOT tell us within two (2) business days and we can prove that we could have prevented the loss had you contacted us, you could lose as much as \$500.00.
- If your statement shows EFTs that you did not make and you do NOT contact us within sixty (60) days after the FIRST statement on which the problem or error appeared, you may not get back any money lost after the sixty (60) days if we can prove that you contacting us could have prevented the losses.

We can extend these time periods in our sole discretion if extenuating circumstances (such as a long trip or hospital stay) kept you from notifying us.

If you believe an unauthorized transaction has occurred concerning your Account, or if your debit card or Online Banking Application login credential have been lost or stolen, contact us at indicated in the Disclosures.

### **4.7 In Case of Errors or Questions About Your EFTs**

Contact us as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on a statement or receipt. Contact us pursuant to the "How to Contact Us" section of the Disclosures pertaining to the type of EFT for which you have noticed an error or are requesting additional information. We must hear from you no later than sixty (60) days after we send the FIRST statement on which the problem or error appears. You must provide us with the following information:

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- Your name and Account number.
- A description of the error or the EFT you are unsure about and why you believe it is an error or you need more information.
- The dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing by email within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will provide you the results and correct any error promptly. If we need more time, we may take up to forty-five (45) days—or ninety (90) days for Accounts open less than thirty (30) days or foreign-initiated transactions — to investigate your 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 Accounts open less than thirty (30) days, we may take up to twenty (20) business days to credit your Account for the amount you think is in error.

We will provide 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 by email. You may ask for copies of the documents that we used in our investigation.

## **5 P2P Transfer Service**

### **5.1 Description of P2P Transfer Service**

If enabled for your Account, the P2P Transfer Service will allow you to send funds from your Account to another person's bank account through the Online Banking Application. The P2P Transfer Service may not be available in connection with the Program. Please refer to the "P2P Transfer Services Applicability" section of the Disclosures for information specific to your Account.

You will need to know the routing number and account number for the other person's bank account to initiate a transfer. The P2P Transfer Service only permits you to send funds. You may not use it to receive or request funds. All transfers made through the P2P Transfer Service will be executed as ACH transfers in accordance with the rules promulgated by NACHA. Your use of and access to the P2P Transfer Service is separate and apart from your ability to facilitate transfers via ACH to a connected bank account (see above).

### **5.2 Transaction Deadlines**

Our cut-off time for P2P transfer requests is 6:00 PM ET on business days. Requests received before our cut-off time will be processed that day. Requests received after our cut-off or on a non-business day will be processed the next business day. For purposes of P2P transfers, a "business day" is a day in which the

Federal Reserve Bank is opened to the public for carrying on substantially all of its business, other than a Saturday, Sunday, or legal holiday.

### 5.3 P2P Transfer Limits

There are limitations on the frequency and dollar amount of P2P transfers you can make from your Account using the P2P Transfer Service. These limits are described in the relevant section of the Disclosures. These limits may change from time to time.

### 5.4 Provisional Credit

You acknowledge that any credit given to the account of the person you are transferring funds to through the P2P Transfer Service will be provisional until the financial institution crediting that account receives final settlement of your funds. This means that the person you transfer funds to will not be considered paid by you until final settlement occurs, and any provisional credit given to that person by their financial institution before settlement occurs may be taken back if settlement does not occur.

### 5.5 Cancellation or Modification of Transfer Requests

Once you authorize a P2P transfer through the P2P Transfer Service, you will not be able to cancel or modify the transfer.

### 5.6 Prohibited Transactions and Rejection of P2P Transfers

You agree that you will not use the P2P Transfer Service to initiate transfers related in any way to online gambling, or that would violate any law or regulation. You further agree that you will only use the P2P Transfer Service to initiate transfers to consumer bank accounts. You may not use the P2P Transfer Service to transfer funds for any business purpose or to a business-purpose bank account.

We may block a transfer and/or take any other action we deem reasonable if we suspect that a transaction is unlawful, suspicious, related to online gambling, for a business purpose, or poses undue risk to us or any of our service providers. We will not be liable for any damages that arise if we block a transfer or take any other action pursuant to this paragraph.

### 5.7 Returned P2P Transfers

We will notify you by email or via the Online Banking Application of a transfer you have requested is returned to us no later than one (1) business day after the business day we receive notice of the return. We will not reattempt any transfer that is returned.

We reserve the right to suspend or terminate your access to the P2P Transfer Service if an excessive number of P2P transfers are returned.



## 5.8 Fees

You will pay for the P2P Transfer Service provided under the Agreement in accordance with the current schedule of fees described in the “Fee Schedule” section of the Disclosures. Fees may change from time to time upon written notice.

## 5.9 P2P Transfer Service Liability, Limitations on Liability & Indemnity

WE SHALL BE RESPONSIBLE ONLY FOR PERFORMING THE P2P TRANSFER SERVICE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT IF AVAILABLE IN CONNECTION WITH THE PROGRAM AND SHALL BE LIABLE ONLY FOR OUR GROSS NEGLIGENCE IN PERFORMING THIS SERVICE. WE SHALL NOT BE RESPONSIBLE FOR YOUR ACTS OR OMISSIONS (INCLUDING THE AMOUNT, ACCURACY, TIMELINESS OF TRANSMITTAL OR AUTHORIZATION OF ANY P2P TRANSFER REQUEST FROM YOU) OR THOSE OF ANY OTHER PERSON. WE ARE AUTHORIZED BY YOU TO PROCESS P2P TRANSFERS IN ACCORDANCE WITH THE INFORMATION THAT WE RECEIVE FROM YOU. YOU SHALL BE SOLELY RESPONSIBLE FOR THE INFORMATION YOU PROVIDE TO US, AND WE SHALL HAVE NO RESPONSIBILITY FOR ERRONEOUS DATA PROVIDED BY YOU. YOU WILL INDEMNIFY AND HOLD US HARMLESS FROM AND AGAINST ANY LOSS, CHARGE, LIABILITY, COST, FEE OR EXPENSE (INCLUDING ATTORNEYS’ FEES AND EXPENSES) WE SUFFER OR INCUR RESULTING FROM ANY THIRD-PARTY LAWSUIT, CLAIM, ARBITRATION OR OTHER ACTION, ACTUAL OR THREATENED, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

IN NO EVENT SHALL WE BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT LOSS OR DAMAGE THAT YOU MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSSES OR DAMAGES FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM OUR ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, WE SHALL BE EXCUSED FROM FAILING TO ACT OR DELAY IN ACTING IF SUCH FAILURE OR DELAY IS CAUSED BY LEGAL CONSTRAINT, INTERRUPTION OF TRANSMISSION OR COMMUNICATION FACILITIES, EQUIPMENT FAILURE, WAR, NATURAL DISASTER, EMERGENCY CONDITIONS, OR OTHER CIRCUMSTANCES BEYOND OUR CONTROL. NOTWITHSTANDING THE ABOVE, WE WILL REIMBURSE YOU FOR EXPENSES THAT ARE ASSESSED BY US OR PROGRAM PARTNER IN THE EVENT OF OUR FAILURE OR DELAY IN TRANSFERRING FUNDS SOLELY CAUSED US.

