

**CLARKSTON STATE BANK**  
**ONLINE AND MOBILE BANKING SERVICES AGREEMENT AND DISCLOSURE**  
**NETTELLER ONLINE BANKING SERVICES AGREEMENT ADDENDUM**

This Online and Mobile Banking Services Agreement and Disclosure (the "Agreement") is entered into between Clarkston State Bank (the "Bank") and each Customer of the Bank who uses any of the Bank's online and/or mobile banking services (the "Online Services"). This Agreement contains the terms and conditions governing the online services, which you agreed to at the time you submitted your application for Online Services to the Bank using our Online Banking Website. Your use of any Online Services, or the use of any Online Services by an Authorized User on your behalf or for themselves, constitutes your consent to the terms and conditions contained in this Agreement and in any Addendum(s) furnished to you in connection with this Agreement.

The Customer and any Authorized Users are referred to in this Agreement as "you" or "your." Clarkston State Bank is referred to in this Agreement as "Bank," "we," "us," and/or "our." Other terms in this Agreement are defined below.

Capitalized terms used in this Agreement are defined as follows:

- a. "Accounts" means a demand deposit (checking), savings, or other account that you have with us that may be accessible by using the Online Services.
- b. "Account Agreements" mean the Account Agreement that governs each deposit and transaction account that you have with us, as the same may be amended from time to time.
- c. "Agreement" means this Online Services Agreement and Disclosure, and any addenda, exhibits or schedules attached to this Agreement or incorporated by reference, as amended or replaced from time to time.
- d. "Authorized User" means you, or any person that you grant access to your accounts with us.
- e. "Bank", "us", "we", "our" mean Clarkston State Bank.
- f. "Bill Pay" or "Bill Payment" means a specific service that is included in the Online Services. Bill Payment is a service that permits you to access your checking Account and initiate and authorize payments to payees that you have selected.
- g. "Business Day" for the purposes of this Agreement means Monday through Friday, and excluding Saturday, Sunday and federal banking holidays. "Holidays" also includes those days where we are open for business, but the Federal Reserve System is not processing wires, checks, or payments.
- h. "Customer" means the person identified as the accountholder on any deposit or transaction account held at the Bank that may be accessed using Online Services, and any person identified in the Bank's record as a joint account holder for such accounts.
- i. "Device" means a computer, mobile phone, or smart phone (such as an iPhone® or an Android™-based mobile phone), tablet, or other electronic device that connects a user to the Internet in any manner, including through use of a computer network, mobile data network, or other mobile telephone network. Any Device must be approved for use by us in order to be used for any Online Services, including Mobile Banking.
- j. "EFTA" means the federal Electronic Fund Transfer Act (15 U.S.C. § 1693 *et seq.*), as it may be amended from time to time.
- k. "Fee Schedule" means the schedule of fees for the Bank's services, including fees for any applicable Online Services. The Fee Schedule for Online Services may be combined by the Bank with other schedules of fees for Bank services. The Fee Schedule may be amended by the Bank from time to time.

