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**NOTE: PLEASE READ CAREFULLY THE ARBITRATION AGREEMENT CONTAINED IN SECTION 8 BELOW.**

### **1. Important Information about Procedures for Opening a New Account**

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What these requirements mean for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

## 2. Account Overview

### a. How to Contact Us

You may contact us with any questions or concerns regarding your account. You can find our contact information on the periodic statements that we send to you, on the back of your debit card, or on our website.

### b. About This Agreement

This Agreement, along with your account opening agreement, the documents referenced in your account opening agreement, and any other documents we provide or make available to you pertaining to your account(s), is a contract that establishes the terms and conditions for your account(s) with us. Please read this carefully and retain it for future reference. If you sign the account opening agreement and/or use the account(s), you agree to the terms of this Agreement, as may be amended from time to time. This Agreement applies to business banking accounts only.

### c. Definitions

In addition to the terms defined throughout this Agreement, the following defined terms have the following meanings:

- “Agreement” means this Business Deposit Account Agreement, our Schedule of Fees, and any other forms, documents, disclosures, or other agreements provided to you in connection with this Business Deposit Account Agreement.
- “Schedule of Fees” means the Bank’s Schedule of Fees, as amended from time to time.
- “You” and “your” mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account.
- “We,” “our,” “us,” and the “Bank” mean Gate City Bank.

### d. Interest, Dividends, and Credits on Collected Funds

Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy.

### e. Ownership of Account and Beneficiary Designation

Different rules apply to your account(s) based on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

**i. Single Party Account**

The entity (or if a sole proprietorship, the natural person) that signs the Account Opening Agreement is the owner of the account.

**ii. Multiparty Accounts**

Two or more individuals or entities can jointly own a multiparty account. The owners of the account are the entities or persons that sign the Account Opening Agreement. Such entities or persons own each account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

All multiparty accounts include a right of survivorship. Accordingly, the death of one party results in ownership passing to the surviving parties. If two or more parties survive and one is the surviving spouse of the deceased party, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving spouse. If two or more parties survive and none is the spouse of the decedent, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving parties in equal shares, and augments the proportion to which each surviving party, immediately before the deceased party's death, was beneficially entitled under law, and the right of survivorship continues between the surviving parties. In addition, multiparty accounts with a right of survivorship may also implement a pay-on-death designation. For accounts that implement a pay-on-death designation, the death of the last surviving party results in account ownership passing to the designated pay-on-death beneficiaries and will not be part of the last surviving party's estate.

If you open a multiparty account but not all account owners sign the Account Opening Agreement, we will designate this Agreement to be a temporary account agreement. For temporary account agreements, each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on your account(s). However, we may later restrict or prohibit further use of your account(s) if you fail to comply with the requirements we have imposed within a reasonable time.

**iii. Fiduciary Accounts**

We may permit accounts to be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

**f. Checking Account Re-Classification**

The Bank may make a change in your checking account that will not affect your available balance, interest earnings, FDIC insurance, or bank statement in order to create a checking sub-account and a savings sub-account. The Bank may periodically transfer funds between these two sub-accounts. On the sixth transfer during a calendar month, any funds in the savings sub-account will be transferred back to the checking sub-account. If your account is a plan on which interest is paid, your interest calculation will remain the same. Otherwise, the savings sub-account will be non-interest bearing. The savings sub-account will be governed by the rules governing our other savings accounts. This process will not affect your available balance, the interest you may earn, FDIC insurance protection, or your monthly statement.

**g. Death or Incompetence**

You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or is adjudicated (determined by the appropriate official) incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or adjudication of incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or adjudication of incompetence for up to ten (10) days after your death or adjudication of incompetence unless ordered to stop payment by someone claiming an interest in the account.

**h. Fees**

Fees for your accounts are set forth on our Schedule of Fees, as amended from time to time in accordance with Section 7(l). Our Schedule of Fees is part of this Agreement governing your account(s). You authorize and provide your consent for us to deduct our fees and charges, without providing notice to you, directly from any of your accounts at the Bank. You will also pay any additional charges for services you request, even if they are not covered by the Schedule of Fees.

**i. Account Disputes**

You will be liable for our costs and expenses (including attorneys' fees, court costs, allocable internal costs, and fees of collection) that we incur as a result of collection activities (whether performed by us or a third party) or arising from any other dispute involving your account(s), including disputes regarding authorized signers or similar persons, disputes made by a third party claiming an interest in your account(s), and any action that you take (or a third party takes) regarding your account(s) that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys' fees will be deducted from any of your accounts at the Bank when they are incurred, without notice to you (even if doing so would result in a negative balance).

**j. Legal Actions Affecting Your Account**

If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (each, a "legal process"), we will comply with

that legal process. Or, at our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal process. We may also close the account(s) or take any other action we feel is necessary to protect us. We will not be liable to you for taking any such action.

The costs and expenses related to or arising from any legal process will be subject to our right of setoff and our security interest. You are responsible for any losses, costs or expenses we incur as a result of any legal process involving your account. In these cases, we will not have any liability to you if there are insufficient funds to pay for your items because we have withdrawn funds from your account or in any way restricted access stop your funds in accordance with the legal process. Any fees or expenses we incur in responding to any legal process (including attorneys' fees and our allocable internal expenses) may be charged against any of your accounts. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal processes.

We may place an administrative hold on the funds in your account (i.e., refuse payment or withdrawal of the funds) if it becomes subject to a claim(s) or claims adverse to: (i) your own interest; (ii) others claiming an interest as survivors or beneficiaries of your account; or (iii) a claim or claims arising by operation of law. The hold may be placed for such period of time as we believe reasonably necessary to allow for legal proceeding(s) to determine the merits of the claim(s) or until we receive evidence satisfactory to us that any and all such disputes have been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

### **3. Your Account Responsibilities**

#### **a. Notify Us If Your Information Changes**

You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, a change of address or name must be made in writing. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you.

#### **b. 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 by reviewing your account statements as they are made available to you for errors or unauthorized activity. You must also notify us within thirty (30) days if you fail to receive a scheduled statement. If you identify an error or unauthorized activity, you must notify us in accordance with this Agreement. Please refer to Section 4(g) for information concerning errors and unauthorized activity.

#### **c. Protect Your Account Information**

It is very important to protect the account numbers and electronic access devices (e.g., a debit card or ATM card) we provide you for your account(s) to prevent unauthorized transactions and fraud. Keep your account number, debit card, ATM card, PIN, statements and any login credentials and passwords



used to access your account secure at all times, and be careful about who you share this information with.

If your account number, electronic access device, PIN, login credentials, passwords or checks are lost or stolen, notify us at once. See Section 4(f) for information and applicable deadlines for notifying us of losses or theft. If you are negligent in safeguarding your account number, electronic access device, login credentials, passwords or checks, you are solely liable, except to the extent the Bank would have any liability pursuant to Section 7(b) of this Agreement.

You agree that we offer you services appropriate for your account to help identify, deter and/or limit unauthorized, altered, counterfeit, or fraudulent transactions, checks, or other items (the “Risk Management Services”) against your account(s), such as positive pay.

**YOU ACKNOWLEDGE THAT RISK MANAGEMENT SERVICES MAY REDUCE THE LIKELIHOOD OF FRAUDULENT ACTIVITY IN YOUR ACCOUNT, AND THEREFORE, IT IS COMMERCIALY REASONABLE FOR US TO REQUIRE YOU TO USE THE RISK MANAGEMENT SERVICES. YOUR FAILURE TO: (A) ENROLL IN AND USE A RISK MANAGEMENT SERVICE PROVIDED FOR YOUR USE; (B) FOLLOW ANY ALTERNATIVE, COMMERCIALY REASONABLE PROCEDURES OFFERED BY US IN LIEU OF THE RISK MANAGEMENT SERVICES (IF ANY); AND/OR (C) IMPLEMENT OTHER COMMERCIALY REASONABLE PRECAUTIONS FOR YOUR PARTICULAR CIRCUMSTANCES WILL BE DEEMED A FAILURE BY YOU TO EXERCISE ORDINARY CARE.**

To the maximum extent permitted by applicable law, (i) you willingly and voluntarily accept any risks and liabilities that result from failing to obtain the Risk Management Services and/or implementing commercially reasonable fraud prevention and mitigation procedures, including if we process any fraudulent transactions, and (ii) you will be precluded from asserting any claim against us, and we shall have no liability to you, for paying any unauthorized, altered, counterfeit, or other fraudulent item, in each case that the applicable Risk Management Service or other fraud prevention or mitigation procedure was designed to detect and/or deter (or if the Risk Management Service or fraud prevention or mitigation procedure would have detected or deterred) any such risk, liability, or claim. Without limiting the generality of the immediately preceding sentence, we shall not be required to re-credit your account or otherwise have any liability to you for paying such items because you either failed to obtain, failed to properly use, or suspended your use of a Risk Management Service.