IN ADDITION, WE SHALL BE EXCUSED FROM FAILING TO TRANSMIT OR DELAY IN TRANSMITTING A P2P TRANSFER 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 MAY VIOLATE 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 OR BANK POLICY. SUBJECT TO THE FOREGOING LIMITATIONS, OUR LIABILITY FOR LOSS OF INTEREST RESULTING FROM OUR ERROR OR DELAY SHALL BE CALCULATED BY USING A RATE EQUAL TO THE AVERAGE FEDERAL FUNDS RATE SET BY THE FEDERAL RESERVE BANK FOR THE PERIOD INVOLVED. AT OUR OPTION, PAYMENT OF SUCH INTEREST MAY BE MADE BY CREDITING THE ACCOUNT RESULTING FROM OR ARISING OUT OF ANY CLAIM OF ANY PERSON WE ARE RESPONSIBLE FOR, ANY ACT OR OMISSION OF YOU OR ANY OTHER PERSON.

## 5.10 Inconsistency of Name and Account Number

You acknowledge that, if the name you provide to us of the person to whom you wish to transfer funds does not match the name on the bank account you enter through the P2P Transfer Service, the transfer may still be made based only on the account number. You are solely responsible for providing correct information for all P2P Transfer Service requests through the Online Banking Application.

## 5.11 Termination

We reserve the right to terminate, suspend, or modify the P2P Transfer Service, or your access to the P2P Transfer Service, at any time and for any reason.

You will remain responsible for all transactions that are initiated prior to any termination by you or by us and for any fees and charges incurred prior to the effective date of cancellation. Any unprocessed transactions including future dated and recurring transactions, will be cancelled as a result of termination or suspension of your P2P Transfer Service.

# 6 Check Deposits, Mobile Deposit Services, and Check Writing

As defined in the Check Clearing for the 21st Century Act (“Check 21”), a “check” is a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including substitute checks (see below) and travelers checks.

If enabled for your Account, you can only deposit checks into the Account using the mobile check deposit services (the “Check Deposit Services,” as further described herein) and only as made available in connection with your Account and in accordance with the terms of this Agreement and the Disclosures. The Check Deposit Services may not be available in connection with the Program. Please refer to the “Check Deposits, Mobile Deposit Services, and Check Writing Applicability” section of the Disclosures for information specific to your Account.

## 6.1 Substitute Checks and Your Rights

Federal rules for Check 21 allow banks to replace original checks with “substitute checks,” as defined in Check 21. Below are the details and your rights related to substitute checks.

### 6.1.1 Substitute Checks

To make check processing faster, federal law permits banks to replace original checks with “substitute checks.” These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: “This is a legal copy of your check. You can use it the same way you would use the original check.” You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other laws with respect to those transactions.

### 6.1.2 Your Rights Regarding Substitute Checks

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your Account or that we withdrew money from your Account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your Account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your Account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law. If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within ten (10) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than forty-five (45) days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your Account.

### 6.1.3 Claims for a Refund

If you believe that you have suffered a loss relating to a substitute check that was posted to your account, please contact us as set forth in the "How to Contact Us" section of the Disclosures. You must contact us within forty (40) days of the date that we delivered the substitute check in question or the Account statement showing that the substitute check was posted to your Account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and/or the following information to help us identify the substitute check: the account number, the check number, the name of the person to whom you wrote the check, the date paid, and the amount of the check.

Substitute checks should only be generated by banks during the check collection process. If you deposit a substitute check that was not generated or previously handled by us, you agree to provide the substitute check warranties as required by Check 21, and represent that the substitute check:

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- Is properly generated and accurately, clearly, and completely represents all the information on the front and back of the original check as of the time the original check was truncated;
- Bears a magnetic ink character recognition (MICR) encoded line that is suitable for automated processing in the same manner as the original check;
- Has not previously been paid by the drawee bank; and
- Is not fraudulent.

A breach of any Check 21 warranty may result in the substitute check being charged back against your Account.

## **6.2 Mobile Check Deposit Services**

If enabled for your Account, the Check Deposit Services allow you to make deposits to your Account from a compatible mobile device by scanning or photographing checks and delivering the images and associated deposit information to us or our designated processor. Please refer to the “Deposits Into Your Account” section of the Disclosures for information on whether Check Deposit Services are enabled for your Account. By using the Check Deposit Services, you agree to comply with all applicable laws and regulations and NACHA rules that apply to remote deposit check capture processing and ACH transaction processing.

### **6.2.1 Eligibility to Use the Check Deposit Services**

Accountholders adhering to all requirements described herein may be eligible to use the Check Deposit Services. Not all Accounts are eligible for the Check Deposit Services. We may terminate your use of the Check Deposit Services at any time at our sole discretion. You may also stop using the Check Deposit Services at any time. However, any images or information transmitted through your use of the Check Deposit Services will continue to be subject to this Agreement after termination. We may change our eligibility criteria at any time in our sole discretion with or without notice to you.

To use the Check Deposit Services on a mobile device, you must have an internet-enabled, compatible iOS or Android device with a camera and be enrolled in the Online Banking Application.

### **6.2.2 Eligible Items**

You agree that the only images you will scan or capture and deposit (“transmit”) to your Account through use of the Check Deposit Services will be Eligible Items. “Eligible Items” include paper items that are defined as “checks” or “certified checks” under Federal Reserve Regulation CC and other paper items not otherwise prohibited by this Agreement. You agree that images deemed to be Ineligible Items (see below) may not be transmitted to your Account and will be rejected by us. You further agree that the image of the Eligible Item transmitted to us will be deemed an “item” within the meaning adopted in the Uniform Commercial Code of the State of Texas.

### 6.2.3 Ineligible Items

You agree you will not use the Check Deposit Services to scan or deposit images of items that:

- Are not payable in United States currency;
- Are not drawn on a financial institution located in the United States;
- Are payable to someone other than you;
- Are savings bonds or traveler's checks;
- Are checks authorized over the telephone and created remotely;
- Are images of a check that never existed in paper form;
- Must be authorized or activated by us prior to being deposited;
- Have already been deposited by or returned to you;
- Are not legible or do not conform to our standards, as determined in our sole discretion;
- Are fraudulent, not authorized, suspicious or not likely to be honored;
- Are not dated, are post-dated, or are more than six (6) months old when transmitted;
- Do not comply with the requirements established from time to time by any applicable statute, regulation, regulatory agency, clearing house or association;
- We deem to be Ineligible Items herein or at any other time, with or without prior notice to you;
- Do not comply with the requirements of the Agreement; or
- Do not meet the Technical Requirements described below.