- l. "Internet" means the electronic communications network that connects computer networks and organizational computer facilities around the world, and is also known as the "World Wide Web".
- m. "Internet Service Provider" means an entity that provides you with access to the Internet, such as a cable company or mobile phone service provider.
- n. "Mobile Banking" means your use of any Online Service(s) through any Device that uses a mobile data network, mobile telephone network, or other similar network, together with any Software.
- o. "Online Banking Information Page" means a page located at our Online Banking Website located at <http://www.clarkstonstatebank.com/1467/mirror/service-online-banking.htm>.
- p. "Online Banking Website" means our Internet address to access the Online Banking Services offered by the Bank, which is <http://www.clarkstonstatebank.com>.
- q. "Online Service(s)" means banking services we offer for your Accounts using a Device and/or Software. Online Services may include, but is not limited to, Bill Pay, Remote Deposit, cash transfers from and to your Accounts, balance inquiries, text messages, Account alerts, and other banking services that may be made available to you and accessed by a Device and/or Software from time to time.
- r. "Qualified Items" means those items that may be processed as a Remote Deposit. Qualified Items include domestic/U.S. checks, money orders, government checks, postal money orders, and other items that may be permitted by the Bank from time to time. Cash, foreign checks (including checks originating in Canada) and other items prohibited by the Bank are not Qualified Items and may not be processed as Remote Deposits.
- s. "Regulation E" or "Reg E" means the federal regulations that implement the provisions of the EFTA.
- t. "Remote Deposit" means the Online Service that permits you to transmit to us for deposit to your Account the image of a Qualified Item that is compliant with the federal Check Clearing for the 21<sup>st</sup> Century Act ("Check 21 Act") (12 U.S.C. 5001 et seq.) using the Internet, a Device and Software.
- u. "Security Procedures" means the physical, electronic, computer, internet and other information, data and other security and confidentiality procedures and requirements that we establish from time to time with respect to the Online Services. The Security Procedures may include without limitation any of the following:
  - o Password protection and security, including length, style, alpha-numeric characters, and frequency of password changes;
  - o Transmission and data encryption;
  - o Protection and confidentiality of login credentials;
  - o Anti-virus software.
- v. "Software" means any software used by a Device that permits you to access the Internet, or our Online Banking Website, and which may be used to access and use the Online Services. Software includes, without limitation, computer operating systems such as those provided by the Microsoft Corporation or Apple Inc. (f/k/a Apple Computer), and mobile applications ("Mobile Apps") for use on portable electronic communications devices (e.g. smartphones) such as an iPhone®, Blackberry®, or other device using the Android™ operating system.
- w. "TheWayiPay" or "iPay" is a Bill Payment service available through Online Services, including Mobile Banking that enables you to make a payment to any person with an active bank account, by using that person's e-mail address.

## **1. SCOPE OF AGREEMENT**

### **1.1 Other Accounts, Loan Agreements and Services**

This Agreement governs online access to your Accounts with the Bank, and your use of the Online Services. The terms and conditions set forth herein are in addition to, and do not cancel or supersede, any other agreements or signature cards governing your deposits, loans, or other business relationships with the Bank, including without limitation the Account Agreements. All of the terms, conditions, agreements, representations, schedules, disclosures, and fees set forth in or associated with such other agreements and signature cards remain in full force and effect. Only Authorized Users are permitted to use the Online Services. **You are cautioned to not share your User ID or login credentials.** If you permit or allow any other person to have access to the Account and Online Services who is not authorized under your other agreements with us, then these individuals are not considered Authorized Users of the Online Services and we shall have no liability for any losses suffered by you relating to the use of the Online Services by these unauthorized persons.

### **1.2 Instructions and Fee Schedules**

Any instructions we may issue for the use of Online Services (collectively, "Instructions"), including any end-user license agreements contained in Software, and any Fee Schedule we may issue are a part of this Agreement and are incorporated herein by reference. From time to time, we may post Instructions on our Online Banking Information Page.

You may obtain a list of fees at any of our branch offices. The fees and service charges provided for in your deposit, line of credit, loan, and other agreements with us, as described in your Account Agreements may apply to our Online Services.

Subject to any applicable notice requirements imposed by the Electronic Fund Transfer Act ("EFTA") and Regulation E ("Reg. E"), the Bank may change or add any fees, modify the Instructions for the Online Service, or otherwise amend this Agreement in whole or in part at any time with proper written notice to you.

### **1.3 Termination**

We may terminate your use of Online Services at any time for any or no reason, without notice to you. We may stop offering any of the Online Services at any time, without notice to you. For example, we may terminate your use of Online Services (including without limitation Remote Deposit) due to inactivity or excessive, inappropriate, or unlawful usage.

You may terminate your use of any of the Online Services at any time. Your termination will not affect any liability or obligation that you have incurred using the Online Services prior to termination of your use, including any fees you have incurred as a result of using any of the Services.

Upon termination, we reserve the right to make no further transfers or payments from your Account(s), including payments or transfers you have previously authorized. If you terminate your use of the Online Services, you authorize us to continue making transfers you have previously authorized until such time as you cancel the requested or scheduled transfers or payments. If you terminate your use of an Online Service, it may cancel your previously scheduled transfers or payments.

