

## General Terms and Conditions

Understanding the Terms and Conditions of your Account as well as the Federal laws and regulations that outline your rights and responsibilities as a Consumer and Non-Consumer (Commercial Account) will help you protect your financial assets. The subject matter that follows provides guidance as to your rights and responsibilities of managing your Account with us.

### Governing Laws, Rules and Regulations

The body of state and Federal law that governs our relationship with you is too large and complex to be reproduced here. The purpose of this document is to

- Summarize some laws, rules, and regulations that apply to common transactions
- Establish rules to cover transactions or events which the law does not regulate
- Establish rules for certain transactions or events which the law regulates but permits variation by agreement

Your Account is governed by Federal law and regulation and by the State of Texas (to the extent that such state law has not been preempted by Federal law). All Items of deposit and collection that concern your Account are subject to applicable Federal law and regulation and the Automated Clearing House (“ACH”). Notwithstanding any other provision herein, this Agreement and any section within this Agreement may be changed or terminated without notice to you to the extent necessary to comply with any law of the State of Texas or Federal Government, and any rule of the ACH.

Furthermore, you acknowledge and agree that the Rate Information Sheet, Account Information Brochure, applicable fee schedule and other disclosures, such as individual product and regulatory disclosures, may modify this Agreement.

### Concerning Your Deposits

All Checks, drafts, Substitute Checks and other Negotiable Instruments (collectively herein “Checks”) deposited to your Account are subject to final collection or subsequent return. Similarly, all Wire Transfer requests, ACH Items, and all other internal and external transfer requests (collectively herein “Funds Transfers”) are subject to final collection or subsequent return. As used throughout this Agreement, “Checks” and “Funds Transfers” are collectively referred to herein as “Items.”

We may charge your Account or any Account you have with us if we are informed that an Item is being returned, or has been returned, to us as unpaid without regard to the return being timely. This right shall extend to Checks drawn on other Accounts with us (“on-us” Checks) that are dishonored by us without regard to the dishonor being timely. No Item within a deposit shall be deemed finally paid because a portion thereof is withdrawn as cash.

Without limiting the foregoing, any Item deposited to your Account or cashed that is finally paid and subsequently returned because a claim is made that the Item was altered, forged, unauthorized, missing signature or should not have been paid for any reason, we may charge your Account or any Account you have with us in the amount of the respective Item. In lieu of charging your Account, we may withhold an amount equal to the respective Item until final determination of such claim has been validated and resolved.

When an Item is returned to us as unpaid, it may create an overdraft of your Account. You acknowledge and agree to pay the amount of the overdraft and any overdraft fees immediately upon demand. At our discretion, and without notice to you, we may resubmit any returned Item for payment as permitted by Federal law and regulation.

We may return or refuse to accept, except for collection only, all or any part of an Item for deposit to your Account at any time and will not be liable to you for doing so even if such action causes outstanding Items to be returned or dishonored. Checks refused for deposit will be returned to you.

We shall not be responsible for deposits sent by mail, courier or placed in the outside depository until we have either received actual delivery from the U.S. Postal Service, courier or have removed the deposits from the outside depository. In the event you place your deposits in the outside depository, you acknowledge and agree to exercise ordinary care in opening, closing and properly securing the depository. Deposits that are received after our current Business Day’s cut-off time, weekend, or Federal holiday will be treated as received on the next available Business Day and subject to the Funds Availability Policy. Please see the “Funds Availability Policy” document for details on deposit availability.

You acknowledge and agree to prepare your deposit in accordance with our instructions, which may include the use of an approved deposit bag or envelope and deposit ticket. Deposits placed in the outside depository are subject to final verification and upon review, may require an adjustment to your Account due to an error, including, but not limited to, an error that appears on your deposit ticket. You acknowledge and agree that we may adjust the balance in your Account due to any error as a result of your deposit.

We may not accept Checks for deposit drawn on a non U.S. bank or Checks payable in foreign currency except on a collection only basis even though we take possession of the physical Check(s) at the time of deposit or final verification. Actual credit for Checks

payable in foreign currency will be at the exchange rate in effect on the date of final collection in U.S. dollars. The “Funds Availability Policy” does not apply to Checks that are payable in foreign currency.

You shall not deposit any Substitute Check (also Image Replacement Document or IRD), other than those that are re-deposited for return purposes, unless we specifically agree to accept such deposit. In the event we accept any Substitute Check for deposit, you agree that such acceptance shall not be deemed to be our agreement to accept any other Substitute Check for deposit. Furthermore, you agree to reimburse us for losses, costs and expenses we sustain associated with warranty or indemnity claims in connection with your deposit of a Substitute Check, or in connection with an electronic representation you provide to us, including, but not limited to, the Substitute Check does not meet applicable standards or causes duplicate payments. Please see the “Substitute Checks and Your Rights” document for details about your rights with regard to Substitute Checks.