We may require you to obtain Risk Management Services (or to comply with other requirements) as a condition of us continuing to offer any account, in our sole discretion. For example, we may require you to do so based on past account activity.

We also offer you commercially reasonable security procedures. If we offered you a commercially reasonable security procedure that you reject, you agree that you are responsible for any payment order, whether authorized or not, that we accept in compliance with any alternative security procedure that you have selected. If you reject a commercially reasonable security procedure we offer you, we

may require you to sign a waiver or other limitation of liability as a condition for maintaining your account with us.

**d. Facsimile, Electronic, or Mechanical Signatures**

Unless you make advance arrangements with us, we have no obligation to honor a faxed, electronic, computer generated or other mechanical signature (including a stamp) on your checks or other orders. If you do use such a device, we reserve the ability to treat it as if you had actually signed it.

**e. Unlawful Internet Gambling and Illegal Activities Notice**

We strictly prohibit the use of any account to conduct transactions that are related, directly or indirectly, to unlawful Internet gambling, as defined under the Unlawful internet Gambling Enforcement Act of 2006 and Regulation GG.

Under Federal Reserve Regulation GG, restricted transactions include transactions in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful internet gambling.

You cannot make restricted transactions through your account(s) or relationship with us. You agree not to conduct any restricted transactions through any account or relationship with us directly or indirectly involving or relating to unlawful internet gambling, including the acceptance or receipt of any funds or deposits in connection therewith. You also agree not to use your account for any other illegal activity under local, state or federal law.

**4. General Rules Governing Your Account**

You understand that any payment instruction or activity performed by an authorized agent shall be deemed authorized by you and valid, and we are under no obligation to investigate the instruction or activity.

**a. Establishment of Security Procedures**

From time to time, we may, in our sole discretion, establish procedures to be used in connection with some or all of the functions of your account or for transactions involving your account ("Security Procedures"). These Security Procedures are provided for the purpose of verifying the authenticity of payment orders or instructions that we receive from you. You understand and agree that any payment order or instruction we receive in your name that has been verified pursuant to a Security Procedure will be considered authorized by you. It is therefore critical that you follow the Security Procedures carefully and take reasonable measures and safeguards to protect the secrecy and integrity of the Security Procedures.

We may amend, implement, or supplement the Security Procedures from time to time by providing notice to you. Any such change will become effective (i) immediately if such change is required for security reasons or by applicable law, or if we determine in our reasonable discretion that such change will not have a material adverse effect on your use of your account, or (ii) the earlier of: the date

indicated on the notice to you and the date upon which the change was implemented, published, or became effective. If you continue to use your account, you will be deemed to have agreed to such change. In order to decline or amend any Security Procedure, you shall stop using your account and comply with any modification procedure requirements, which may include the execution of a waiver, modification or other documentation that we require.

**YOU ACKNOWLEDGE AND AGREE THAT WE HAVE MADE ONE OR MORE SECURITY PROCEDURES (INCLUDING FRAUD RISK MITIGATION SECURITY PROCEDURES) AVAILABLE FOR YOUR USE AND THAT SUCH PROCEDURES ARE COMMERCIALY REASONABLE. YOU ARE FULLY RESPONSIBLE FOR IMPLEMENTING AND APPROPRIATELY USING THE SECURITY PROCEDURES. WE SHALL HAVE NO LIABILITY IF YOU (A) FAIL TO IMPLEMENT THE SECURITY PROCEDURES OR RISK MANAGEMENT SERVICES, WHICH ARE INTENDED TO DECREASE THE RISK OF UNAUTHORIZED TRANSACTIONS AND ARE DESIGNED TO DETECT AND/OR DETER FRAUD, AND/OR (B) FAIL TO IMPLEMENT REASONABLE MEASURES TO PROTECT THE SECRECY OF SECURITY ITEMS, PROMPTLY REVIEW ONLINE TRANSACTION ACTIVITY OR BANK STATEMENTS FOR UNAUTHORIZED ACTIVITY, OR IMMEDIATELY REPORT SUSPICIOUS ACTIVITY TO US. IN ADDITION, WE SHALL HAVE NO LIABILITY IF YOU SUSPEND, TAMPER WITH OR OTHERWISE CAUSE SUCH SECURITY PROCEDURES TO BE INEFFECTIVE OR UNAVAILABLE. THIS WAIVER OF OUR LIABILITY IS SUBJECT TO APPLICABLE LAW.**

Any available Security Procedures are not intended to detect errors in the transmittal or the content of an instruction received from you or prevent duplicate transactions. Any such error shall be your sole responsibility. You understand and agree that we may take action beyond the standard Security Procedures in order to detect errors or unauthorized Instructions. Such action shall not be deemed a part of our standard Security Procedures, and, to the maximum extent permitted by applicable law and this Agreement, we shall not be liable to you if we fail to take such action in each circumstance.

Further, you acknowledge and agree that the Bank has the absolute right to require you to adopt available Security Procedures as a condition of your continued account relationship, even if such Security Procedures result in additional costs to you. You further acknowledge and agree that the Bank may amend, suspend, or terminate your account if you fail to use, circumvent, or otherwise decline to use available Security Procedures as required by the Bank.

**b. Determining the Ledger Balance and Available Balance in Your Account**

**i. Ledger Balance**

Your ledger balance is the amount of money that is actually in your account at any given time and is different than your available balance. The ledger balance reflects only transactions that have posted to your account. Your ledger balance does not include transactions that have been authorized and are pending. Your ledger balance does not reflect “management holds” placed on your account, which include holds placed due to suspected fraudulent activity or as the result of the legal process, such as garnishments, levies, or liens. We will notify you when a management hold is placed on your account.

It is very important to understand that the amount of your ledger balance is used to determine whether you have sufficient funds to cover a transaction when it is presented for payment and whether you will be assessed an overdraft fee.

## **ii. Available Balance in Your Account**

Your available balance is a tool to help you keep track of spending in your account. It represents the amount of money that is available for you to use or withdraw at any given time. We use the available balance to authorize, return, or reject your transactions during the day (for example, debit card purchases and ATM withdrawals). Like your ledger balance, your available balance is updated throughout the day.

The available balance is the ledger balance minus any transaction authorizations or holds (such as debit card transactions that have been authorized but have not yet posted to your account, management holds, or deposited check holds). Your available balance will not reflect (i) pending automated clearing house ("ACH"), (ii) checks you have written that have not yet posted, (iii) scheduled transfers, and (iv) any funds available to you on a line of credit or in a savings account you have linked are not reflected in your available balance.

If your available balance is insufficient to cover the item presented for payment, we may, in our sole discretion, choose to pay the transaction. Such a decision may, if your ledger balance is insufficient to cover the transaction, result in an overdraft of your account. **It is very important to understand that you may still overdraw your account even though the available balance appears to show there are sufficient funds to cover a transaction at the time it is made.** This is because the amount of your ledger balance, not your available balance, is used to determine whether you have sufficient funds to cover a transaction when it is presented for payment.

## **iii. Posting Transactions to Your Account**

We post transactions, including credits and debits, to your account throughout the day as they are received for processing or settlement, which means your ledger balance changes throughout the day as items post. Transactions made at a retail office are received for processing on any day the retail office is open and receiving transactions. Internal bank transfers are received for processing every day except holidays and Sundays. All other transactions are received for processing and settlement each day, except holidays. Currently, when we process transactions to determine your ledger balance, the most common kinds of transactions are generally posted as follows:

- We add deposits as they are received and processed throughout the day.
- We subtract debit transactions as they are received and processed throughout the day as follows:
  - ATM transactions (including withdrawals and transfers), telephone transfers, online and mobile banking transfers, PIN-based debit card transactions, and checks or other items processed through a Gate City Bank retail office teller are generally received and processed when the transaction occurs;

- Signature-based debit card transactions are generally received for settlement (which may be days after you authorized the transaction) from merchant processors in batches throughout the day, seven days a week, and are posted in the order the merchant processor provides them to us within each batch, which may not be the order in which the transactions were made;
- Checks not processed through a Gate City Bank retail office teller are generally received for payment in batches throughout the day, with checks within the same batch posted in check number order;
- ACH debits are generally received for settlement in batches throughout the day and are posted on the settlement date in the order in which they were provided to us in each batch, which may be different from the order in which the ACH was initiated.