## **2. DESCRIPTION OF AND LIMITATIONS OF OUR ONLINE SERVICES**

### **2.1 A General Description of Online Services**

In general, our Online Services enable you to:

- search transaction histories and obtain balance information on Accounts with us which may include checking, savings, money market savings, certificates of deposit, loans, lines of credit, and safety deposit boxes;
- transfer funds between your transaction accounts with us;
- deposit Qualified Items into your Account using Remote Deposit;

- communicate with our staff through a secure message facility;
- establish reminders and Account alerts.

Our Bill Pay service enables you to:

- electronically request one-time or recurring payments to be made from your primary checking Account to many persons, organizations, or companies that are located in or doing business in the United States;
- view pending payments and payment history.

This list is not exhaustive. We may offer additional or different Online Services in the future, all of which will be governed by this Agreement (to the extent such services are not governed by another agreement that you have with the us as described below).

Not all services are available to you using particular Software or using a particular Device. Please review the features of the Software you are using to understand what Online Services are available to you.

## **2.2 Types of Transfers and Limitations**

You can make internal transfers of funds from one Account with us to another held by us, such as a transfer from a savings Account to a checking Account, subject to the following limitations:

- a. Transfer capabilities are prohibited for Investment Sweep Accounts. Payments and draws from/to loan Accounts are prohibited without the written consent of the loan administration department of Clarkston State Bank. Loan payoffs must be submitted directly to Clarkston State Bank and not through the Service. Certificates of deposit are time deposits whereby early withdrawals may result in the assessment of penalties. Therefore, only balance and interest information is available online for these types of Accounts.
- b. Transfers may be limited in amount as provided in our agreements with you governing these services or in accordance with our policies. In addition, your ability to transfer funds between certain accounts is limited by federal law, as stated in your Account Agreement with us. For example, you can make no more than six (6) transfers from a savings or money market account during each statement period. Transfers made using both the Online Service and other transfer methods described in the Account Agreements are counted against the permissible number of transfers. We reserve the right to further limit the frequency and dollar amount of transactions from your Accounts for security or credit reasons.

## **2.3 Overdrafts**

It is your responsibility to ensure that you have enough money or credit available in an Account from which you instruct us to make transfers or payments using Online Services. You are obligated to provide sufficient funds in your Account for any payments or transfers you make or authorize to be made. If we complete a payment or transfer that you make or authorize and we subsequently learn that you have insufficient funds for the transaction, you agree to reimburse us upon our demand, and you further agree that we may reverse the transaction or offset the shortage with funds from any other Account you have with us.

## **2.4 The Bill Payment Service**

### **a. Description of Service**

Bill Pay is our optional electronic Bill Payment system that permits you to initiate and authorize payments from your checking account(s) to payees, which you have selected in advance, to receive payments by means of this service (a "payee" is a person, organization, or business you are paying). To participate in Bill Pay you must be a customer in good standing and have a checking account (regular or interest) with us. You must have access to, and be authorized to use, our Online Services. Participation in Bill Pay is voluntary, and may incur service charges imposed by us with proper notice to you.

You may make payments to any individual, business, merchant, or professional with a U.S. payment address. You may use Bill Pay on a transaction-by-transaction basis, on a recurring and scheduled basis, or a combination of both. For example, you may use Bill Pay to automatically initiate your mortgage payments on the 1<sup>st</sup> day of each month. Our Bill Pay system may contain limitations in the manner and types of bills that you can pay using Bill Pay.

**b. TheWayiPay**

TheWayiPay (iPay) is an optional electronic Bill Payment system available through Online Services and Mobile Banking that enables you to send payment to another person using his or her email address. The person you pay must maintain a bank account in order to receive the payment through iPay. When conducting an iPay transaction, you must choose a “keyword” and notify the payee of the chosen keyword in order to complete the transaction. You will be charged \$1.00 for each iPay transaction you conduct, and iPay transactions are subject to a daily limit of \$1,000.00. The processing times for iPay transactions are the same as for our Bill Pay service, and are explained in subparagraph e. below. In the event that you initiate an iPay transaction and there are insufficient funds in your Account at that time to complete the transaction, you will have two (2) business days to transfer sufficient funds into the account to cover the transaction. During that time, we will make up to four (4) attempts (or less, depending on the time of day you initiate the iPay transaction) to process your payment. If our last attempt to complete the transaction during that time is not successful due to insufficient funds, your payment request will be cancelled. The payee has nine (9) calendar days to respond and complete the transaction before it will be cancelled.