### **Concerning Order of Payments**

At our discretion, we may pay Checks and other Items drawn against your Account in any order. You acknowledge and agree that we may do so even though such an event (1) prevents payment of other Checks or Items that would have otherwise been paid had we chosen a different order; (2) prevents payment of fewer Checks or Items; or (3) results in the imposition of additional fees. Generally, our policy is to pay Checks or Items presented for payment on your Account according to the transaction type (such as Checks, ACH and ATM) and dollar amount, with Checks or Items of greater dollar amount paid first. You acknowledge and agree that we may change the order in which we pay Checks or Items presented for payment on your Account without prior notice to you. We encourage you to maintain careful records and to practice sound account management to reduce possible fees, which may result from overdraft situations.

### **Endorsing Your Checks**

You acknowledge and agree to endorse all Checks deposited to your Account in accordance to Federal law and regulation. Furthermore, you acknowledge and agree that each person signing the signature card is authorized, or any person as otherwise authorized, to endorse any Negotiable Instrument payable to you, or your order, for deposit to your Account. Such authorization remains in place until we actually receive written notice of a change from you. In the event the Account is for business purposes (Commercial Account), we will honor such authorization until we actually receive written notice of a change from the governing body of the legal entity. Notwithstanding, anyone can make a deposit to your Account. You acknowledge and agree that we have no obligation to question the authority of anyone making a deposit to your Account.

Proper endorsement standards specify that you endorse each Check in the area that extends 1 1/2 inches from the trailing edge on the back of the Check. The trailing edge is the left side of the Check when you look at it from the front side. If your endorsement obscures any area outside of the 1 1/2 inches reserved for your endorsement or if your endorsement is illegible or incomplete, we may, at our option, accept such nonconforming endorsement and you agree to hold us harmless from any claim, loss, delay, liability, or damage which may arise as a result. Without limiting the foregoing, this provision shall extend to imprinting information on the back of your Check(s).

In the event you deposit a Check that lacks endorsement, you acknowledge and agree that we may deem the Check as endorsed or may endorse the Check on your behalf. With respect to such deposit, our rights and your liabilities shall be determined as though you actually endorsed and deposited the Check. Notwithstanding, if you deposit a Check that is later returned to us because a claim has been made that the endorsement is either incomplete or is not authentic, we may withhold the amount of such Check from your Account until either the claim is withdrawn or the Check is finally paid.

### **Paying Stale and Post-Dated Checks**

We are not required to pay any Check which presents against your Account for payment more than six (6) months after its written date. Nonetheless, we may pay such Check if we do so in good faith. You acknowledge and agree that we are acting in good faith provided there is not a stop payment order in effect when we pay such Check. Notwithstanding, you acknowledge and agree that we may honor a post-dated Check which presents against your Account for payment prior to its written date. Under such circumstances, we will charge the amount of such Check against your Account. Without limiting the foregoing, you acknowledge and agree that you may request a stop payment order on a post-dated Check provided we have not accepted, certified, made final payment on or otherwise become accountable for such Check. Please see the “Requesting Stop Payment Orders: Checks” section of this Agreement for further details on requesting a stop payment order.

### **Concerning Restrictive Legends**

We are not liable to you for any claims, costs, losses or damages which result from the placement of restrictive legends on your Checks unless you and we have otherwise agreed in writing to such restriction. Without limitation, examples of restrictive legends include “Not valid after 90 days,” “Not valid over \$1,000.00” and “Two Signatures Required.”

### **Selecting Check Stock and Ink**

Checks you write may be converted into electronic images (truncated) during the Check collection and return process. You acknowledge and agree to bear the risk of loss in the event you elect to have Checks printed by a vendor that has not been approved

by us, use Check stock or features (such as security features) that cause critical data to disappear or to become obscured upon truncation, or make Checks out in a way (such as use of a light colored ink) that causes critical data to disappear upon truncation. Furthermore, you acknowledge and agree to bear the risk of loss in the event you use Check stock that contains printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers. We strongly suggest that you do not pre-print your driver's license number, Social Security Number, or Taxpayer Identification Number on your Checks for security purposes.