This general posting order and timeline description does not cover every kind of transaction we may process, and there can be exceptions to the posting order or timeline described above. We may choose to post credits early but are not obligated to do so. You acknowledge and agree that we are allowed to determine, in our sole discretion, at any time without notice to you, the categories of transactions, the transactions within a category, the order or timeline among categories, and the posting orders or timelines within a category.

**c. Deposits**

**i. Funds Availability For Direct Deposits and Checks for Business Checking Accounts**

Section 4(c)(i) of this Agreement applies only to Business Checking Accounts and explains how the Bank complies with Regulation CC. Regulation CC does not apply to Savings, Money Market Savings, or Certificate of Deposit accounts; funds availability for those accounts is at the Bank's discretion.

**a. Your Ability To Withdraw Funds At Gate City Bank**

Our policy is to make funds from Domestic<sup>1</sup> electronic direct deposits, cash, and some portion of your check deposits available to you on the day we receive your deposit.

The remaining amount of your check deposits will be available on the 1st business day after the day of deposit. We may, at our discretion, make funds from deposits available to you sooner than required, but we are under no obligation to do so, even if we have done so routinely in the past.

Once they are available, you can withdraw the funds in cash, and we will use the funds to pay withdrawal requests that you have written or authorized.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit at a time or on a day that we are not open, we will consider that the deposit was made on the next business day that we are open.

<sup>1</sup> International electronic direct deposits may be subject to delay.

**b. Longer Delays May Apply**

In some cases, we will not make all of the funds you deposit by check available to you on the 1st business day after the day of deposit. Depending on the type of check you deposit, funds may not be available until the sixth business day after the business day of your deposit. However, the first \$6,725 of your deposits will be available on the first business day after the business day of deposit.

If we are not going to make all of the funds from your deposit immediately available, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the Notice of Funds Availability by the next business day after we receive the deposit.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$6,725 on any one day (across all of your accounts with us).
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six (6) months.
- There is an emergency, such as failure of communications or computer equipment.
- Your account is less than 30 days old.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the sixth business day after the business day of your deposit.

**c. Holds On Other Funds (Check Cashing)**

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

**d. Holds on Other Funds (Other Account)**

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. Funds in the other account would then not be available for withdrawal until the time periods described elsewhere in this disclosure for the type of check you deposited.

**e. Special Rules for New Accounts**

If you are a new customer, the following special rules may apply during the first thirty (30) days your account is open. If you deposit more than \$6,725 in check and money order funds in a

single day, the excess over \$6,725 may be available nine (9) business days after the day of your deposit. Funds for the first \$6,725 of deposited checks not made in person to an employee of the Bank (other than a U.S. Treasury Check), may not be available until the second business day after the receipt of the deposit.

**ii. Provisional Credit**

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn “on us”). Before settlement of any item becomes final, we act only as your agent, regardless of the form of endorsement or lack of endorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by applicable law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing endorsement, claim of alteration, encoding error or other problem, which in our sole discretion justifies reversal of credit.

You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. We are not responsible for transactions by mail or outside depository until we actually record such transactions. We will treat and record all transactions received after our “daily cutoff time” on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party endorsers to verify or guarantee their endorsements or endorse in our presence.

**iii. Erroneous Execution**

If we pay you more in error than the amount of a payment order received, we are entitled to recover from you the amount paid in excess of the amount of that payment order, notwithstanding any claim you may have against the sender of the funds.

**d. Withdrawals**

You may withdraw money from your account(s) in any manner permitted by us for the type of account you have opened. Withdrawals and transfers from your account may be restricted as provided in this Agreement or by applicable law.

**i. Notice of Withdrawal**

We reserve the right to require not less than seven (7) days’ advance written notice before each withdrawal from an interest-bearing account other than a time deposit or demand deposit. (Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.)



## **ii. Checks and Items**

If you make withdrawals by check, the check must be properly completed and signed by you or your agent. Your checks must meet our standards; we may refuse checks that don't or that cannot be processed by our equipment. Certain check features, such as security features, may impair the quality of a check image. We are not responsible for losses that result from your failure to follow our check standards.

We may refuse any withdrawal or transfer request made by check that is outside of our frequency or amount limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations.

Even if we honor a nonconforming request, we are not required to do so at a later date. If you violate the stated transaction limitations (if any), in our discretion we may close your account. If we are presented with an item drawn against your account that would be a "substitute check," as defined by applicable law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

We may, without inquiry or liability (to the maximum extent permitted by applicable law and this Agreement), pay a check even if it has special written instructions indicating we should refuse payment (e.g., "void after 60 days" or "void over \$500"); is stale-dated (i.e., the check's date is more than six months in the past); is post-dated (i.e., the check's date is in the future); or isn't dated.

A check may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item. We may check the amount of your available balance, any pending transactions, and uncollected funds from any deposits you have made to determine the amount of funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item for settlement and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, we may consider your available balance, pending transactions and uncollected funds at the time we make the subsequent determination.

## **iii. Early Withdrawal Penalties (and Involuntary Withdrawals)**

We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.



**e. Overdrafts and Returned Transactions**

**i. Overdrafts**

An overdraft occurs on your account if the amount of your ledger balance is less than the amount we need to pay your transaction when presented for payment but we pay the transaction anyway, causing the amount of your ledger balance to be negative.

If we determine at the time a transaction(s) is presented for payment that paying the transaction(s) will result in an overdraft, we may, in our sole discretion, pay the transaction instead of returning it unpaid, which will result in the amount of your ledger balance being negative. Alternatively, as described below, we may, at our option and in our sole discretion, return any of the transactions presented for payment as unpaid, or otherwise refuse to pay the transaction. In the event that the amount of your ledger balance is not sufficient to cover a transaction(s) (including any type of debit, withdrawal, or transfer from your account) when it is presented for payment, you agree that we are allowed to authorize or decline some or all of those transactions, or pay or return some or all of those transactions at our sole discretion. You agree that, if we pay an overdraft transaction when it is presented for payment, we may charge you a fee, as allowed by applicable law and as set forth in the Schedule of Fees applicable to your account, which can be obtained from us and is available at our offices, and which can change from time to time.

**It is also important to understand that the amount of your ledger balance may be positive at the time you authorize a transaction, but may be negative when the transaction is later presented for payment, resulting in an overdraft.** This can be caused when other transactions post to your account after you authorized the transaction at issue but before that transaction is posted to your account, reducing your ledger balance.

For example, this can occur when you authorize a debit card transaction on a day when you have a sufficient available balance to cover the transaction, but the transaction does not post to your account until several days later when the merchant requests payment from us for the transaction. If other transactions are paid from your account during that time, you may not have a sufficient ledger balance by the time the debit card transaction posts. This is why it is important for you to keep track of your balances and all of the transactions you have authorized to avoid overdrafting your account.

You agree that you will pay promptly the amount of the overdraft and any fees relating to the overdraft without further notice or demand. After the fifth (5th) consecutive day the amount of your ledger balance is negative, you may be charged a negative balance fee each consecutive day the amount of your ledger balance remains negative. We may use subsequent deposits and other credits to your account to cover any overdraft and any related fees charged to your account.

**ii. Returned Transactions**

If the amount of your available balance is less than the amount needed to pay a transaction presented for payment, or if your available balance includes funds from a deposit we have not yet

collected, we may, at our option and in our sole discretion, return any of the transactions presented for payment as unpaid, or otherwise refuse to pay the transaction.

We may return or refuse to pay any transaction at any time if the amount of your available balance is insufficient to pay for that transaction at the time it is presented for payment, or if the funds needed to pay for the transaction have not been collected, even if we previously have permitted overdrafts. You are not entitled to rely on any prior act by us with respect to your account, and our election to pay overdrafts does not establish a course of dealing between you and us or modify the terms of this Agreement.

However, transactions that we return as unpaid may be re-presented for payment multiple times. We will determine whether to pay or return the transaction each time it is presented to us for payment. We may also choose to pay a re-presented transaction as an overdraft even if we previously chose to return the transaction.