**c. Limitations**

Each of our Online Services will have limits established on the daily and/or monthly number of items, number of transactions, and/or maximum dollar amounts in order to minimize the risk involved to the Customer and the Bank. We reserve the right to change these limits at any time with proper notice to you.

**d. Electronic Payments and Checks**

Payments issued through Bill Pay may be made electronically if the payee is eligible to receive electronic payments. If payment is not made electronically, the Bank (or the vendor that provides the online service to us) will issue a paper check for payment against your Account and mail it to the payee at the address you have provided. We cannot guarantee when an electronic payment or paper check issued as payment will be received by the payee. Electronic payments will generally reach the payee’s account within three to five Business Days after the date you have requested we send the payment to the payee. Payments made by paper check will generally reach the payee within five to seven Business Days after the date you have selected for the payment to be made. However, it is important to understand that payments made by check may be subject to additional delays for mailing and delivery, and as a result, Bill Payment by check may take as long as 15 days to be delivered to the payee. If you wish to have a payment received by the payee by a certain date, you should schedule the payment for delivery keeping these time frames in mind. It is your responsibility to schedule payments sufficiently in advance to make sure that the payment arrives by the date you desire, and to check with the payee to make sure that the payment was delivered. We are not responsible for any late fees, additional interest, or other charges that you may incur because a payment that you scheduled using Bill Pay is late. We are not responsible for the timely delivery of postal mail or the improper transmission or handling of payments by a third party such as failure of the payee to properly post a payment to your account. We are not responsible for monitoring payments made through Bill Pay.

Our systems may provide you with an estimated arrival date for your payment. This estimate is provided as a courtesy to you, and the actual delivery time may be later than the estimate. We cannot guarantee when your payee will receive your payment or credit your account with the payee.

**e. Processing Times for Bill Pay**

Requested payments through Bill Pay will be processed on Business Days at 3 a.m. and at 1:00 p.m. (all times are Eastern Time). Therefore, requests for payments made after 3 a.m. but before 1 p.m. on a Business Day will be processed at 1 p.m. that day. Requests for payments made after 1 p.m. on a Business Day, or on a non-Business Day, will be processed the next Business Day at 3 a.m. Recurring bill payments scheduled by you that fall on non-Business Days will be processed on the Business Day immediately preceding such non-Business Day.

## **f. Modification or Cancellation of Payments**

You may cancel or modify a recurring bill payment that you have scheduled before 3 a.m. of the date that the payment is scheduled to be processed. You may cancel or modify a "same-day" bill payment request submitted between 3 a.m. and 1 p.m. on any Business Day before 1 p.m. of such Business Day. You may cancel or modify a "same-day" payment request submitted on any non-Business Day before 3 a.m. of the Business Day immediately subsequent to such non-Business Day. In addition, "stop payment" requests may be honored by the Bank on bill payments made by check in accordance with the Bank's normal "stop payment" policy governing your checking account. We are unable to process a "stop payment" for electronic payments sent through Bill Pay because no physical check is used.

### **2.5 Hardware and System Requirements**

In order to use the Online Services, you must have an Internet Service Provider, a Device, and the Software. You are responsible for the acquisition, installation, maintenance, security for and operation of your Device and the Software. You are responsible for contracting with your Internet Service Provider to obtain a data plan for your Device. You are responsible for any additional fees that your Internet Service Provider may assess for such service.

### **2.6 User ID and Security**

You will create a User ID in order to use the Online Services. For your first use of Online Services through our Online Banking Website you will be provided a temporary password. The Bank may require that you access the Online Banking Website by use of a particular Device, such as a computer with a supported web-browser, in order to obtain your temporary password, validate your initial access to the Online Services, or to make changes to your online banking profile with the Bank.