### **Converting Checks to Electronic Items**

Checks that do not contain a value in the on-us auxiliary field of the MICR line may be converted to an ACH Debit Entry by a merchant, in which case such entry will be collected electronically and charged against your Account much more quickly than if processed as a Check through Check processing channels. This means that you (1) have a reduced right to stop payment; (2) must ensure that your Account has sufficient funds to cover the ACH Debit Entry processed through the ACH network; and (3) will not receive the cancelled Check(s) with your Periodic Statement. When a Check which qualifies for Check conversion to an ACH Debit Entry is presented for payment by way of:

- **Point of Purchase:** the merchant is required to provide notice of possible check conversion prior to receipt of each check. Usually such notice is posted at the point-of-purchase. The merchant is required to return the Check to you as voided after the transaction is complete. You should treat the voided Check with care to reduce the risk of someone obtaining the voided Check and initiating additional debit transactions against your Account.
- **Mail via Lockbox:** the merchant is required to provide notice of possible check conversion prior to the receipt of each check. Usually such notice is included with your billing statement. The merchant is required to have procedures in place for the destruction of the original Check.
- **Back Office:** the merchant is required to provide notice of possible check conversion prior to the receipt of each check. Usually such notice is posted at the point-of-purchase. The merchant is required to have procedures in place for the destruction of the original Check.
- In all cases, a Check which qualifies for Check conversion into an ACH Debit Entry (Point of Purchase, Lockbox, or Back Office) will have a description of the debit transaction on your Periodic Statement you receive from us.

### **Requesting Telephone Transfers**

You acknowledge and agree that funds in any of your Accounts with us can be transferred, if arranged for or permitted, by telephone upon the request of any person signing the signature card, or any person as otherwise authorized, to another Account you have with us. We shall not be held responsible for any loss you incur as a result of our acceptance and execution of such request, order or instruction by telephone we believe to be genuine.

Notwithstanding, we may refuse to accept and/or execute any request, order or instruction we receive by telephone. Please see the "Restricting Withdrawals and Transfers" section of this Agreement for details about transfer request limitations. Other transfer restrictions may be described and provided under separate cover. For details on withdrawal and transfer guidelines, please see the "Requesting Withdrawals and Transfers" section of this Agreement.

### **Requesting Withdrawals and Transfers**

You acknowledge and agree that we may debit your Account for any withdrawal or transfer that you make, or authorize another to make, in accordance with the provisions of your Account. Unless otherwise indicated on your Account records clearly and conspicuously, each person signing the signature card, or any person as otherwise authorized, may withdraw or transfer all or any part of the Account balance.

As a condition of withdrawal, we may, at our discretion, require you to provide us with your signature on certain withdrawal documents signed in the presence of our personnel, or require other identification or information acceptable to us. You acknowledge and agree that we may refuse any withdrawal or transfer request which is provided on forms not approved by us, received by any method we do not specifically permit, received in excess of the number of withdrawals or transfers permitted, or received for an amount greater than, or less than, any withdrawal or transfer limitation. In the event we honor such nonconforming request, we may treat continued abuse of the stated limitations herein, if any, as your act of closing the Account.

Without limiting the foregoing, the date that the withdrawal or transfer request is completed by us is the date to which the frequency limitation is applied (as opposed to the date you initiate it). Notwithstanding, you acknowledge and agree that in the event we honor a withdrawal or transfer request which overdraws the available balance in your Account does not obligate us to do so in the future. Please see the "Funds Availability Policy" document for details on the availability of funds for deposits you make by Cash or Check. For deposits other than Cash or Check, you may ask us at the time of deposit when funds will become available for withdrawal or transfer.

### **Restricting Withdrawals and Transfers**

Federal law and regulation impose restrictions on the number of withdrawal and transfer requests allowed in any given month from a savings and/or money market account (non transaction accounts); thus, we are required to monitor your savings and/or money market Account each month for withdrawal and transfer activity. You acknowledge and agree that during any calendar month, you may not make more than six withdrawals or transfers to another account of yours or to a third party by means of a preauthorized or

automatic transfer, telephone order or instruction, computer transfer, check, draft, debit card or similar order to a third party. We consider the transaction on the date the Item clears from your Account. This date may be different from the date on which you wrote the Check or the date on which you initiated the Item. You acknowledge and agree that we may close your Account, or convert your Account to an account type not subject to such withdrawal and/or transfer restrictions, in the event you frequently exceed the number of withdrawals or transfers stated herein as required by Federal law and regulation.

### **Requesting Notice of Withdrawal**

We reserve the right under Federal law and regulation to require seven (7) days prior written notice from you of your intent to withdraw funds from any interest-bearing Account (savings, checking and money market). It is unlikely, however, that we will request such notice.