You are solely responsible for managing your account and the amount of your balances, to avoid overdrafts or returned transactions. We encourage you to manage your funds responsibly by keeping track of all transactions of any kind using the tools that suit you, such as a check register to assist you in avoiding overdrawing your account.

**f. Reporting Lost or Stolen Items**

If you suspect that your check stock, debit card, or PIN, has been lost, stolen, or otherwise compromised, you must notify us within forty-eight (48) hours. If you do not notify us within forty-eight (48) hours, you will be fully liable for any errors or unauthorized charges made through your card from that point forward.

If you need to report your check stock as lost, stolen, or compromised, or to replace your debit card for any reason, please contact us at 1-800-234-3344 or 701-293-2400.

**g. Errors and Unauthorized Transactions on Your Account**

Unless otherwise specified in this Agreement or applicable law requires us to provide you with more time, you agree to carefully review your statements and promptly report to us any errors or unauthorized activity by contacting the Bank within thirty (30) days after we provide you with the FIRST statement on which the error or unauthorized activity appeared. You must provide us with sufficient information to identify you, your account, and the transaction at issue. If you notify us orally, we may require that you send your information to us in writing within ten (10) business days.

Once we receive your notice, you agree that we have a reasonable period of time to investigate the facts and circumstances of any claimed error or unauthorized transaction and that we will have no obligation to provisionally credit your account. You also agree to provide us with an affidavit containing the information we require if we request and cooperate with us in the investigation of your claim and any attempt to recover funds, including identifying and prosecuting the suspected wrongdoer.

If you do not provide us with timely written notice, you agree that you cannot make any claim against us relating to unreported errors or unauthorized transactions, regardless of the care or lack of care we may have exercised. We will also not be liable to you for any subsequent unauthorized transactions on your account by the same person. You may not bring any legal proceeding or action against us to recover any amount paid from your account unless you have given us timely written notice as described above.

**To the fullest extent permitted by applicable law, our maximum liability for any claim of error or unauthorized activity is limited to the lesser of the face value of the item or transaction, or the actual value of any funds not properly credited or debited, reduced by the amount of the loss that could have been avoided BY YOUR USE OF ORDINARY CARE. WE WILL PAY INTEREST ON THE AMOUNT OF THE LOSS ONLY AS REQUIRED BY LAW. OUR LIABILITY IS FURTHER LIMITED BY THIS AGREEMENT, INCLUDING SECTION 7(B).**

#### **h. Checks**

##### **i. Check Item Standards**

The Check Clearing for the 21<sup>st</sup> Century ("Check 21") Act provides that a properly prepared substitute check that meets the requirements for legal equivalence is the legal equivalent of the original for all purposes.

The Check 21 Act helps make check processing faster by using substitute checks to present to other banks instead of the original check, reducing transportation and helping enable the electronic collection of checks.

It is the policy of the Bank not to create liability for itself under the Check 21 Act by introducing into the check collection or return process any item on which the check standards are not met.

To constitute a substitute check and legal equivalent of your original check for all purposes, you must ensure the item:

- Contains clearly and legibly all names, account numbers, dates, amounts, signatures, and the like when they are imaged or copied;
- does not have any writings in a substance (i.e., gel ink, markers, pencil, etc.) that does not reproduce clearly when imaged or copied;
- does not bear designs, security features, or other elements that prevent the check from being imaged or copied with all the necessary elements being reproduced clearly; and
- includes all endorsements.

##### **ii. Endorsements**

An endorsement is a signature, stamp, or other mark on the back of a check to transfer, restrict payment, or make the signer responsible for the check.

You warrant that all endorsements are genuine. If you have not endorsed a check that you deposited to your account, we may endorse it for you. Any endorsement must be in the 1 1/2 inch area that starts on the top of the back of the check. Do not sign or write anywhere else on the back of the check. Otherwise, it may overlap into the area reserved for the banks' endorsements.

If you endorse a check outside of that area, mark or otherwise obscure the other area or a prior endorsement or make an endorsement that is illegible or incomplete, we may refuse or delay the processing of the item or we may, without incurring any liability to you, accept such nonconforming endorsement and you agree to indemnify us for, and hold us harmless from, any Losses (as defined in Section 7(d)) arising from us accepting a nonconforming endorsement.

**iii. Check Processing**

We receive a large volume of checks. Although we may visually review a sample of checks and other items, we do not individually examine all of your items to determine if the item is properly completed, signed and endorsed or to determine if it contains any information other than what is encoded in magnetic ink.

We retain the right to process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. You agree that automated processing of your checks is reasonable and that the exercise of ordinary care will not require us to detect forgeries or alterations that could not be detected by a person observing reasonable commercial standards consistent with general banking practice.

Because we do not inspect each item, if you write a check to multiple payees, we can properly pay the check regardless of the number of endorsements unless you notify us in writing that the check requires multiple endorsements. We must receive the notice in time for us to have a reasonable opportunity to act on it, and you must tell us the precise date of the check, amount, check number and payee. We are not responsible for any unauthorized signature or alteration that would not be identified by a reasonable inspection of the item.

**iv. Multiple Signatures**

We may act on the instructions of any one authorized signer on your account and not require multiple signatures. We may require written authorization for some actions.

If you have indicated that more than one signature is required to transact on your account, you acknowledge and agree that such requirements are for your own control and internal procedure purposes only, and we will not be liable if a check or other transaction is processed without multiple signatures. We do not assume a duty to enforce multiple signature requirements that you may agree upon among yourselves.

We are not responsible for reviewing your checks or other transactions for multiple signatures. We may pay out funds from your account if the check, item, or other withdrawal or transfer instruction

is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this.

**v. Check Cashing**

If anyone that does not have an account with us tries to cash a check, draft or other instrument written on your account, we may charge a fee them a fee or refuse to cash it. We may also require identification we deem necessary to cash such a check, draft or other instrument based on the circumstances at the time the instrument is presented.

**vi. Remotely Created Checks**

Like any standard check or draft, a remotely created check is a check or draft that can be used to withdraw money from an account. A remotely created check, however, is not issued by the paying bank and does not contain the signature of the account owner. In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection:

- you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check;
- you will maintain proof of the authorization for at least two (2) years from the date of the authorization, and supply us the proof if we ask; and
- if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

**vii. Truncation, Substitute Checks, and Other Check Images**

If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid.

You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for, and hold us harmless from, any Losses (as defined in Section 7(d)) we incur arising from any truncated check transaction you initiate.

We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a

separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

**viii. Restrictive Legends or Endorsements**

The automated processing of the large volume of checks we receive prevents us from inspecting or looking for restrictive legends, restrictive endorsements, or other special instructions on every check.

Examples of restrictive legends placed on checks are “must be presented within 90 days” or “not valid for more than \$1,000.00.” The payee's signature accompanied by the words “for deposit only” is an example of a restrictive endorsement. For this reason, we are not required to honor any restrictive legend or endorsement or other special instruction placed on checks you write unless we have agreed in writing to the restriction or instruction.

Unless we have agreed in writing, we are not responsible for any losses, claims, damages, or expenses that result from your placement of these restrictions or instructions on your checks.

**ix. Stop Payments on Checks**

We may accept an order to stop payment on any item from any one of you. You must make any stop-payment order in the manner required by applicable law and we must receive it in time to give us a reasonable opportunity to act on it before the item is presented for payment. Because stop-payment orders are handled by computers, to be effective, your stop-payment order must precisely identify:

- the exact check number or range of check numbers,
- the exact date,
- the amount of the item, and
- the payee's name.

We are not responsible for stopping payment on checks if you do not provide this information, provide inconsistent information, or your request comes too late for us to act on it.

You may stop payment on any item drawn on your account whether you sign the item or not. Your stop payment order is effective for six (6) months if it is given to us in writing or by another type of record. Generally, a “record” is information that is stored in such a way that it can be retrieved and can be heard or read and understood. You can ask us what type of stop payment records you can give us. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. If the original stop-payment order was oral, your stop-payment order will lapse after fourteen (14) calendar days if it is not confirmed in writing or by another type of record within that time period. We are not obligated to notify you when a stop-payment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

If you stop payment on an item and we incur any Losses (as defined in Section 7(d)) arising from the stop payment, you agree to indemnify us for, and hold us harmless from, those Losses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

Additional limitations on our obligation to stop payment are provided by applicable law (e.g., we paid for the item in cash or we certified the item).