These items, collectively, are "Ineligible Items" under this Agreement, and they are not eligible for deposit into your Account via the Check Deposit Services.

#### 6.2.4 Image Capture, Transmission, Processing and Payment

All images you transmit to us using the Check Deposit Services must comply with the technical requirements we may specify from time to time (the “Technical Requirements”). You are responsible for all expenses you incur to meet the Technical Requirements. We reserve the right to change the Technical Requirements at any time without prior notice.

You are responsible for reviewing and validating the accuracy and completeness of any information you transmit to us, including the amount indicated on the item and the legibility of the image transmitted. You will only submit check images that meet our quality standards. You will not transmit an image or images of the same check to us more than once and will not deposit or negotiate, or seek to deposit or negotiate, such check or item with us or any other party.

You will be solely responsible for ensuring the quality, accuracy, and completeness of the images you transmit using the Check Deposit Services. You will be solely responsible for the selection, use, and operation of the mobile device you use to transmit images.

We can attempt to process, collect, present for payment, return, or re-present images you attempt to transmit in any way we choose that is allowed by law.

We can also reject any transmission for any reason at our option and without liability. An image will be deemed received when you receive confirmation from us that we have received the image. Receipt of such confirmation does not mean that the transmission was an Eligible Item or accepted.

If an image does not meet our requirements, we can also at our option:

- Process the image as received for payment;
- Correct the image or its accompanying data and process the corrected image for payment;
- Process the deposit for payment in another format as allowed; or
- Debit (chargeback) your Account for the amount indicated in the image.

Successfully transmitting an image to us does not mean that your transmission and deposit are complete. All of your images are subject to our further verification prior to being accepted for deposit and payment. Do not destroy the item transmitted as an image until you see the full deposit amount posted when you view your transaction history via the Online Banking Application.

#### 6.2.5 Limits for the Check Deposit Services

There may be limitations on the frequency and dollar amount of transactions you can make using the Check Deposit Services. Please refer to the “Deposits Into Your Account” section of the Disclosures for information on transaction limitations that will apply to your use of the Check Deposit Services.

### 6.2.6 Required Endorsements on Items You Deposit and Managing the Original Item

When you transmit an image to us, you will still have possession of the original item. To prevent an additional submission of the item for payment, you are required take the following steps:

- Before you transmit an image to us, you must endorse the original item being captured for transmission by signing the back of the original item and writing the words “For mobile deposit only at TransPecos Banks, SSB” either above or below your signature.
- After you transmit the image to us, you should write the date and the words “Deposited by Check Deposit Services” on the front of the item and keep the original item in a safe place.

You must not deposit or attempt to cash the item after transmitting the image to us.

### 6.2.7 Availability of Your Deposits Using the Check Deposit Services

You acknowledge that items transmitted using the Check Deposit Services are not subject to the funds availability rules contained in Regulation CC. Funds deposited using the Check Deposit Services will ordinarily be made available to you for withdrawal within five (5) business days after the day you make your deposit. See below for information concerning how we determine the day your deposit is made. We may make such funds available sooner or later based on the length and extent of your relationship with us, transaction and experience information, and other factors as we, in our sole discretion, deem relevant.

### 6.2.8 Cutoff Times for Deposits Using the Check Deposit Services

If you successfully transmit an image to us before the cut-off time for the Account on a business day that we are open, we will consider that day to be the day of your deposit. After that time or on a day we are not open, we will consider the deposit to be made on the next business day that we are open. See Section 3.2 for cut-off times.

### 6.2.9 Errors

You agree to notify us of any suspected errors regarding items transmitted through the Check Deposit Services right away, and in no event later than sixty (60) days after the first Account statement on which the error appears is made available to you. Unless you notify us of an error within sixty (60) days after the applicable Account statement is made available to you, all deposits made through the Check Deposit Services that appear on that statement will be deemed correct and we will have no obligation to investigate any claim of error you make.

### 6.2.10 Chargeback

We can charge back your Account or any other deposit account you have with us for the amount of any item, its image or any other representation of an item that is:



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- Returned to us; or
- Rejected by us for any reason, including when we believe it has been previously submitted or deposited with us or with anyone else.

This is true even if you have made withdrawals against any amount we have credited to your Account for the deposited item that was returned or rejected.

We can also charge fees connected to the chargeback as described in this Agreement and any other agreements you have with us.

### 6.2.11 Fees

There may be fees associated with your use of the Check Deposit Services. Please refer to the “Fee Schedule” section of the Disclosures for all fee information.

### 6.2.12 Security

You are responsible for protecting your mobile device against unauthorized use as well as any Losses from unauthorized access. You will protect your mobile device, set up strong passwords, and take other reasonable security precautions to protect your mobile device from unauthorized use. Always keep your passwords secret and remember that neither we nor any of our employees or agents will ever ask for your password. If you receive a communication from anyone requesting that you provide your password, do not respond. We are not responsible for any of these security precautions. If another person uses the Check Deposit Services with your mobile device, you will be responsible for their actions on the Account as well as anyone else they allow to use your mobile device. This will be true even if you did not want, or agree to, their use.

If your mobile device is lost or stolen, or if you believe there has been unauthorized activity involving the Check Deposit Services, tell us immediately by contacting us as set forth in the “How to Contact Us” section of the Disclosures and promptly change your password.

### 6.2.13 Check Deposit Services Disruption

The Check Deposit Services might not be available from time to time due to maintenance, technical problems, or other reasons. We are not responsible if the Check Deposit Services are not available. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur.

We reserve the right to change, suspend, discontinue, or limit your use of the Check Deposit Services, in whole or in part, immediately and at any time without prior notice to you.

### 6.2.14 Ownership and License

You agree that we and our service providers, as applicable, retain all ownership and proprietary rights in the Check Deposit Services, associated content, technology, and website(s). Your use of the Check Deposit Services is subject to and conditioned upon your complete compliance with this Agreement.

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Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Check Deposit Services. Without limiting the restriction of the foregoing, you may not use the Check Deposit Services:

- In any anti-competitive manner;
- For any purpose which would be contrary to our business interests (as deemed by us in our sole discretion); or
- To our or our service providers' actual or potential economic disadvantage in any aspect.

You may not copy, reproduce, distribute, or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide the Check Deposit Services.