### **Requesting Early Withdrawal of CDs**

Your Account will be subject to interest penalties when you withdraw funds from your certificate of deposit prior to the maturity date. The interest penalties are as follows:

- Maturity date of less than 91 days: Penalty will be 30 days of interest based on the principal amount withdrawn.
- Maturity date of 91 days up to, and including, one (1) year: Penalty will be 90 days of interest based on the principal amount withdrawn.
- Maturity date greater than one (1) year: Penalty will be 180 days of interest based on the principal amount withdrawn.

In certain circumstances, such as the death or incompetence of an owner of a time account, the law permits, or requires in some cases, waiver of the early withdrawal penalty. Notwithstanding, all accrued or paid interest is available at any time without incurring an early withdrawal penalty.

### **Provisioning for Multiple Signatures**

You acknowledge and agree that we may act upon any oral or written instruction by any person who signed the signature card, or any person as otherwise authorized, to transfer funds between your Accounts, to transfer your Account to another banking center and/or to take other actions. Under certain circumstances, we may require written authorization.

Notwithstanding, you acknowledge and agree that we do not offer an account on which two or more signatures are required for withdrawal. In the event you indicate on your Checks, signature card or other document that more than one signature is required for withdrawal, you acknowledge and agree that such indication is for your internal purposes only and is not binding to us. Without limiting the foregoing, you acknowledge and agree that we are not liable to you when we honor a Check, Item, or other instruction which presents against your Account that is signed, or approved, by any person who signed the signature card, or any person as otherwise authorized.

### **Provisioning for Returned Deposits: Checks**

In the event you deposit a Check to your Account that is later returned to us by the collecting bank, or we receive a notice in lieu of the return or a notice of the intent to return, we may accept the return, or the notice of return. Under such circumstances, you acknowledge and agree that we may debit your Account in the amount of the returned Check and any applicable fees without prior notice to you and without regard to the Check being returned to us in a timely manner by the returning bank.

Without limiting the foregoing, in the event you deposit a Check to your Account that has been previously paid by the paying bank but is later returned to us with the claim that the Check had been altered, forged, or unauthorized or should not have been paid for any reason, at our discretion and without prior notice to you, we may debit your Account in the amount of the respective Check and any applicable fees, or we may withhold an amount equal to the respective Check, until the claim is withdrawn or the Check is finally paid.

The foregoing provision shall extend to a Check that is later returned to us because a claim has been made that the endorsement was either incomplete or not authentic. For information on return provisions for ACH Items, please see the "Returning Unauthorized ACH Entries: Commercial" and "Returning Revoked/Unauthorized ACH Entries: Consumer" sections of this Agreement, as applicable.

### **Provisioning for Insufficient Funds**

When funds in your Account are not adequate to pay a Check or other Item presented for payment, we consider the Check or other Item an Insufficient Funds Item. Insufficient Funds Items include all order and instructions for the payment, transfer, or withdrawal of funds from your Account. Examples of Insufficient Funds Items include, but are not limited to, Checks, demand drafts, images, Substitute Checks, Electronic Funds Transfer Items (ACH and ATM) as well as Items that present against Uncollected Funds. Whether we return or pay an Insufficient Funds Item depends on a number of factors, including the amount of the Item and past activity on your Account.

You acknowledge and agree that we have no obligation to honor any Item, withdrawal or transfer request unless it is drawn, or requested against, collected funds credited to your Account at the opening of business on the Business Day the Item, withdrawal or

transfer request is presented and/or received. We may, at our discretion, make a decision to honor an Item, withdrawal or transfer request that is not drawn, or requested against, collected funds in your Account. Under such circumstances, you acknowledge and agree that we are under no obligation to honor such event in the future.

Notwithstanding, we may, at our discretion, make a decision to honor an Item, withdrawal or transfer request that results in an overdraft to your Account. Under such circumstances, you acknowledge and agree to immediately pay the amount of the overdraft, applicable fees and accrued interest whether or not you signed and/or initiated the Item, withdrawal or transfer request causing the overdraft. You acknowledge and agree we may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees. Furthermore, you acknowledge and agree to pay all costs and expenses we incur in the collection of any overdraft on your Account, including our reasonable attorneys' fees, where permitted by law.

### **Requesting Stop Payment Orders: Checks**

You may request a stop payment order on a Check drawn against your Account if we have not accepted, certified, made final payment on or otherwise become accountable for the Check. Furthermore, you acknowledge and agree that each person signing the signature card is authorized, or any person as otherwise authorized, to request a stop payment order on any Check drawn against your Account. Stop payment orders may be requested electronically through our Online Banking service, initiated by way of telephone, secured email, facsimile or in person at one of our banking centers. Please see the "Contacting Texas Capital Bank" section of the *Welcome to Texas Capital Bank* document for contact information.