**i. Electronic Fund Transfers ("EFTs")**

**i. Electronic Fund Transfers and Direct Deposits**

If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the federal government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by applicable law. We may also use any other legal remedy to recover the amount of our liability.

**ii. Electronic Fund Transfers Subject to the UCC and NACHA Rules**

This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us and as modified by this Agreement. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by the rules and regulations of National Automated Clearing House Association ("NACHA"). These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank, or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. Credit entries may be made by ACH. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

**iii. Provisional Payment (ACH)**

Credit given by us to you with respect to an ACH credit entry is provisional until we receive final settlement for such an entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not be deemed to have paid you in the amount of such entry.



**iv. Notice of Receipt of Entry**

Under the operating rules of the NACHA, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.

**v. Telephone Transfers**

A telephone transfer of funds from your account(s) to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing.

**vi. Use of Third-Party EFT Service Providers**

You may elect to use a third-party EFT service provider that is unaffiliated with the Bank to effectuate electronic funds transfers on your behalf from your account. If you do so, you will be entering into a direct contractual relationship with that third-party EFT service provider. We will report any such transactions on your normal periodic statement to the extent that the third-party EFT service provider makes such information available to us.

We are not liable for any errors or unauthorized transactions effectuated through a third-party EFT service provider. You agree that you will report any errors or unauthorized transactions with respect to EFTs that you initiate through that third-party service provider to the service provider and not to the Bank. Any error resolution responsibilities or liability will be allocated between you and the third-party EFT service provider. Our responsibilities with respect to any errors or unauthorized transactions conducted through a third-party EFT service provider are limited solely to providing information or copies of documents as requested by the third-party EFT service provider to assist them in their investigation.

**j. Wire Transfers**

A wire transfer is a transaction or series of transactions that begin with the debtor's payment order, made for the purpose of making a payment to the creditor of the order. A wire transfer is complete by the acceptance by the creditor's bank of a payment order for the benefit of the beneficiary of the debtor's order. We may give you the ability to make wire transfers; if we do, the wire transfer terms in the Treasury Management Services Agreement will govern your use of wire transfer services.

**k. Foreign Transactions**

Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. This means that the exchange rate applied to the credit may differ from any rate quoted to you at the time the transaction was initiated. In addition, there may be additional fees for certain types of foreign transactions; these fees are noted in the Schedule of Fees. Note that availability of certain types of foreign deposits may be delayed for regulatory reasons.



## **5. Business Debit Cards**

You may be provided with a business debit card in connection with your account. If you are provided with such a card, you authorize us to pay from your account the total amount of any transaction originated by use of the debit card.

### **a. General**

A business debit card may be used to: (i) withdraw cash or transfer funds at any Bank-owned ATM from any account linked to the card; (ii) withdraw cash or transfer funds at any ATM from the primary checking and primary savings account linked to the card; (iii) pay for Point-of-Sale (POS) purchases from the primary checking account at places that have agreed to accept Mastercard Debit (PIN not required).

We may impose relevant limits on the number or amount of debit card transactions that you make from the account; we will disclose any such limits to you separately when your debit card is provided to you and/or in your Account Opening Agreement. A Savings Account or Money Market Savings account may be linked to the card provided the card is also linked to a primary checking account. In such cases, the card use is limited to accessing cash at ATMs.

### **b. Personal Identification Number (PIN)**

You will be required to select a customized PIN for security reasons. It is your responsibility to keep this number confidential; it should not be written on your card or disclosed to anyone not authorized to sign on the account. The PIN represents your signature authorizing transactions made using your debit card, identifies the bearer of the debit card, and serves to validate and authenticate the directions given to complete the debit card transactions.

### **c. Card Ordering**

There are no limits on the number of cards per checking account. An individual that can withdraw or transfer funds on deposit as indicated on the Signature Card as "Account Authority" may order business debit card(s) for themselves or for employees, agents, or representatives of the business. To order a business debit card for an individual that does not have "Account Authority" you must request the debit card for the individual and assign the daily limits. The business name and the name of the employee, agent, or representative designated as an authorized cardholder will appear on the card. Each cardholder will receive a unique card number and will select a PIN. You must notify the Bank with three (3) business days' notice if you wish to terminate debit card access to any cardholder, including instances of employee terminations. Any transactions initiated by that cardholder within the three-day notice period will be considered to be authorized by you.

### **d. Limitations on Dollar Amount and Frequency of Transfers**

You may make unlimited cash withdrawals and purchases using your debit card, provided you do not exceed the daily dollar limits per card record number. A daily dollar limit per card will be discussed and agreed to at the time of your card order. Each cardholder may make unlimited cash withdrawals and purchases using their debit card, provided they do not exceed the daily dollar limits per card.

**e. Errors on Your Account and Limitations of Liability**

Debit card transactions are a type of electronic funds transfer. Your use of the debit card, including the process for handling errors on your account and the limitations of our liability in connection with your debit card transactions, are governed by Section 4(g) of this Agreement related to electronic funds transfers.

**f. Termination of Access**

We may terminate the use of your debit card at any time by sending you a notice to the last address shown in our records. You will still have the same rights and responsibilities for transactions initiated before the termination.

**g. Split Transactions**

You can instruct a merchant to charge your debit card for part of a purchase and pay any remaining amount with cash or another card. This is called a “split transaction.” Some merchants do not permit split transactions. If you wish to conduct a split transaction, you must tell the merchant the exact amount you would like charged to your debit card. If you fail to inform the merchant you would like to complete a split transaction and you do not have sufficient available funds in your account to cover the entire purchase amount, your debit card is likely to be declined.

**h. Card-Not-Present Transactions**

You may make retail card purchases without presenting your debit card by providing information from your debit card, such as transactions done by internet or telephone. Conducting transactions in this way has the same legal effect as if you used the plastic debit card itself. For security reasons, the amount or the number of card-not-present transactions you are permitted to make may be limited.

**i. Virtual Cards**

When you open an account, you may also receive a virtual card (“Virtual Card”) represented by a 16-digit card number, a 3-digit card verification value (“CVV”) number, and an expiration date. The Virtual Card is separate from your physical debit card and can be managed through the Online Services. We will issue you a replacement Virtual Card when it expires.

The Virtual Card accesses the available funds in your account to make card-not-present transactions (see Section 5(h)) anywhere your debit cards are accepted in the same way as your physical debit cards. The Virtual Card can also be added to a digital wallet (see Section 5(j)) in the same way as your physical debit card.

Your use of the Virtual Card is subject to the terms of this Agreement, including transaction limitations, to the same extent as your physical debit card.

**j. Use of the Card with Digital Wallets**

A digital wallet (“Wallet”) provides another way for you to make purchases with your debit card. A Wallet is a service provided by another company (such as Apple Pay, Android Pay, Samsung Pay, etc.), that allows you to use your debit card to pay for transactions where the Wallet is accepted. A Wallet may not be accepted at all places where your debit card is otherwise accepted, and your debit card may not be eligible for all the features and functionalities of the Wallet. Any use of your debit card in or through the Wallet continues to be subject to all terms and conditions of this Agreement. We may terminate your access to or use of your debit card with a Wallet at any time and for any reason, including if you violate any of the terms or conditions of this Agreement.

You can add or remove your debit card from a Wallet by following the instructions provided by the Wallet provider. By doing this, you agree to allow us to share your debit card information with the Wallet provider. You may be required to take additional steps to authenticate your identity before your debit card is added to the Wallet. We do not charge you any additional fees for adding your debit card to a Wallet or for using your debit card in the Wallet. However, any fees and charges that would apply when you use your debit card outside Wallet will also apply when you use a Wallet to make purchases with your debit card or otherwise access your debit card. The Wallet provider and other third parties such as wireless companies or data service providers may charge you fees. The digital version of your debit card in a Wallet may, in our sole discretion, be automatically updated or upgraded without notice to you.