You will be required to change the temporary password upon your first entry into the system, and you may be required to change your password from time to time thereafter. The Bank may require that your new password have certain characters to better protect your account from unauthorized access. These may include the use of capital letters, numbers and special characters (such as \$, %, or \*), as well as a minimum and maximum number of characters. There may also be restrictions on the use of any passwords you have previously used. **YOU ARE RESPONSIBLE FOR KEEPING YOUR USER ID, PASSWORD AND ACCOUNT DATA CONFIDENTIAL. WE RECOMMEND THE USE OF STRONG PASSWORDS OF AT LEAST 8 CHARACTERS (UP TO A MAXIMUM OF 25 CHARACTERS), WHICH INCLUDE A COMBINATION OF UPPER AND LOWER CASE LETTERS, NUMBERS, AND SPECIAL CHARACTERS.**

You will need your User ID and Password ("login credentials") to gain access to Online Banking. Use of your login credentials is the agreed security procedure between you and the Bank. You should keep your login credentials confidential in order to prevent unauthorized use of Online Services. Anyone to whom you give or disclose your login credentials, either deliberately or inadvertently, will have access to your Accounts and may authorize transfers of money from your Accounts to other parties. You are responsible for all transactions against your Account(s) made using Online Services, including any transactions that may be unintentionally or inadvertently authorized or made, and any losses, charges, or penalties incurred as a result. You are responsible for all transactions made using your login credentials if you provide your login credentials to a third party.

Mobile Apps may also require that you use login credentials.

We reserve the right to deactivate any User ID for any reason at any time, including any User ID that has been "inactive" for a period of six (6) months or more. If your User ID has been deactivated, you will be required to go through the registration process again to restore access to Online Services. You may not receive advance notice of User ID deactivation. If you are deactivated, all recurring payments under Bill Pay will be cancelled.

### **2.7 Reporting Unauthorized Transaction or Theft or Loss of User IDs**

If you believe that an unauthorized transaction has been or may be made from your Account, or that an unauthorized person may have access to your login credentials, alert the Bank immediately by calling us at (248) 625-8585, or writing us at: Clarkston State Bank, 15 S. Main Street, Clarkston, MI 48346. To send secure transmissions to Clarkston State Bank, it is recommended you use the contact bank link from Clarkston State Bank's website or the contact bank link from within

NetTeller. These transmission methods are secure messaging alternatives to email. You may have other obligations for notifying us of any unauthorized transfers or transactions in your Account under Regulation E.

To the extent a transaction is an “electronic fund transfer” under Federal Reserve Board Regulation E, tell us AT ONCE if you believe your Password has been lost or stolen, or if you believe that a Mobile Banking transaction has been made without your permission using information from your check. Telephoning or visiting the nearest Clarkston State Bank facility is the best way of keeping your possible losses down. Call us at (248) 625-8585 during our normal business hours (Monday through Friday, excluding holidays, from 9:00 a.m. until 5:00 p.m. ET) or write us at 15 S. Main Street, Clarkston, MI 48346. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within two (2) Business Days after you learn of the loss, theft, or unauthorized transaction, you can lose no more than \$50.00 if someone used your Access Code or made a transaction without your authorization.

If you do NOT tell us within two (2) Business Days after you learn of the loss, theft, or unauthorized transaction, and we can prove we could have stopped someone from using your Access Code or the Service without your authorization if you had told us, you could lose as much as \$500.00. You could also lose up to an additional \$50.00 if the Funding Account has an overdraft protection line of credit feature. Also, if your statement shows a transaction that you did not make or authorize, tell us at once. If you do not tell us within sixty (60) days after the statement was mailed, electronically transmitted, or otherwise made available to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

## **2.8 No Signature Required**

When using Online Services, you agree that the Bank, without prior notice to you, may execute transfers between Accounts or payments against loans as instructed by you using Online Services, without securing your physical signature by hand or by legally acceptable form of electronic signature.