You acknowledge and agree that we will not be liable for the nonpayment of any Check on which you have requested a stop payment order. Furthermore, in the event your stop payment order is successful, you may still be liable to the Payee or Third Party in the amount of the respective Check. You acknowledge and agree to indemnify us and reimburse us for any losses, damages, suits, judgments and expenses that result from the nonpayment of any Check drawn against your Account for which a stop payment order is requested.

Although we may, at our discretion, act upon your oral stop payment request, we must receive a written confirmation from you within 14 calendar days from the date of your oral request. In the event you fail to provide us with your written confirmation within the 14 calendar day timeframe, you acknowledge and agree that we have no obligation to maintain your oral stop payment request beyond the timeframe set forth herein. Upon receipt of your written confirmation, a stop payment order remains in effect for six (6) months, unless renewed in writing.

To request a stop payment order, we will need the account number, check number and exact amount to allow us to identify the Check based upon our computer retrieval system standards. We may also require the written date of the Check and the name of the Payee to whom the Check was made payable. You acknowledge and agree to indemnify us from any losses you incur as a result of providing us with an incorrect account number, check number and exact amount. Furthermore, in the event you provide us with an incorrect account number, check number and exact amount of the Check on which you requested a stop payment order, you acknowledge and agree that we may pay the Check accordingly.

Notwithstanding, we must receive the stop payment order at such a time and in such a manner as to afford us the reasonable opportunity to act upon the stop payment order. You acknowledge and agree that one and one-half (1 1/2) Business Days to act upon such request is a reasonable amount of time. A stop payment order will be in effect for six (6) months. We will charge your Account a fee for each stop payment order. A request for a continuation on a stop payment order is considered a new stop payment order which results in an additional stop payment fee. If a Check is presented for payment after any stop payment order has expired, we may pay the Check accordingly.

Stop payment orders on official Checks, cashier's Checks, or certified Checks are not permitted. If an official Check, cashier's Check, or certified Check has been lost, stolen or destroyed, you may provide a declaration of loss and affidavit and request the Check be re-issued. The Bank may require that you wait 90 calendar days (or provide a bond where permitted by law) before honoring your claim, and we will not be liable to you if such Check is cashed prior to the expiration of the 90 calendar days from the issue date (or receipt of bond, where applicable) or in the case of a certified Check, from the acceptance date.

In the event we inadvertently pay a Check for which a valid stop payment order should have been in effect, we will reimburse you for your losses, up to the amount of the Check, provided that you are able to prove to our satisfaction that you do not owe the Payee in the amount of the respective Check. Under such circumstances, we may attempt to recover the amount from the Payee to whom you wrote the Check and you agree to cooperate in such recovery effort.

If you are unable to prove to our satisfaction that you do not owe the amount of the Check to the Payee to whom you wrote the Check, we will not be obligated to reimburse you for your losses, up to the amount of the Check. In any event, our liability for paying a Check subject to a proper and timely stop payment order is limited to the actual loss suffered, up to the amount of the Check, unless payment was due to our gross negligence or willful and intentional disregard of your stop payment order.

Without limiting the foregoing, you may request to release a stop payment order if we have not already acted upon such request by returning the respective Check as unpaid due to the stop payment order. In the event you wish to release a stop payment order, the Authorized Signer who requested the respective stop payment order, or any person as otherwise authorized, must request the release. Please see the “Contacting Texas Capital Bank” section of the *Welcome to Texas Capital Bank* document for contact information.

Notwithstanding the foregoing, please see the “Requesting Stop Payments: Commercial ACH” and “Requesting Stop Payments: Consumer ACH” sections of this Agreement for details which pertain to requesting a stop payment order for ACH Items. The “Electronic Funds Transfer” section of this Agreement provides details which pertain to requesting a stop payment order for ATM and debit card transactions.

### **Concerning Government Payments**

In the event we deposit a payment from the Federal Government to your Account which should have been returned to the Federal Government for any reason, you acknowledge and agree that we may debit your Account or any Account you have with us in the amount of our liability to the Federal Government, without prior notice and at any time, except where prohibited by law. Furthermore, you acknowledge and agree that we may use any other legal remedy to recover the amount from you in the event funds are not available in any Account you have with us to satisfy our liability with the Federal Government.