We are not the provider of the Wallet, and we are not responsible for providing the Wallet service to you or for ensuring that your debit card is compatible with any Wallet service. We are only responsible for supplying information to the Wallet provider to allow usage of your debit card in the Wallet as you have requested. We are not responsible for any failure of the Wallet, any mobile device you use with the Wallet, or the inability to use the Wallet for any transaction. We are not responsible for the performance of services by any Wallet provider or any other third parties regarding any agreement you enter. We do not control the privacy and security of any of your information that may be held by the Wallet provider. Any information held by the Wallet provider is governed by the privacy policy given to you by the Wallet provider. If you have location services enabled on your mobile device, the location of your mobile device may be collected and shared by the Wallet provider in accordance with their respective data and privacy policies, including with us. If you request to add your debit card to a Wallet, you authorize us to collect, transmit, store, use and share information about you, your mobile device, and your use of the debit card in accordance with our privacy policy.

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY ARE WE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM YOUR USE OF A WALLET, YOUR USE OF YOUR DEBIT CARD IN CONNECTION WITH A WALLET, OR A MOBILE DEVICE.**

If you use a Wallet, you should protect your Wallet and your mobile device as you would your debit card. If your Wallet or mobile device is compromised, lost or stolen, you should also consider your debit

card lost or stolen and notify us immediately. Please see Section 4(f) for instructions for reporting a lost or stolen debit card.

If you have any questions, disputes, or complaints about a Wallet, contact the Wallet provider using the information given to you by the provider.

**k. Card Authorization Holds**

When you use your debit card to purchase goods or services or to obtain cash from a merchant, the merchant may request preauthorization (“Card Authorization”) for the transaction. If the merchant makes such a request and there are sufficient available funds in your account, we will approve the transaction and place a temporary hold on the funds in your account. This hold will reduce the Available Balance in your account. The amount of this temporary hold will usually be the amount of the Card Authorization. The hold will remain on your account until the merchant sends the final amount of the transaction to us and requests payment (“Settlement”). In most cases, if the merchant does not request Settlement or is delayed in requesting settlement, the hold will automatically be removed after three (3) days. However, for transactions with certain merchants, such as hotels, the hold may remain on your account up to seven (7) days.

Please note that the merchant controls the timing of both the Card Authorization and Settlement. This means that a merchant may initiate Settlement after the Card Authorization hold has already been removed. If the hold is removed and you spend the funds in your account before Settlement, it may cause your account to overdraw. In addition, the Card Authorization amount that the merchant requests may be different than the Settlement amount. It is therefore important that you keep track of your transactions and your account. We cannot stop a debit card transaction once we have approved a Card Authorization, and you will be responsible for repaying any negative balance that may occur in your account.

**l. Returns and Refunds**

Please be aware of the merchant’s return policies before using your debit card to make a purchase. We are not responsible for the delivery, quality, safety, legality or any other aspect of the goods or services you purchase using your debit card. If you have a problem with a purchase that you made with your debit card or if you have a dispute with the merchant, you must handle it directly with the merchant. If you are entitled to a refund for any reason for goods or services obtained using your debit card, you agree to accept credits to your debit card for the refund and agree to the refund policy of the merchant. The amounts credited to your debit card for refunds may not be available for up to five (5) days from the date the refund transaction occurs.

**6. Communications About Your Account**

**a. Credit Verification**

You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

**b. Telephonic Instructions**

Unless required by applicable law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission or leave by voicemail or on a telephone answering machine.

**c. Monitoring and Recording Telephone Calls and Consent to Receive Communications**

You acknowledge and agree that all telephone or electronic conversations, or any other communications among or between you, the Bank, any third parties used by you or the Bank, and any of your or our respective employees and agents, may be monitored and recorded and retained by us or our third-party service providers by use of any reasonable means unless prohibited by applicable law. We may use any recording for reasonable business purposes, including security and quality assurance. However, we are under no obligation to make or maintain any such recording. We will not remind you that we may be monitoring or recording a telephone or electronic conversation unless required by applicable law to do so. To provide you with the best possible service in our ongoing business relationship for your account we may need to contact you about your account from time to time by telephone, text messaging, or email. You authorize us to contact you regarding your account throughout its existence using any telephone numbers or email addresses that you provide to us, including cellular wireless phone numbers. You also authorize us to make such contact using pre-recorded or artificial voice messages and an automated dialing device.

**7. Additional Terms and Conditions**

**a. Force Majeure**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE ARE NOT LIABLE FOR ANY CLAIMS, COSTS, LOSSES, OR DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM OUR FAILURE TO ACT, OR ANY DELAY BEYOND TIME LIMITS PRESCRIBED BY LAW OR PERMITTED BY THIS AGREEMENT IF SUCH FAILURE OR DELAY IS CAUSED BY MAINTENANCE OR INTERRUPTION OR MALFUNCTION OF EQUIPMENT OR COMMUNICATION FACILITIES, UNUSUAL TRANSACTION VOLUME, SUSPENSION OF PAYMENTS BY ANOTHER FINANCIAL INSTITUTION, FIRE, NATURAL DISASTERS, ELEMENTS OF NATURE, GOVERNMENT ACTION, ACTS OF WAR, TERRORISM OR CIVIL STRIFE, EMERGENCY CONDITIONS, OR OTHER CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE BANK.**

**b. Limitation of Liability**

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OUR LIABILITY HEREUNDER IS LIMITED TO ACTUAL DAMAGES DIRECTLY RESULTING FROM OUR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.**

**ADDITIONALLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OUR LIABILITY TO YOU FOR A CLAIM INVOLVING ANY ERROR OR UNAUTHORIZED ACTIVITY IS LIMITED TO THE FACE VALUE OF THE ITEM OR TRANSACTION, reduced by the amount of the loss that could have been avoided by**

your use of ordinary care, OR THE ACTUAL VALUE OF ANY FUNDS NOT PROPERLY CREDITED OR DEBITED.

ADDITIONALLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE BANK OR ITS AFFILIATES, SUCCESSORS, ASSIGNEES, AGENTS OR SERVICE PROVIDERS BE LIABLE TO YOU (1) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (HOWEVER ARISING, WHETHER UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY) IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT, INCLUDING LOST PROFITS, DATA LOSS, OR OTHER PECUNIARY LOSS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES, AND (2) FOR AN AMOUNT EXCEEDING THE AVERAGE FEES ACTUALLY PAID BY YOU AND RECEIVED BY US DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

ADDITIONALLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE 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.

NOTHING IN THIS AGREEMENT IS INTENDED TO VARY OUR DUTY TO ACT IN GOOD FAITH AND WITH ORDINARY CARE WHEN REQUIRED BY APPLICABLE LAW.

THIS AGREEMENT AND OTHER AGREEMENTS BETWEEN YOU AND US MAY CONTAIN OTHER LIMITATIONS OF LIABILITY, WHICH SUPPLEMENT AND DO NOT REPLACE, THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 7(B).

THIS SECTION 7(B) AND THE OTHER LIMITATIONS OF LIABILITY CONTAINED IN OR RELATED TO THIS AGREEMENT REPRESENT A FAIR AND REASONABLE ALLOCATION OF THE RISK BASED ON THE FEES CHARGED HEREUNDER AND APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

**c. Disclaimer of Warranty**

NEITHER BANK NOR ITS AFFILIATES, SUCCESSORS, ASSIGNEES, AGENTS OR SERVICE PROVIDERS MAKES ANY REPRESENTATION OR WARRANTY TO YOU AS TO THE SERVICES HEREUNDER, INCLUDING ANY HARDWARE, SOFTWARE, MOBILE APPLICATION, EQUIPMENT, TECHNOLOGY OR ASSOCIATED DOCUMENTATION PROVIDED BY US (DIRECTLY OR INDIRECTLY) IN CONNECTION WITH THE SERVICES (WHETHER EXPRESS, IMPLIED OR STATUTORY), INCLUDING IMPLIED WARRANTIES OF QUALITY, TITLE, NON-INFRINGEMENT, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY,

**AVAILABLE, SECURE, OR ERROR-FREE. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS.**

**d. Indemnification**

You agree to indemnify, hold harmless, and promptly reimburse the Bank and its affiliates, subsidiaries, owners, directors, officers, employees, counsel, agents, attorneys-in-fact, and other representatives (including any successors or assigns of any of the foregoing) from any costs, liabilities, claims, demands, losses, penalties, fines, actions, judgments, suits, damages, or expenses (including attorneys’ fees, court costs, allocable internal costs, and fees of collection and enforcement) (collectively, “Losses”) related to or arising from this Agreement and your accounts, and any related act or omission by us or you, including (i) our action or inaction in reliance upon oral, written, or electronic instructions or information from you, and (ii) the breach of any of your representations, warranties, or covenants under this Agreement. The indemnification obligations under this Section 7(d) apply to the maximum extent permitted by applicable law.