When using Bill Pay, you agree that the Bank, without prior notice to you, may debit your Account upon which the payment item was drawn to pay checks that you have not signed by hand or by legally acceptable form of electronic signature.

## **2.9 DISCLAIMER OF WARRANTIES**

THE SERVICES AND THE SOFTWARE ARE PROVIDED TO YOU “AS IS”. WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES OR THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR APPLICATION, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. YOU ASSUME THE RISK OF USING THE ONLINE SERVICES, INCLUDING THE RISK OF DAMAGE TO YOUR DEVICE, FEES FOR DATA USAGE, LIABILITIES ARISING FROM UNAUTHORIZED USE OF THE ONLINE SERVICES, ETC.

WE MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, FUNCTIONALITY, OR PERFORMANCE OF ANY BANK-DEVELOPED, BANK-LICENSED, OR THIRD PARTY SOFTWARE THAT MAY BE USED OR REQUIRED IN CONNECTION WITH ONLINE SERVICES (E.G. QUICKEN, MICROSOFT MONEY, OR BANK BRANDED MOBILE BANKING APPLICATIONS).

WE DO NOT WARRANT THAT THE ONLINE SERVICES WILL BE AVAILABLE AT ALL TIMES. SERVICE OUTAGES MAY OCCUR.

## **3.0 RESPONSIBILITY OF PARTIES**

### **3.1 Confidentiality and Access to Online Services**

We shall exercise due care in seeking to preserve the confidentiality of your login credentials and to prevent unauthorized access to the Online Services. It is understood and agreed that implementation by us of our normal procedures for maintaining the confidentiality of information relating to our customers (including the Security Procedures) and preventing unauthorized transactions shall constitute the fulfillment of our obligation to exercise due care.

We shall not be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by you by reason or in consequence of any unauthorized person gaining access to, or otherwise making use of your Accounts through the Online Services if: (i) we have fulfilled our obligation of due care; or (ii) the loss or damage could have been avoided had you promptly notified us when you received knowledge or notice of an unauthorized transaction or other breach of security; or (iii) the unauthorized transaction was a transfer of funds to an account owned by you or by any person or entity which controls, is controlled by, or is under common control with you. You assume full responsibility for the consequences of any misuse or unauthorized use of or access to the Online Services or disclosure of any of your confidential information or instructions by your employees, agents or other third parties. If we become aware of any unauthorized access to your Accounts, we will advise you as promptly as is practical under the circumstances.

### **3.2 Hardware and Software Malfunctions**

The risk of error, failure, incompatibility or nonperformance of your Device is your risk and includes the risk that you do not operate your Device or your Software correctly. We are not responsible for any errors or failures from any malfunction of your Device or Software. We have no liability to you for any damage or other loss, direct or consequential, which you may suffer or incur by reason of your use of your Device or Software.

The Bank is not responsible for nor shall have any liability for any loss or damage, direct or consequential, from electronic viruses, worms, trojans, keystroke loggers, spyware or any other "malware" that you may encounter on any Device using an Internet Service Provider. WE STRONGLY ENCOURAGE YOU TO INSTALL, PROPERLY USE, AND KEEP UP-TO-DATE ANTI-VIRUS, ANTI-SPAM, ANTI-SPYWARE AND FIREWALL SOFTWARE AND/OR HARDWARE PRODUCTS FROM RELIABLE, REPUTABLE PROVIDERS TO PROTECT YOUR DEVICE'S ONLINE SECURITY. WE ALSO RECOMMEND THAT YOU PROCEED WITH CAUTION IN USING ANY DEVICE TO USE ONLINE BANKING THAT IS NOT OWNED BY YOU.

### **3.3 Third Party Vendors**

We rely on third parties ("vendor(s)") to provide, support and manage our computer systems and our online banking systems, which in turn permits us to provide the Online Services to you. If a vendor is unable to provide us with a particular service, or if the vendor suffers a service outage, then we may not be able to provide the Online Service to you contemplated under this Agreement. We are not responsible for any Online Service outages due to a failure by any third party who provides us with a particular service.