### 6.2.15 Indemnification and Limitation of Liability

You will indemnify, defend, and hold the Indemnified Parties, including, without limitation, any of our services providers responsible for administering the Check Deposit Services, harmless from any and all Losses imposed on or sustained, incurred or suffered by any of the Indemnified Parties, including, without limitation, any of our service providers responsible for administering the Check Deposit Services, whether actual or threatened or proven or not, in respect of any and all Claims, without regard to the merit or lack thereof, arising from or related in any way to (a) your breach of the Agreement, (b) a return of a check deposit made using the Check Deposit Services due to incomplete or incorrect information provided, a closed account, or insufficient funds, or (c) fraudulent activity.

YOU AGREE YOUR USE OF THE CHECK DEPOSIT SERVICES AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES, INCLUDING OUR SERVICE PROVIDERS) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS", "WHERE IS", AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE WILL (i) MEET YOUR REQUIREMENTS, (ii) BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (iii) PROVIDE ACCURATE OR RELIABLE RESULTS.

You agree that neither we nor any service provider we use to facilitate the Check Deposit Services will be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages, including damages for loss of profits, goodwill, use, data or other Losses resulting from the use or the inability to use the Check Deposit Services incurred by you or any third party arising from or related to the use of, inability to use, or the termination of the use of the Check Deposit Services, regardless of the form of action or claim (whether contract, tort, strict liability or otherwise), even if we have been informed of the possibility thereof.

### 6.2.16 Termination

We may terminate your access to the Check Deposit Services for any or no reason, including due to your material breach of this Agreement, your fraudulent actions or omissions with respect to your use of the

Check Deposit Services, if you become insolvent or file for bankruptcy, or if there is a change in applicable law or the rules that govern your use of the Check Deposit Services.

#### 6.2.17 Third-Party Beneficiary

You acknowledge and agree that any third-party service provider we use to facilitate your use of the Check Deposit Services is a third-party beneficiary of this Agreement and that the third-party service provider has the right to directly enforce your obligations of this Agreement against you.

### 6.3 Check Writing and Getting Checks for Your Account

Your Account may permit you to write checks drawn against your Account. To obtain checks for your Account, you must purchase them from a third-party check printing service. You can also request to have a check printed and mailed on your behalf through our check printing and mailing service.

The ability to write checks drawn against your Account may not be available for the Program. Please refer to the "Check Deposits, Mobile Deposit Services, and Check Writing Applicability" section of the Disclosures for information specific to your Account.

#### 6.3.1 Check Printing and Mailing Service

You may request a check drawn against your Account to be printed and mailed on your behalf. In order to request that a check be printed and mailed for you, you must specify the entity or person you are paying, the payee's address, the check date, and the amount to be paid. No checks may be post-dated and all checks sent through the service may be deposited or cashed by the recipient immediately upon receipt.

The face value of the check will be drawn from your Account at the time that the check is presented for payment and is processed. You are solely responsible and liable for ensuring that you maintain a balance in your Account that is sufficient to fully cover the face value of any checks that you request for us to print and send. Checks must be written in U.S. dollars.

You acknowledge that when you request a check through the service, you authorize us and our third-party service providers to sign the check on your behalf, in the capacity as your duly authorized representative. We and our third-party service providers are entitled to use, at our discretion, a digital signature that you provide to us or other mark that we generate on your behalf, which you hereby authorize and designate as your authorized signature(s). By undertaking any check printing and mailing services on your behalf, in no way are we or our service providers intending to be liable on the check.

You are solely responsible for, and we and our third-party service providers have no obligation to verify, any information that you provide to us in order to print your checks, including the payee, payee address, and the face amount, even if you provide us with duplicate check instructions. If you provide any incorrect information, we and our third-party service providers are entitled to honor your instructions, even if the error could have been detected by us or our third-party service provider. We will not print or accept any special instructions for checks that are printed and mailed on your behalf.

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You authorize us to modify and standardize the address that you provide to us, including in the event of a typographical error, or if the address needs to be updated to reflect an “NCOA” (national change of address) at our discretion.

We reserve the right to reject or cancel, and we may delay in processing, any check requests that you make for any reason, including if we determine that the address that you have provided for the payee is incomplete or otherwise invalid.

We are not liable for checks that are lost, destroyed, damaged, or delayed in the mail. Checks will be shipped by USPS First Class mail, or by any other method in our sole discretion. We cannot guarantee the shipping method or delivery date of any check. If possible, we will provide you with the delivery status of your check, but we do not and cannot guarantee the accuracy of any delivery status. We may, at our discretion, void any check that you request through the service that has not been presented for payment within one hundred eighty (180) days of our issuance of the check and shall have no liability for doing so, without the need to obtain any further consent from you or provide any notice to you.

### 6.3.2 Check Stock Purchased by You

Any check stock you purchase must meet our standards, including paper stock and dimensions. We may refuse to process any checks that do not meet our standards or cannot be processed by our equipment. Certain check features, such as security features, may impair the quality of a check image.

All checks you write must be written in U.S. dollars and may not include any special instructions, such as “void after 30 days” or “void over \$100.” We may pay checks you write without inquiry or liability, even if the check (1) has special instructions written on the check; (2) is stale dated (i.e., the check date is more than 6 months in the past); (3) is post-dated (i.e., the check is dated for a future date); or (4) is not dated.

Contact us pursuant to the “How to Contact Us” section of the Disclosures for information concerning the minimum standards checks must meet for us to accept them. We are not responsible for losses that result from your failure to follow our check standards.

## 6.4 Requesting Stop Payment On A Check

You may request a stop payment on a check drawn against your Account, or cancel a stop payment request you previously provided to us, if you allow us a reasonable amount of time to act on it. You may request a stop payment on a check, or cancel a prior stop payment request, by contacting us as set forth in the “How to Contact Us” section of the Disclosures. Your Account may be subject to a fee for each check you request a stop payment on. Please refer to the “Fee Schedule” section of the Disclosures for information concerning fees.

When making a request, you must provide us with (a) your Account number, (b) the check number or range of check numbers, (c) the check amount or amounts, (d) the payee name or names, and (e) the date or dates on the check. We are not responsible for stopping payment on a check if you provide incorrect or incomplete information.

Any stop payment of a check you request is valid for twelve (12) months. We may pay a check once a stop payment request expires. You must make a new stop payment request if you do not want it to

expire, and we will treat each renewal of a stop payment request as a new request subject to any stop payment fees that apply to your Account.

You acknowledge that you will be liable to the holder of a check drawn against your Account even if we return the check due to your stop payment request. You agree to indemnify us against any claim made by any party arising from our return of a check pursuant to your stop payment request.