**e. Our Right to Setoff; Security Interest; Remedies Cumulative**

We may (without prior notice and when permitted by applicable law) set off the funds in your account(s) any due and payable debt any of you owe us now or in the future. If your account(s) is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

This right of setoff does not apply to your account(s) if prohibited by applicable law. For example, the right of setoff does not apply to your account(s) if the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against your account(s). You agree to indemnify us for, and hold us harmless from, any Losses (as defined in Section 7(d)) arising from our exercise of our right of setoff.

You also grant us a security interest in each of your account(s) to secure any debt that you owe to us. Debts include overdrafts, fees, collection costs, and any other amounts you have authorized for us to charge you under this Agreement and any of your other agreements. By opening and keeping each account with us, you consent to our security interest. You may not grant a security interest in, transfer, or assign your accounts to anyone other than us without our written agreement.

Our rights and remedies under this Agreement or any other documents or instruments pursuant to or in connection with the Services are cumulative and not exclusive of any other rights or remedies.



**f. Claim of Loss**

If you claim a credit or refund because of forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss.

You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

**g. Our Business Days**

For purposes of this Agreement, our “business days” are Monday through Friday, excluding federal holidays.

**h. Our Relationship With You**

We are establishing a banking relationship with you. This Agreement does not create a fiduciary, advisory, or any other special relationship between you and us.

**i. Third-Party Institutions and Service Providers**

We may work with one or more third-party financial institutions or service providers in connection with this Agreement. You authorize us to share your corporate, financial, or other information with such third parties as necessary in order to provide the account or to complete transactions you have requested. You also license and authorize us to access information maintained by such third parties, on your behalf as your agent, and you expressly authorize such third parties to disclose your information to us. We disclaim any liability for your use of any third-party financial institutions or service providers. Unless stated expressly otherwise in writing, we do not endorse or make any representations or warranties regarding any third-party financial institutions or service providers.

**j. Choice of Law and Venue**

This Agreement, your accounts, and any related disputes are governed by United States law and (when not superseded by United States law) the laws of the state where your account is located (without regard to conflict of laws principles). If your account is opened through one of our retail offices, then the account is located in the state where the retail office is located. If you reside anywhere else or open your account online, then your deposits will be held, and the account will be located in North Dakota.



You agree that any dispute arising under this Agreement or relating in any way to this Agreement or your relationship with us, to the extent not arbitrated pursuant to Section 8, will be exclusively resolved in a federal or state court located in Fargo, North Dakota and that you will be subject to such court's jurisdiction. You waive any objection that you may have based upon improper venue or forum *non conveniens* as to the conduct of any such proceeding.

**k. Notices**

Unless we provide to you an alternate or different address, all notices to the Bank must be in writing and sent to:

Gate City Bank  
500 2<sup>nd</sup> Avenue North  
Fargo, ND 58102

We may send notices to you by telephone, email, through the Online Service, or any other form of commercially reasonable communication based on the contact information you provide to us, and such notices are immediately effective. You agree to keep us informed of any changes to your contact information at all times.

Any written notice you give us is effective when we actually receive it. You must follow any specific delivery instructions provided with regard to written notices. We must receive your written notice in time to have a reasonable opportunity to act on it. If the notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date and payee.

**l. Termination and Modification; Waivers**

Unless we are required under applicable law to provide you with advance notice, we reserve the right to terminate or modify this Agreement at any time, without notice and for any reason, including: (i) for security reasons; (ii) as may be required by applicable law, regulation, any Governing Rules or a government authority; (iii) your default under this Agreement or any other agreement with us; (iv) account inactivity; or (v) if you present undue risk to the Bank, as determined by us in our sole discretion.

We may require you to obtain Risk Management Services (or to comply with other requirements) as a condition of us continuing to offer any account, in our sole discretion. For example, we may require you to do so based on past account activity.

We may change this Agreement at any time by posting a revised version on our website or otherwise making the revised Agreement available to you. For example, we may add, delete, or modify the terms of this Agreement. These terms include fees and charges for this Agreement.

Any change shall be effective on the date the change was made and published. Your continued use of your account(s) will constitute your agreement to adhere to and be bound by this Agreement, as amended from time to time.

You may terminate this Agreement for any reason by providing at least thirty (30) days' advance written notice to us.

You will be responsible for paying any fees and charges related to this Agreement that have accrued on or before the date of termination.

Any waiver of any of any of the terms of this Agreement by the Bank must be expressly made in a writing signed by the Bank, and no waiver of any term, provision, or condition of this Agreement by the Bank, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition, or any other term, provision or condition of this Agreement.

**m. Severability**

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

**n. Limitations of Assignment**

You may not assign, transfer, or otherwise delegate, whether by operation of law or otherwise, your rights or obligations, in whole or in part, under this Agreement or any accounts without the Bank's prior written consent. Any assignment, transfer, or delegation or attempted assignment, transfer, or delegation in violation of the foregoing is void. The Bank may assign, transfer, or otherwise delegate its rights or obligations, in whole or in part, under this Agreement in our sole discretion, including through the use of the Bank's subcontractors and service providers.

**o. No Third-Party Beneficiaries**

This Agreement is for the benefit only of you and the Bank and is not intended to, and shall not be construed as, granting any rights to or otherwise benefiting any other person or entity.

**p. Entire Agreement**

This Agreement (and the other documents referenced herein) constitute the entire agreement and understanding between you and the Bank relating to the subject matter of this Agreement and supersedes all prior agreements (if any).

**q. Survival**

Sections 7 and 8, and any other terms that expressly or are intended by their nature to survive termination of this Agreement, together with any provisions necessary to interpret or enforce any of the terms of the foregoing Sections, shall survive the termination of this Agreement.

**r. Statute of Limitations**

Any claim, action or proceeding by you to enforce the terms of this Agreement or to recover for any related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs.

**s. Interpretation**

For purposes of this Agreement, the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” the word “or” is not exclusive, and the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Words defined in the singular include the plural, and vice versa. Headings are included for convenience only and shall not affect the interpretation of this Agreement.

**8. Arbitration Agreement**

**PLEASE READ THE PROVISIONS OF THIS SECTION 8 (THIS “ARBITRATION AGREEMENT”) CAREFULLY. IT REQUIRES ALL CLAIMS BETWEEN YOU AND US TO BE RESOLVED BY BINDING ARBITRATION WHENEVER YOU OR WE CHOOSE TO SUBMIT A CLAIM TO ARBITRATION. BY ACCEPTING THIS ARBITRATION AGREEMENT, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO A SMALL CLAIMS COURT) AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION.**

**a. Agreement to Arbitrate**

Either you or we may elect, without the consent of the other, to arbitrate any Claim (as defined below) through the binding arbitration process set forth in this Arbitration Agreement. For purposes of this Arbitration Agreement, “we,” “our,” and “us” include Gate City Bank and its employees, officers, directors, parents, agents, controlling persons, subsidiaries, affiliates, predecessors, acquired entities, successors, and assigns.

**b. Claims Covered By Arbitration**

“Claims” subject to this Arbitration Agreement include all of the following: (i) claims related to or arising out of this Agreement or any prior or later versions of the Agreement, as well as any changes to the terms of the Agreement; (ii) claims related to or arising out of any aspect of any relationship between you and us that is governed by the Agreement; (iii) claims related to or arising out of your account or any services provided to you under the Agreement; and (iv) claims related to the interpretation, scope, applicability, or enforceability of the Agreement or Arbitration Agreement. Claims are subject to arbitration whether they are based in contract, tort, federal or state statute, constitution, regulation, or any other legal theory, or whether they seek legal or equitable remedies (except as provided in the “Public Injunctive Relief Waiver” section below). All claims are subject to arbitration whether they arose in the past, may currently exist, or may arise in the future. Claims include claims or disputes that arose before the parties entered into the Agreement (such as claims related to advertising) or after termination of the Agreement or your account is closed.

**c. Claims Not Covered By Arbitration**

Claims filed by you or by us in a small claims court are not subject to arbitration, so long as the dispute remains in such court and advances only an individual claim for relief. The “Class and Representative Action Waiver” and “Public Injunctive Relief Waiver” sections below set forth additional claims not subject to arbitration.