### **Concerning Your Periodic Statement**

We will maintain appropriate records of your Account and will provide you with a Periodic Statement which reflects such records. Your Periodic Statement will be mailed to you as applicable to your current address we have on file for you. The term “monthly” as discussed in this Agreement means a period of time covered by your Periodic Statement. This period of time may or may not correspond to a calendar month but in most cases will not exceed 32 days or be less than 28 days. The specific dates covered by your Periodic Statement will be set forth in the statement.

Your Periodic Statements will be mailed by way of the U.S. Postal Service unless you and we have otherwise agreed upon a different delivery system. We may change your mailing address in our records if we receive an address change notice from the U.S. Postal Service or from another entity in the business of providing correct address information that the address we have on file for you no longer corresponds to the address on file with the U.S. Postal Service.

You acknowledge and agree to promptly notify us in writing at the address listed in the “Contacting Texas Capital Bank” section of the *Welcome to Texas Capital Bank* document in the event you change your mailing address. Furthermore, we may accept a change of address provided by any person signing the signature card, or any person as otherwise authorized, on your Account. Without limiting the foregoing, in the event your Periodic Statement is returned to us as undeliverable, we reserve the right to discontinue mailing your Periodic Statement until you provide us with a new mailing address. Furthermore, we reserve the right to destroy all previously returned Periodic Statements after 90 calendar days of the statement date. You acknowledge and agree to hold us harmless from any claim that transpires as a result of your failure to notify us immediately of an address change.

### **Reviewing Your Periodic Statement: Checks**

You agree to review your Periodic Statement and cancelled Checks, if you receive them, promptly upon receipt. In the event you do not receive your scheduled Periodic Statement, notify us AT ONCE by calling 877.839.2265 (Client Support). Upon receipt of your Periodic Statement, if you discover any unauthorized signature(s), missing signature(s), forged signature(s) or alteration(s) of which one or more Check deposits are reflected on your Periodic Statement, or there is any other type of error or discrepancy reflected on your Periodic Statement, you acknowledge and agree that you must notify us AT ONCE of the relevant facts by calling 877.839.2265 (Client Support).

We require an affidavit signed by you on a form acceptable to us on the day of notification to begin the research process. Notification may be provided by way of telephone, secured email, facsimile or in person at one of our banking centers, but must be received within 60 calendar days of the date on which the unauthorized signature(s), missing signature(s), forged signature(s) or alteration(s) appeared on the first Periodic Statement that was mailed, transmitted or otherwise made available to you, whichever occurs first.

You acknowledge failure by you to discover and promptly report an unauthorized signature, a missing signature, a forgery or an alteration within 60 calendar days from the date the event first appeared on your Periodic Statement and from the date your Periodic Statement was mailed, transmitted or otherwise made available to you, whichever occurs first, that you agree not to assert against us:

1. Any unauthorized signature, missing signature, forgery or alteration in the event we suffer a loss due to your failure to discover and promptly report the issue.
2. Any unauthorized signature, missing signature, forgery or alteration by the same wrongdoer on Checks we paid in good faith after you have had a reasonable period of time to examine your Periodic Statement which contains or reflects such event but prior to notice from you. A reasonable period of time is not to exceed 30 calendar days from when the first Periodic Statement was mailed, transmitted or otherwise made available to you, whichever occurs first.

In the event you can prove we failed to exercise ordinary care in paying a Check that contained an unauthorized signature, a missing signature, a forgery or an alteration and that our failure substantially contributed to your loss, the loss will be allocated between you and us based to the extent on which our respective failure to exercise ordinary care contributed to such loss. In that regard, we process Checks by automated means and do not visually examine signatures on all Checks. You acknowledge and agree that we do not fail to exercise ordinary care because we process Checks by automated means.

Furthermore, you acknowledge and agree that we do not fail to exercise ordinary care if the Checks were forged or altered so cleverly (for example, unauthorized use of a facsimile machine, photocopy machine or computer) that a reasonable person would not detect such forgery or alteration. Notwithstanding, you acknowledge and agree that you lose any and all rights you may have to assert against us in the event you fail to discover and report any unauthorized signature(s), missing signature(s), forged signature(s) or alterations(s), or any other error or discrepancy that pertains to a Check within 60 calendar days from the date your Periodic Statement was mailed, transmitted or otherwise made available to you, whichever occurs first. Furthermore, you acknowledge and agree that this 60 calendar day limitation takes priority over the provisions in the previous paragraphs within this section and is regardless of ordinary care by you or us.