## **7 Wire Transfers**

The Account may permit domestic wire transfers through the Online Banking Application made available to you by Program Partner. Wires may not be available in connection with the Program. Please refer to the “Wire Transfers Applicability” section of the Disclosures for information specific to your Account.

### **7.1 Types of Wire Transfers Supported by Your Account**

Your Account may support receiving and/or initiating domestic wire transfers. Refer to the “Deposits Into Your Account” and “Withdrawals From Your Account” sections of the Disclosures to determine whether you will be able to receive wires, initiate wires, both, or neither.

We may select any means for the transmission of funds that we consider suitable. We may make use of correspondents, agents, subagents, and funds transfer and communication systems. Such third parties will be deemed your agents, and we will not be liable for any errors, delay, misdelivery, or failure of delivery by any of them except as required by applicable law.

### **7.2 Limitations on Wire Transfers**

There are limitations on the frequency and dollar amount of wire transactions you can make to or from your Account. For limits that apply to transactions that credit or deposit funds into your Account, please refer to the “Deposits Into Your Account” section of the Disclosures. For limits that apply to transactions that debit or withdraw from your Account, please refer to the “Withdrawals From Your Account” section of the Disclosures.

There may be limits on the beneficiaries who can receive a wire transfer you initiate from your Account. These limits may change from time to time in our sole discretion.

### **7.3 Cut-Off Times for Wire Transfers**

If a wire request is received before the cut-off time on a business day and verified through our security procedures outlined in the section below titled “Security Procedures,” funds will be processed the same business day. If it is received or verified through our security procedures at or after the cut-off time or on a non-business day, funds may be processed the next business day. Section 3.2 contains the cut-off times.

We may treat any wire transfer request received at or after our cut-off time as if it was received that business day, or we may treat it as if it were received at the opening of the next business day.

## 7.4 Security Procedures

You agree and consent to the use of certain security procedures by us to confirm the validity of any wire transfer request made pursuant to this Agreement. You understand the security procedures are not designed to detect errors in the content of the wire transfer request or to prevent duplicate transfers. Some elements of the procedures will vary, depending upon the method used to initiate a wire transfer. You hereby agree that your utilization of any security procedure established hereunder will constitute your agreement to its use and affirmative acknowledgment of its commercial reasonableness.

You further agree that any wire transfer request that is acted upon in good faith by us in compliance with these security procedures, whether in fact authorized by you, will constitute an authorized wire transfer.

## 7.5 Liability for Incorrect Wire Transfers

You are responsible for providing us with the accurate name and account number for wire transfers, and we are responsible for transmitting money to the account number you provided.

When you provide us with a name and account number for us to process a wire transfer, we may make payment based solely on the account number, even if the account number identifies a person different from the named beneficiary. We or an intermediary bank may send a wire transfer to an intermediary bank or beneficiary's/designated recipient's bank based solely on the bank identifying number, even if the payment order indicates a different name. You should be very careful when providing the account number for a wire transfer.

If you have provided us with the wrong account number, there may be no way to correct the error or retrieve the funds. You agree that you will pay the amount of a wire transfer even in such circumstances. You are responsible for all Losses resulting from an incorrect account number or your misidentification of the beneficiary/designated recipient.

If you think a wire transfer is wrong or if you need more information about a wire transfer, you must contact us as set forth in the "How to Contact Us" section of the Disclosures as soon as possible and no later than fourteen (14) days after you receive your Account statement. If you do not tell us about an error, we will not have any obligation to pay interest on the amount of an unauthorized or erroneous wire transfer for which we are liable, and you will also be liable to us for all Losses we may incur.

## 7.6 Payment

You must pay us the amount of the wire transfer, plus any applicable fees, before we will execute the wire transfer request. Please see the "Fee Schedule" section of the Disclosures for fees applicable to wire transfers.

## 7.7 Execution of Wire Transfers

A wire transfer request is considered accepted by us when we execute it. You can verify whether your wire transfer request has been executed by contacting us as set forth in the "How to Contact Us" section of the Disclosures.

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We have no responsibility to accept any incoming wire transfer(s) for your benefit. Likewise, we have a right to reject any wire transfer request(s) for an outgoing wire transfer for reasons including insufficient or uncollected funds in the account specified in the wire transfer request, a request that fails any required security procedures, our inability to execute the wire transfer for the reasons set out above, or if we are unable to verify the authenticity of the wire transfer request. If we stop a domestic outgoing wire transfer, we will refund the fee.

If we determine, in our sole discretion, not to honor, execute, or accept a wire transfer request, we will make reasonable efforts to notify you. We will also make reasonable efforts to notify you promptly if a wire transfer is returned to us after its execution. In either case, we will have no liability by reason of our delay or failure to provide you with notice, and we will have no obligation to resend a wire transfer if we complied with the original wire transfer request and such wire transfer was returned to us.

### **7.8 Cancellation or Amendment of Wire Transfer**

Once we receive a wire transfer request, it may not be able to be canceled or amended. However, at our discretion, we may use reasonable efforts to act on any request for cancellation or amendment, provided that the method by which we are notified of a request for cancellation or amendment complies with our security procedures. However, we will have no liability if the wire is not cancelled or amended. Any cancellation or amendment of a wire transfer by us will relieve us of any obligation to act on the original wire transfer request.

### **7.9 Interest**

In addition to the limitation of liability in this Agreement, except as otherwise provided by applicable law, the maximum period for which we will be liable for interest on any amount to be refunded or paid to you with respect to an unauthorized, erroneous, or other wire transfer request is thirty (30) days.

### **7.10 Your Liability for Unauthorized Wire Transfers**

Except as otherwise provided by law, you will be liable for all Losses to which your negligence contributed or which resulted in unauthorized, fraudulent, or dishonest acts by your current and/or former authorized representatives. Such liability includes instances when a current or former authorized representative effects one or more wire transfers or any improper use of security procedures to effect a wire transfer to your detriment.

### **7.11 Compliance with Anti-Money Laundering and Exchange Control Regulations and OFAC Enforced Sanctions**

You agree to observe all Anti-Money Laundering and Exchange Control laws and regulations including economic and trade sanctions promulgated by the Office of Foreign Assets Control of the U.S. Department of Treasury in relation to any wire transfer, and you will use all reasonable endeavors to assist us to do likewise. You agree that the information you provide to us is accurate. We may disclose any information that you provide to us that we, in our sole discretion, think necessary or desirable to disclose; except we will only disclose confidential information if required by law, a court, or legal, regulatory, or governmental authority, or as permitted by law to combat, prevent, or investigate issues arising under anti-money laundering laws, economic sanctions, or criminal law.