### **3.4 Liability for Online Services**

We shall be responsible only for performing the Online Services offered under this Agreement, and we shall only be liable to you for a loss arising out of our breach of this Agreement, or for our gross negligence or willful misconduct in providing Online Services under this Agreement. We shall not be responsible for: (i) any damages, costs or other consequences caused by or related to our actions based upon your instructions, including poor image quality or duplicate deposits of checks; (ii) any unauthorized actions initiated for any of your Accounts using the Online Services; (iii) the failure of any of our computers or other systems because a vendor has failed to perform satisfactorily; (iv) any refusal of any other financial institution or other party to pay upon a substitute check or Qualified Item for any reason (other than the breach of this Agreement by the Bank), including without limitation the reason that such substitute check or Qualified Item was unauthorized, counterfeit, altered, or forged in any way; (v) lack of access to the internet or the inability to transmit data because a failure of the Software or our computers; or (vi) failures or errors on the part of any Internet Service Provider, telecommunications provider or any party's internal systems.

### **3.5 LIMITATIONS ON OUR LIABILITY**

IN NO EVENT SHALL WE BE LIABLE TO YOU FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE RELATING TO THIS AGREEMENT OR THE ONLINE SERVICES.



OUR AGGREGATE LIABILITY TO ANY PARTY FOR ANY CLAIMS ARISING OUT OF THIS AGREEMENT, WHETHER SUCH CLAIMS ALLEGE BREACH OF CONTRACT, NEGLIGENCE, INFRINGEMENT, TORT, LOSS OF BUSINESS, LOSS OF BUSINESS OPPORTUNITIES OR PROFITS, PERSONAL INJURY, PROPERTY DAMAGE OR OTHERWISE, THAT ARISE DURING ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO, AND NOT EXCEEDING, THE TOTAL FEES PAID BY YOU FOR SERVICES UNDER THIS AGREEMENT FOR SUCH TWELVE MONTH PERIOD. OUR TOTAL LIABILITY FOR ANY ERROR OR OMISSION WITH RESPECT TO DATA TRANSMITTED BY US IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO CORRECTING THE ERROR OR OMISSION, AND CORRECTING OF THE ERROR OR OMISSION IS LIMITED TO THE REPROCESSING, REPRINTING, OR REPRESENTING THE QUALIFIED ITEM TO THE PAYOR BANK OR TO ANY OTHER PARTY.

IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY DAMAGE OF ANY KIND OR NATURE TO YOUR DEVICE (INCLUDING ANY SOFTWARE ON THE DEVICE) ARISING OUT OF YOUR USE OF THE DEVICE OR THE SOFTWARE.

Without limiting the generality of the foregoing provisions, we are excused from failing to act or delay in acting, if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions, vendor failure, or other circumstances beyond our control.

Subject to the foregoing limitations, our liability for loss of interest, resulting from its error or delay shall be calculated by using a rate equal to the rate of interest paid by us for amounts in the Account during any applicable period of time.

### **3.6 Time for Bringing Claims**

You agree that any claim, action, cause of action, complaint or other proceeding (collectively a "Claim") that you may bring for breach of this Agreement or otherwise must be brought within a reasonable period of time after you have knowledge of such Claim, and in any event within 12 months from the date of such facts or circumstances having occurred which give rise to such Claim. If your Account Agreement requires you bring a Claim within a period of time that is less than 12 months, then the terms of your Account Agreement control.

### **3.7 Security Procedures**

You will comply with our Security Procedures. You agree that you are responsible for the protection and confidentiality of your login credentials. You will not permit any person who is not an Authorized User to use the Online Services. We do not assume any responsibility to discover or audit for any possible breach of security of the Online Services.

You agree to immediately notify us of any suspected compromise of security or Security Procedures. We reserve the right to change Security Procedures at any time, with or without written notice to you.

## **4. MISCELLANEOUS PROVISIONS**

### **4.1 Periodic Statements**

Your payments and transfers using Online Services will be indicated on the normal monthly statements we provide or make accessible to you by mail or delivery service, or electronically for your Account. You have a right under federal law to receive such statements for accounts governed by the Electronic Fund Transfer Act and its implementing Regulation E. You agree to notify us promptly if you change your address or if you believe there are errors or unauthorized transactions in any statement, or statement information.