### **Reviewing Your Periodic Statement: ACH**

ACH Items can consist of debit and credit transactions. Your rights and responsibilities under the NACHA Operating Rules depend on the account type. A Consumer Account is afforded the protections of the NACHA Operating Rules and of the Electronic Funds Transfer Act governed by Regulation E. A Commercial Account is afforded protections of the NACHA Operating Rules and the provisions of the UCC, Article 4A. Such protections and provisions include, but are not limited to, return timeframes and provisional credit, respectively. You acknowledge and agree to be bound by the NACHA Operating Rules, as applicable. Please see the "Automated Clearing House Items" section of the *Funds Transfer Services* document for details about your rights and responsibilities with regard to ACH.

### **Reviewing Your Periodic Statement: ATM/Debit Card**

ATM and debit card activity consists of point-of-sale electronic credit transactions to a Third Party initiated by you either in-person, over the telephone or through the Internet, with the use of your Access Device. Your rights and responsibilities are provided protection under the Electronic Funds Transfer Act governed by Regulation E. Such protection includes, but is not limited to, your rights and responsibilities in the event you encounter unauthorized ATM and/or debit card activity. Please see the "Electronic Funds Transfers" section of the *Funds Transfer Services* document for details about your rights and responsibilities with regard to your ATM and/or Visa® CheckCard.

### **Reviewing Your Periodic Statement: Online Bill Pay**

Online Bill Pay activity consists of electronic credit transactions to a Third Party initiated by you, through the Internet. Your rights and responsibilities are dependent upon the Account type. Consumer account types are provided protection under the Electronic Funds Transfer Act governed by Regulation E. Such protection includes, but is not limited to, your rights and responsibilities in the event you encounter unauthorized online Bill Pay activity. Notwithstanding, Non-Consumer account types are provided some protection under the NACHA Operating Rules. Please refer to the "Terms and Disclosures" document provided to you at the time you subscribed to our online Bill Pay service for details on this subject matter.

### **Provisioning for Inactive and Dormant Accounts**

An account becomes dormant when there has been a lack of customer-generated activity and customer-generated communication on the account for one (1) year. In the event your Account becomes dormant, we reserve the right to hold your Periodic Statements. You acknowledge and agree that we are not obligated to pay interest on dormant accounts. In the event your Account is inactive for at least five (5) years, and you have failed to notify us of an address change, the Account may be presumed abandoned. Under such circumstances, you acknowledge and agree that we are obligated by law to deliver the funds in your Account, if any, to the Texas Comptroller of Public Accounts. If you have any concerns as to the status of your Account, you may call us at 877.839.2265 (Client Support).

### **Provisioning for Notices**

We inform you of changes that affect your rights and responsibilities by way of notices. In the event your Account has more than one signer, notice to one of you will be effective as to all of you. We may, at our discretion, post a notice in our banking centers and/or on our Website. Otherwise, notices will be mailed to you by way of the U.S. Postal Service unless you and we have otherwise agreed upon a different delivery system. You acknowledge and agree to promptly notify us in writing at the address listed in the "Contacting Texas Capital Bank" section of the *Welcome to Texas Capital Bank* document in the event you change your mailing address. Furthermore, you acknowledge and agree that we may recognize a change of address provided by any person signing the signature card, or any person as otherwise authorized, on your Account.

Notwithstanding, you acknowledge and agree that we may change your mailing address in our records if we receive an address change notice from the U.S. Postal Service or from another entity in the business of providing correct address information that the

address we have on file for you no longer corresponds to the address on file with the U.S. Postal Service. In the event one or more notices we mailed to you is returned to us as undeliverable, we may destroy such notice after 90 calendar days from the notice date without incurring any liability to you. Furthermore, we may stop mailing future notices to you until you provide us with a new mailing address. You acknowledge and agree that such undeliverable notices and the subject matter thereof are effective and binding on you.

### **Affirming Our Right of Waiver**

You acknowledge and agree that we may, at our discretion, waive any of your obligations under this Agreement in a particular situation, without any obligation to treat future situations similarly, where permitted by law.

### **Affirming Our Right of Setoff**

You acknowledge and agree that your Account is subject to our rights of set-off, whether legal or equitable. At our discretion and without prior notice to you, we may set off the funds in your Account(s) against any due and payable debt you owe us or against any due and payable debt any legal entity you own owes us now or in the future, by any of you having the right of withdrawal, to the extent of such person's or legal entity's right to withdraw, where permitted by law.

In the event the debt arises from a note, any "due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance on the due date for which we properly accelerate under the terms of the note.