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Sometimes legal, regulatory, or governmental authorities require additional information, either in respect of individuals, entities, or particular transactions. You agree to promptly supply all such information, which any such authority may require, and/or which we may be required to supply, in relation to the individual, entity, or particular transaction.

If you, or your authorized representative, breach any such laws or regulations, you irrevocably agree that we may retain any monies or funds transmitted to us pursuant to this Agreement and/or not fulfill any wire transfer request if we are required to take or refrain from such action by any legal, regulatory, or governmental authority or if we reasonably believe that such action may violate any laws or regulations described herein, and such monies shall not bear interest against us. You further agree that we may pay such monies to the appropriate legal, regulatory, or governmental authority, when required by law.

## **8 Other Legal Terms and Conditions**

### **8.1 Assignment**

You may not assign, transfer, or otherwise delegate, whether by operation of law or otherwise, your Account or your rights or obligations, in whole or in part, under this Agreement. Any assignment, transfer or delegation or attempted assignment, transfer, or delegation in violation of the foregoing shall be void.

We may assign, transfer, or otherwise delegate our rights or obligations, in whole or in part, under this Agreement in our sole discretion.

### **8.2 Legal Processes and Claims Affecting Your Account**

If we receive a levy, attachment, or other legal process against you (collectively, "Legal Process"), we may refuse to permit withdrawals or transfers from your Account until the Legal Process is dismissed or satisfied. Any Legal Process will be subject to our right of set-off and security interest. You are responsible for all Losses we incur as a result of any dispute or legal proceeding involving your Account. If we receive a claim against the funds in your Account, or if we know of or believe that there is a dispute as to the ownership or control of funds in your Account, we may, in our discretion: (a) place a hold on your Account and refuse to pay out any funds until we are satisfied that the dispute is settled; (b) close your Account and send the balance to the named account holder; (c) require a court order to act; or (d) take any other action we feel is necessary to protect us. We will not be liable to you for taking any such action.

### **8.3 Limitation of Liability and Disclaimer of Warranty**

EXCEPT AS REQUIRED BY LAW, TO THE EXTENT WE (OR OUR SERVICE PROVIDER(S)) ARE FOUND LIABLE, OUR AND OUR SERVICE PROVIDERS' TOTAL LIABILITY TO YOU FOR A CLAIM WILL NEVER EXCEED THE AMOUNT OF ACTUAL DAMAGES PROVEN BY YOU AND IS LIMITED TO THE FACE VALUE OF THE ITEM OR TRANSACTION, OR THE ACTUAL VALUE OF ANY FUNDS NOT PROPERLY CREDITED OR DEBITED. EXCEPT AS REQUIRED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, WE AND OUR SERVICE PROVIDERS SHALL ONLY BE RESPONSIBLE AND LIABLE FOR OUR AND OUR SERVICE PROVIDERS' OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING OUR OBLIGATIONS UNDER THIS AGREEMENT. OUR AND OUR SERVICE PROVIDERS' LIABILITY MAY ALSO BE FURTHER REDUCED BY THE

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AMOUNT OF THE LOSS THAT IS CAUSED BY YOUR OWN NEGLIGENCE OR LACK OF CARE, AS WELL AS ANY RECOVERY OF THE LOSS YOU OBTAIN FROM THIRD PARTIES.

IN NO EVENT WILL YOU BE ABLE TO RECOVER FROM US OR OUR SERVICE PROVIDERS ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, LOSSES OR EXPENSES (INCLUDING COUNSEL AND THIRD PARTY FEES OR FINES) OR LOST PROFITS, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, (a) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES; (b) EVEN IF SUCH DAMAGES, LOSSES OR EXPENSES WERE FORESEEABLE, (c) WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND (d) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION, OUR AND OUR SERVICE PROVIDERS' LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, WE AND OUR SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY ERROR, FAILURE OR DELAY IN OUR ABILITY TO PERFORM OUR OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERROR, FAILURE OR DELAY IN THE PROCESSING OF ANY TRANSFER, ARISING FROM OR RELATING TO CAUSES BEYOND OUR OR OUR SERVICE PROVIDERS' REASONABLE CONTROL, INCLUDING ANY ACT OF GOD, WAR (DECLARED OR UNDECLARED), SABOTAGE, BLOCKADE, REVOLUTION, INSURRECTION, TERRORISM, CIVIL STRIFE, EXPROPRIATION, NATIONALIZATION, CHANGE IN LAW, GOVERNMENT ACTION, EMBARGO, SANCTION, ACCIDENT, FIRE, NATURAL DISASTERS, ELEMENTS OF NATURE, PANDEMIC, EQUIPMENT FAILURE, SYSTEM FAILURE, TECHNICAL FAILURE, LABOR DISPUTE, UNUSUAL TRANSACTION VOLUME, SUSPENSION OF PAYMENTS BY ANOTHER FINANCIAL INSTITUTION, OR THE FAILURE OF ANY THIRD PARTY TO PROVIDE ANY ELECTRONIC, DIGITAL OR TELECOMMUNICATIONS SERVICE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, WE AND OUR SERVICE PROVIDERS SHALL NOT BE LIABLE TO ANY THIRD PARTY OR FOR ANY ACT OR OMISSION OF YOURS OR ANY THIRD PARTY, INCLUDING THIRD PARTIES USED BY US IN EXECUTING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT OR PERFORMING A RELATED ACT AND NO SUCH THIRD PARTY SHALL BE DEEMED TO BE OUR AGENT.

IN ADDITION, EXCEPT AS REQUIRED BY LAW, WE AND OUR SERVICE PROVIDERS ARE NOT LIABLE OR RESPONSIBLE FOR ANY SERVICES OR FEATURES OF ANY ONLINE BANKING APPLICATION PROVIDED TO YOU BY A THIRD PARTY. WE AND OUR SERVICE PROVIDERS ARE ALSO NOT LIABLE FOR ANY UNAUTHORIZED ACCESS OF YOUR INFORMATION OR DATA BY A THIRD PARTY DUE TO YOUR USE OF THIRD-PARTY COMMUNICATION CHANNELS NOT OFFERED BY US.

ALL BANK SERVICES AND ACCOUNT FEATURES, INCLUDING THOSE PROVIDED BY A THIRD PARTY, SUCH AS ONLINE BANKING APPLICATION, ARE PROVIDED "AS IS", "WHERE IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WE DO NOT WARRANT BANK'S SERVICES OR ACCOUNT FEATURES OR THE SERVICES OR FEATURES OF ANY THIRD PARTY, INCLUDING ONLINE BANKING APPLICATION, WILL MEET YOUR REQUIREMENTS, BE CONTINUOUS, UNINTERRUPTED, SECURE, TIMELY, OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. TO THE EXTENT THAT WE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY

IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW.