**d. Pre-Arbitration Demand**

You agree that before filing any claim in arbitration, you must first submit an individualized request regarding your Claim (a “Pre-Arbitration Demand”) by sending us a notice, in writing, to the address specified in (and otherwise in accordance with) Section 7(k), at any time. A Pre-Arbitration Demand is only valid when it pertains to, and is on behalf of, a single individual.

Your Pre-Arbitration Demand must include: (i) your name, (ii) the telephone number(s) associated with your account(s), (iii) the email address(es) associated with your account(s), (iv) a factual description of your Claim and the amount that you are seeking in order to fully resolve the Claim, and (v) the name, related firm, telephone number, mailing address, and email address of your counsel, if any. You agree to promptly notify us if, at any time during the Pre-Arbitration Demand process, you subsequently become represented by counsel, change counsel, or are no longer represented by counsel.

The informal dispute resolution process described in this subsection (d) is a condition that must be fulfilled before commencing arbitration. If your Claim is not resolved within sixty (60) calendar days of submitting a Pre-Arbitration Demand, a demand for arbitration can be made in accordance with this Arbitration Provision, unless we and you mutually agree to extend or shorten that 60-day period. You and we agree that the arbitrator shall dismiss any arbitration demand filed prior to the end of that period.

**e. Commencing an Arbitration**

Unless the parties agree to select a different arbitration administrator, the arbitration shall be administered by the American Arbitration Association (“AAA”) under AAA’s Commercial Arbitration Rules, except as modified by this Arbitration Agreement. AAA’s rules may be obtained from [www.adr.org](http://www.adr.org) or 1-800-778-7879 (toll-free).

If AAA is for any reason unable to serve and the parties are unable to agree on an alternative arbitration administrator, then a court of competent jurisdiction shall appoint an arbitration administrator.

Either you or we may start an arbitration by giving written notice to the other party; provided, that you are required to first comply with the Pre-Arbitration Demand process set forth in subsection (d). This notice may be given before or after a lawsuit has been filed concerning the Claim and it may be given by papers filed in the lawsuit such as a motion to compel arbitration. The party asking for arbitration must file a notice with the arbitration administrator pursuant to its rules.

If you are represented by counsel, the demand for arbitration must include the counsel’s name, telephone number, mailing address, and email address. Your counsel must also sign the demand for arbitration.

By signing a demand for arbitration, you and/or your counsel shall be deemed to have certified to us, to the best of you (and/or your counsel’s knowledge), information, and belief, formed upon its due and reasonable inquiry, that (i) the demand for arbitration is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution, (ii) the claims and other legal contentions in the demand for arbitration are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law (or for establishing new law), and (iii) the factual contentions made in the demand for arbitration have evidentiary support (or will likely have evidentiary support) after a reasonable opportunity for further investigation or discovery. The arbitrator shall be authorized to afford any relief or impose any sanctions available under Federal Rule of Civil Procedure 11 or any applicable state law for either party’s violation of this paragraph.

**f. Arbitration Procedure**

Unless you and we agree otherwise in writing, the arbitration shall be decided by a single, neutral arbitrator, who shall be a retired judge or a lawyer with at least ten years of experience, selected in accordance with the chosen arbitration administrator’s rules.

The arbitrator will decide the Claim or Claims in accordance with the terms of the Agreement and applicable substantive law, including the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”), and applicable statutes of limitation (subject to Section 7(r)). The arbitrator shall honor claims of privilege

recognized at law. Except as provided in the “Public Injunctive Relief Waiver” section below, the arbitrator may award damages or other relief (including injunctive relief) available to the individual claimant under applicable law.

The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect to the Claim(s) in arbitration and shall not have any bearing on the rights and obligations of any other persons, or on the resolution of any other dispute. The arbitrator will take reasonable steps to protect customer account information and other proprietary or confidential information.

You irrevocably consent to and agree that any arbitration hearing or other proceeding hereunder shall take place in Fargo, North Dakota, unless we, in our sole and absolute discretion, expressly agree otherwise in writing.

At your or our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

The arbitrator’s award shall be final and binding except that any party may appeal any award relating to a Claim for more than \$500,000 (exclusive of claimed interest, arbitration fees and costs) or for injunctive relief to a three-arbitrator panel appointed by the arbitration administrator, which will reconsider de novo any aspect of the appealed award. The panel’s decision will be final and binding.

**g. Costs and Expenses**

Each party agrees to bear its own costs and expenses in connection with any arbitration proceeding; provided, that a party that does not agree to submit to arbitration after a lawful demand by the other party must pay all of the other party’s costs and expenses for compelling arbitration (including any attorneys’ fees and court costs of the other party); provided, further, that the arbitrator may award the payment of costs and expenses to the extent permitted by applicable AAA rules.

**h. JURY WAIVER AND LIMITATION OF RIGHTS**

**YOU AND WE AGREE THAT, BY ENTERING INTO THIS ARBITRATION AGREEMENT, THE PARTIES ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR A TRIAL BEFORE A JUDGE IN COURT (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO A SMALL CLAIMS COURT). YOU AND WE ACKNOWLEDGE THAT ARBITRATION WILL LIMIT OUR LEGAL RIGHTS, INCLUDING THE RIGHT TO PARTICIPATE IN A CLASS ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO CONDUCT FULL DISCOVERY, AND THE RIGHT TO APPEAL.**

**i. CLASS ACTION AND REPRESENTATIVE ACTION WAIVER**

**YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS**

OR REPRESENTATIVE PROCEEDING. FURTHER, UNLESS MUTUALLY AGREED TO BY YOU AND US, CLAIMS OF TWO OR MORE PERSONS MAY NOT BE JOINED, CONSOLIDATED, OR OTHERWISE BROUGHT TOGETHER IN THE SAME ARBITRATION (UNLESS THOSE PERSONS ARE JOINT ACCOUNT HOLDERS OR BENEFICIARIES ON YOUR ACCOUNT OR RELATED ACCOUNTS, OR PARTIES TO A SINGLE TRANSACTION OR RELATED TRANSACTION). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT ANY CLASS, PRIVATE ATTORNEY GENERAL OR OTHER REPRESENTATIVE PROCEEDING. THIS SECTION DOES NOT APPLY TO REQUESTS FOR PUBLIC INJUNCTIVE RELIEF, WHICH ARE ADDRESSED IN THE SECTION BELOW ENTITLED “PUBLIC INJUNCTIVE RELIEF WAIVER.”

**ii. PUBLIC INJUNCTIVE RELIEF WAIVER**

NEITHER YOU NOR WE WILL HAVE THE RIGHT TO SEEK PUBLIC INJUNCTIVE RELIEF AS A REMEDY FOR ANY CLAIM AGAINST ONE ANOTHER (A “PUBLIC INJUNCTIVE RELIEF REQUEST”) IN ARBITRATION, IF SUCH A WAIVER IS PERMITTED BY THE FAA. IF SUCH A WAIVER IS DEEMED UNENFORCEABLE, YOU AND WE AGREE THAT THE PUBLIC INJUNCTIVE RELIEF REQUEST SHALL BE SEVERED FROM ANY OTHER CLAIMS OR REMEDIES YOU HAVE. THE PUBLIC INJUNCTIVE RELIEF REQUEST MUST BE ADJUDICATED BY A COURT AFTER ALL YOUR OTHER CLAIMS TO BE DECIDED IN ARBITRATION UNDER THIS ARBITRATION AGREEMENT ARE RESOLVED IN ARBITRATION. THE VALIDITY, ENFORCEABILITY, AND EFFECT OF THIS SECTION SHALL BE DETERMINED EXCLUSIVELY BY A COURT, AND NOT BY ANY ARBITRATION ADMINISTRATOR OR ARBITRATOR.

**i. Governing Law**

You and we agree that you and we are participating in transactions that involve interstate commerce and that this Arbitration Agreement and any resulting arbitration are governed by the FAA. Notwithstanding any section in the Agreement to the contrary, to the extent state law applies, the laws of the state governing your account relationship apply (as determined in accordance with Section 7(j)). No state statute pertaining to arbitration shall apply.

**j. Severability**

Notwithstanding any section in the Agreement to the contrary, if any section of this Arbitration Agreement (except for the “Class Action and Representative Action Waiver” above) is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this Arbitration Agreement. However, if the “Class Action and Representative Action Waiver” section is deemed invalid or unenforceable in whole or in part, then this entire Arbitration Agreement shall be deemed invalid and unenforceable.