Unless we are informed to the contrary in writing, the Account in question is a general Account. For example, the right of setoff does not apply to your Account if: (a) the Account is an Individual Retirement Account or similar tax-deferred retirement account, (b) the debt is created under a Consumer credit card plan (but this does not affect our rights under any consensual security interest), (c) the debtor's right of withdrawal only arises in a representative capacity, or (d) the debt is created by a home equity loan.

We will not be liable for the dishonor of any Check that is presented for payment against your Account if the dishonor takes place due to our action to set off a debt against your Account. You acknowledge and agree to hold us harmless from any claim that transpires as a result of our right to setoff and the execution thereof.

### **Affirming Limit of Liability**

You agree that the amount of any claim you have against us in connection to any Account or transaction with us, is subject to reduction on the basis of failure to use reasonable care on your part, the part of any person who signed the signature card on your Account, or the part of any of your agents or employees who contributed to the loss, which is the basis of your claim.

You further agree that our liability with respect to such claim will be limited to the face value of any Item or transaction improperly dishonored or paid or the actual value of any deposits not properly credited or withdrawals not properly debited, and that no liability for consequential, special, incidental or punitive damages will exist unless required by law.

You agree to hold us harmless from any liability, loss, expenses and costs we may incur by reason of your failure to comply with any of the provisions of this Agreement. In addition, unless prohibited by law, you agree to reimburse us for any liability, loss, cost and expense we may incur in connection with your Account(s) except to the extent that such liability, loss, expense, and cost was caused solely by our intentional misconduct.

### **Unlawful Internet Gambling Notice**

The Unlawful Internet Gambling Enforcement Act of 2006 ("UIEGA") prohibits any person engaged in the business of betting or wagering from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Bank does not offer commercial account services to businesses that engage in Internet gambling activities or that process transactions related to Internet gambling activities. **BANK PROHIBITS CUSTOMER FROM USING ANY ACCOUNT AT THE BANK TO PROCESS ANY TRANSACTION RELATED TO INTERNET GAMBLING ACTIVITIES AND RESERVES THE RIGHT TO TERMINATE ALL ACCOUNTS OF CUSTOMER AT THE BANK, WITHOUT NOTICE, IF CUSTOMER VIOLATES THIS PROHIBITION.**

### **Provisioning for Powers of Attorney**

You acknowledge and agree that we are not obligated to accept or honor a delegation of authority to another person to act upon your behalf, including a Power of Attorney executed pursuant to the Texas Probate Code. In the event you have an attorney-in-fact or other agent and such attorney-in-fact or other agent attempts to write Checks, withdraw or transfer funds from your Account, we reserve the right to refuse to pay any Checks or permit any withdrawals by your attorney-in-fact or other agent. We also reserve the right to restrict the types and sizes of transactions we will permit an attorney-in-fact or other agent to conduct, by general policy or on a case-by-case basis.

At our discretion, if we elect to accept a Power of Attorney, you agree to indemnify and hold us harmless for any transactions conducted in reliance upon such Power of Attorney. We may continue to recognize the authority of any Power of Attorney we elect to accept until we receive written notice of revocation or termination, including revocation that results from death, and have had a reasonable amount of time to act upon such written notice. Regardless of the specific terms contained within the Power of Attorney, you must notify us in writing if you decide to revoke the respective Power of Attorney. We will not accept any Power of Attorney unless it is in a form satisfactory to us, at our discretion.

### **Provisioning for Arbitration**

You and we shall have the right to apply to a court to enjoin any breach of contract. Except for the right of you and we to see such relief, all claims and matters in question arising out of or related to this Agreement, or the relationship between you and we by this Agreement, whether sounding in contract, tort or otherwise, shall be resolved by binding self-administered arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), and all such proceedings shall be subject to the Federal Arbitration Act.

There shall be three arbitrators. You and we shall designate an arbitrator, who need not be neutral, within 30 calendar days of the notification of either Party’s intent to proceed with arbitration. The two arbitrators so designated shall elect a third arbitrator. If either of you or we fails to designate an arbitrator within the time specified or the two parties’ arbitrators fail to designate a third arbitrator within 30 calendar days of their appointment, the remaining arbitrator(s) shall be appointed by the AAA. The arbitrators shall decide whether a particular dispute is or is not arbitral.

You and we shall each pay for the expenses incurred by its designated arbitrator and the costs of the third, neutral arbitrator shall be divided between you and us. Only damages allowed pursuant to this contract may be awarded and arbitrators shall have no authority to award punitive or exemplary damages, you and us hereby waiving their right, if any, to recover punitive or exemplary damages, either in arbitration or in litigation. The arbitration shall take place in Dallas, Texas.