## 8.4 Indemnification

You will indemnify, defend and hold the Indemnified Parties harmless from any and all Losses imposed on or sustained, incurred or suffered by any of the Indemnified Parties, whether actual or threatened or proven or not, in respect of any and all Claims, without regard to the merit or lack thereof, arising out of, or related in any way to (a) the matters set forth in this Agreement, including any Claims by any business or person related to the connected bank account, including any other owner of the connected bank account; (b) breach of this Agreement, including any warranties; (c) our taking any action or not taking any action that we are entitled to take pursuant to this Agreement, including attempting to cancel or amend a transfer or actions we take based on the instructions of your attorney-in-fact, including if it is later determined that your power of attorney was invalid or improperly executed; (d) any action or omission by you or any Authorized User; (e) fraudulent activity (except as otherwise provided for herein or by applicable law); or (f) our action or inaction in reliance upon oral, written or electronic instructions or information from you or any Authorized User.

## 8.5 Our Right of Set-Off and Security Interest

We have the right to set-off any liability, direct or contingent, past, present, or future that you owe against any account you have with us. This means that we can take any funds in your Account or any other account you have with us to pay any debt or liability you owe us. We have this right even if the Account(s) we withdraw money from is a joint Account and the debt or liability we apply it to is owed by only one of you. Likewise, we could withdraw money from an Account owned by only one person and apply it to reduce the joint debt or liability of that person and another person. Our rights under this Section are in addition to any right of set-off we may have under applicable law.

You also agree to grant us a security interest in your Account to secure payment of any money that you owe to us or will owe us arising under this Agreement or any other agreements with us. You acknowledge that this security interest is consensual and in addition to any right of set-off. We may exercise our security interest or right of set-off without regard to the source of the funds in your Account or prior recourse to other sources of repayment or collateral, even if it causes you to incur penalties or suffer any other consequence. You waive any conditions or limits to our right of set-off to the maximum extent permitted by law. We will notify you if we exercise our right to set-off if required by law.

If we take any action to collect debt or liability incurred by you or other amounts you owe us under this Agreement or defend ourselves in a lawsuit brought by you where we are the prevailing party, you will reimburse us for our Losses, including reasonable attorneys' fees, to the extent permitted by applicable law. We may charge your Account for our Losses without prior notice to you.

## 8.6 Changes in Terms and Additional Services

We may change this Agreement, or any fees and features of your Account, at any time by posting an amended Agreement on the Program Partner's website. Any such amendment will be effective upon posting. We will give you advance notice of any change where required by law. We may provide such notice to you with your statement, electronically, or by mail. Any notice we provide to you will be

## **Confidential**

binding and sent to the last (postal or electronic) address in our records. We may change your address if we receive an address change notice from the U.S. Postal Service. We may change or terminate this Agreement without notice at our discretion or to comply with any appropriate federal or state law or regulation.

If we make any of our other banking services available to you in connection with your Account, we may provide certain terms and conditions for those additional services to you in a separate agreement or disclosure.

### **8.7 No Waiver of Rights**

We may waive or decline to enforce any of our rights under this Agreement without obligating ourselves to waive such rights in the future or on any other occasion. We may release any other person obligated under this Agreement without affecting your responsibilities under this Agreement.

### **8.8 Conflicts and Section Headings**

If there is a conflict between this Agreement and any other document or statement made to you concerning the Account, this Agreement will govern. If there is a conflict between this Agreement and any other document or statement made to you concerning any services or products other than the Account, the separate terms and conditions applicable to that service or product will govern. Section headings that appear in this Agreement are for convenience purposes only and are intended to help you find information. They should not be construed as affecting the meaning of the Agreement.

### **8.9 Severability**

If any court or tribunal of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected. To the extent permitted by law, the parties waive any provision of law which prohibits or renders unenforceable any provisions of this Agreement, and to the extent that such waiver is not permitted by law, you and we agree that such provision will be interpreted as modified to the minimum extent necessary to render the provisions enforceable.

### **8.10 Governing Law, Forum, and Time Limits**

All actions relating to your Account and this Agreement will be governed by the laws and regulations of the United States and the State of Texas where your Account will be opened, irrespective of conflict of law principles. You agree that any dispute arising under this Agreement or relating in any way to your relationship with us that is not arbitrated will be resolved in a federal or state court located in San Antonio, Texas and that you will be subject to such court's jurisdiction.

Except where prohibited by law, you agree that you must file any lawsuit or arbitration against us within two (2) years after the claim arises unless federal or Texas law, or another agreement you have with us, provides for a shorter time. If federal or Texas law requires a longer time period than the time periods in this Agreement, you agree to the shortest time period permitted under the law.

## **9 Arbitration and Waivers**

BE SURE THAT YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US.

### **9.1 Election to Arbitrate**

You and we agree that the sole and exclusive forum and remedy for resolution of a claim be final and binding arbitration pursuant to this section (the "Arbitration Provision"). As used in this Arbitration Provision, "Claim" will include any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us on the other hand, relating to or arising out of this Agreement, and/or the activities or relationships that involve, lead to, or result from this Agreement, including the validity or enforceability of this Arbitration Provision, any part thereof, or the entire Agreement. Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise. Claims include matters arising as initial claims, counterclaims, cross-claims, third-party claims, or otherwise. Please note that you may continue to assert Claims in small claims court, if your Claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

You have the right to opt-out of this arbitration clause and it will not affect any other terms and conditions of this Agreement or your relationship with us. TO OPT OUT, YOU MUST NOTIFY US IN WRITING OF YOUR INTENT TO DO SO WITHIN SIXTY (60) DAYS AFTER OPENING YOUR ACCOUNT. Your opt-out notice can be a letter that is signed by you that states "I elect to opt out of the arbitration clause in my Consumer Deposit Account Agreement for Account #" or any words to that effect. Send the notice as set forth in Section 1.1 of this Agreement. An election to opt out applies only to the account or accounts identified in your opt-out notice or, if no specific accounts are identified in your notice, then to any account(s) that became subject to the arbitration clause within the sixty (60)-day period before we received your notice. The arbitration clause will apply to any claims between us relating to any account(s) for which we do not receive an opt-out notice as described in this section.

### **9.2 Applicability of the Federal Arbitration Act; Arbitrator's Powers**

This Arbitration Provision is made pursuant to a transaction involving interstate commerce and will be governed by and enforceable under the Federal Arbitration Act (the "FAA"). The arbitrator will apply substantive law consistent with the FAA and applicable statutes of limitations. The arbitrator may award damages or other types of relief permitted by applicable substantive law, subject to the limitations set forth in this Arbitration Provision. The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court. The arbitrator will take steps to reasonably protect confidential information. In any arbitration arising out of or related to this Agreement, the arbitrator will apply the limitation of liability set forth above and, for the avoidance of doubt, is not empowered to award (a) punitive or exemplary Losses, except where permitted by statute, or (b) incidental, indirect or consequential Losses, or Losses for lost profits. The parties waive any right to recover all such Losses.

### 9.3 Informal Dispute Resolution

If a Claim arises, our goal is to address your concerns and, if we are unable to do so, to provide you with a neutral and cost-effective means of resolving the dispute quickly. You agree that before filing any claim in arbitration, you will first submit your Claim to us by email at the address specified above and provide us with the opportunity to resolve your concern prior to initiating arbitration.

### 9.4 Arbitration Procedures

The party initiating arbitration will do so with the American Arbitration Association (“AAA”). The arbitration will be conducted by a single arbitrator according to, and the location of the arbitration will be determined in accordance with, the rules and policies of the administrator selected, except to the extent the rules conflict with this Arbitration Provision or any countervailing law. You may obtain copies of the current rules, forms, and instructions for initiating an arbitration with AAA online at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. In the case of a conflict between the rules and policies of the administrator and this Arbitration Provision, this Arbitration Provision will control, subject to countervailing law, unless all parties to the arbitration consent to have the rules and policies of the administrator apply. The arbitration will be held in the United States county where you live or work, or any other location we agree to.

### 9.5 Arbitration Fees

If we initiate arbitration, we will pay all the administrator's filing costs and administrative fees (other than hearing fees). If you initiate arbitration, filing costs and administrative fees (other than hearing fees) will be paid in accordance with the rules of the administrator selected, or in accordance with countervailing law if contrary to the administrator's rules. We will pay the administrator's hearing fees for one (1) full day of arbitration hearings. Fees for hearings that exceed one (1) day will be paid by the party requesting the hearing, unless the administrator's rules or applicable law require otherwise, or you request that we pay them and we agree to do so. Each party will bear the expense of its own attorneys' fees, except as otherwise provided by law. If a statute gives you the right to recover any of these fees, these statutory rights will apply in the arbitration notwithstanding anything to the contrary herein.

### 9.6 Appeals

Within thirty (30) days of a final award by the arbitrator, any party may appeal the award for reconsideration by another arbitrator selected according to the rules of the arbitrator administrator. In the event of such an appeal, any opposing party may cross-appeal within thirty (30) days after notice of the appeal. The arbitrator will reconsider de novo all aspects of the initial award that are appealed. Costs and conduct of any appeal will be governed by this Arbitration Provision and the administrator's rules, in the same way as the initial arbitration proceeding. Any award by the initial arbitrator that is not subject to appeal, and any award on appeal, will be final and binding, except for any appeal right under the FAA, and may be entered as a judgment in any court of competent jurisdiction.

### 9.7 No Class Actions

NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS (INCLUDING AS PRIVATE ATTORNEY GENERAL ON BEHALF OF OTHERS), EVEN IF THE CLAIM OR CLAIMS THAT ARE THE

SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT. Unless consented to in writing by all parties to the arbitration, no party to the arbitration may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless those persons are parties to a single transaction. Unless consented to in writing by all parties to the arbitration, an award in arbitration will determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and will not (a) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a named party; nor (b) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator will have the power or authority to waive, modify, or fail to enforce this section, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, will be invalid and unenforceable. Any challenge to the validity of this section will be determined exclusively by a court and not by the administrator or any arbitrator.

## **9.8 Survival and Severability of Arbitration Provision**

This Arbitration Provision will survive the termination of this Agreement. If any portion of this Arbitration Provision other than the subsection titled “No Class Actions” is deemed invalid or unenforceable, the remaining portions of this Arbitration Provision will nevertheless remain valid and in force. If there is a final judicial determination that applicable law precludes enforcement of this Arbitration Provision’s limitations as to a particular claim for relief or particular term, then that claim (and only that claim) or that term (and only that term) must be severed from the Arbitration Provision and may be brought in court. If an arbitration is brought on a class, representative, or collective basis, and the limitations on such proceedings in the previous subsection are finally adjudicated pursuant to the last sentence of that subsection as unenforceable, then no arbitration will be had. In no event will any invalidation be deemed to authorize an arbitrator to determine Claims or make awards beyond those authorized in this Arbitration Provision.

## **9.9 Judicial Forum for Claims**

Except as otherwise required by applicable law, in the event that this Arbitration Provision is found not to apply to you or your Claim, you and we agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts in San Antonio, Texas. Both you and we consent to venue and personal jurisdiction there. All parties agree to waive our right to a jury trial.

## **9.10 WAIVER OF RIGHT TO LITIGATE**

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY BUT ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVING THAT RIGHT BY AGREEING TO THIS AGREEMENT AND ARBITRATION PROVISION.

# **10 Interpretation**

Except as otherwise expressly provided in this Agreement, the following rules apply: (a) the singular includes the plural and the plural includes the singular; (b) all references to the masculine gender include the feminine gender (and vice versa); (c) “include”, “includes” and “including” are not limiting; (d) unless the context otherwise requires or unless otherwise provided herein, references to a particular



agreement, instrument, document, law or regulation also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument, document, law or regulation; (e) a reference in this Agreement to a Section or Schedule is to the Section of or Schedule to this Agreement unless otherwise expressly provided; (f) a reference to a Section in this Agreement, unless the context clearly indicates to the contrary, refers to all sub-parts or sub-components of any said Article or Section; (g) words such as “hereunder,” “hereto,” “hereof,” and “herein,” and other words of like import, unless the context clearly indicates to the contrary, refers to the whole of this Agreement and not to any particular Section, subsection or clause hereof; (h) where the Agreement states that a Party “shall,” “will,” or “must” perform in some manner or otherwise act or omit to act, it means that the Party is legally obligated to do so in accordance with the Agreement; and (i) references to any statute includes any amendments thereto and its implementing regulations.

## **11 Miscellaneous**

Except with respect to Indemnified Parties and except as otherwise specified in this Agreement, this Agreement is not intended to and shall not be construed to give any third party any interest or rights (including any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby. Use of the Account is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions. Bank does not waive its rights by delaying or failing to exercise them at any time. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible. The headings in this Agreement are only for convenience and do not in any way limit or define your or our rights or obligations under this Agreement. You agree that this Agreement and other agreements or disclosures you may receive from us with respect to the Account or your debit card, contain the entire statement of the terms and conditions, which apply to the subject matter hereof. If any term or condition of this Agreement should be invalidated or unenforceable for any reason, all other terms and conditions will continue in full force and effect.