### **4.2 Business Days and Hours of Operation**

Online Services are generally available twenty-four (24) hours a day, seven (7) days a week. However, at certain times, some or all of the Online Services may not be available due to scheduled or unscheduled system maintenance, or due to Internet Service Provider down time, or due to a vendor service outage. During these times, you may use the Bank (if open), or a Bank ATM to conduct your transactions. Subject to the timing requirements for Bill Pay set forth above, a transfer or other service

initiated through the Online Service before 6:00 P.M. (Eastern Time) on a Business Day is generally posted to your account the same day. Transfers and other Online Services completed after 6:00 P.M. (Eastern Time) on a Business Day, or completed on a day that is not a Business Day, will be posted on the next Business Day.

#### **4.3 Notices and Communications**

Except as otherwise provided in this Agreement, all notices required to be sent to you will be effective when we mail or deliver them to the last known address that we have for you in our records. Notices from you will be effective when received by us by mail at the address specified in Section 2.7 above. Except as otherwise expressly provided herein, we are not required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter. We are entitled to rely on any written notice or other communication, believed by us in good faith to be genuine and to have been signed by you.

#### **4.4 E-Mail Communications**

E-mail communications sent over the Internet are not necessarily secure. Therefore, we will not send, and we strongly recommend that you do not send, any confidential personal or account information by e-mail. You agree that we may take a reasonable time to act on any e-mail request that you send.

Our Online Service includes a secure message system by which you and Bank staff can exchange confidential account information safely. These communications take place inside the secure Online Banking Website and therefore do not pose the same confidentiality risk as regular e-mail transmitted over the public internet. However, you must use Software that has appropriate security features in order to keep your communications secure. We will typically respond to these communications within a reasonable time frame, normally within one (1) business day. Correspondence that requires expeditious handling (e.g. reporting an unauthorized transaction from one of your accounts) should be made by calling us at (248) 625-8585 or visiting us in person.

#### **4.5 Assignment**

The Bank may assign its rights and delegate its duties under this Agreement to a company affiliated with the Bank or to any other party. You may not assign your rights in this Agreement to any other person or entity.

#### **4.6 No Waiver**

The Bank shall not be deemed to have waived any of its rights or remedies under this Agreement, any Account Agreement or any other agreement between you and the Bank unless such waiver is in writing and signed by the Bank. No delay or omission on our part in exercising our rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

#### **4.7 Governing Law**

Regardless of where you live or work or where and how you access the Online Services, this Agreement will be governed by, and construed in accordance with, the laws of the State of Michigan and the federal laws of the United States of America (to the extent that any federal law is applicable). Any action brought under this Agreement shall be brought in a court of competent jurisdiction for Oakland County, Michigan.

#### **4.8 Enforcement**

In the event we bring legal action relating to this Agreement, we are entitled, subject to applicable law, to payment by you of our reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable.

#### **4.9 Severability**

Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law as nearly as possible to reflect the original intent of the Agreement, and the remaining portions shall remain in full force and effect.

#### **4.10 Amendment of This Agreement**

We may amend any part of this Agreement at any time, without notice to you. We may alter, limit, or terminate any of the Online Services, or your ability to use any of the Online Services, without notice to you.

#### **4.11 Entire Agreement**

This Agreement, and any addenda or schedules to this Agreement, as amended from time to time, is the complete and exclusive statement of the agreement between you and the Bank with respect to the usage of Online Services and supersedes any prior agreement(s) between us with respect to the Online Services. If there is a conflict between this Agreement and your Account Agreement, then the terms of your Account Agreement shall control.

**If you have entered into a specific agreement for other online services such as for ACH transactions, Positive Pay or remote deposit services with us, then those agreements shall be applicable to the specific services described in such agreements.**

In the event performance of the Online Services by us would result in a violation of any present or future statute, regulation or government policy to which we are subject, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and we incur no liability to you as a result of such violation or amendment.

#### **4.12 Headings**

Headings are used for referenced purposes only and shall not be deemed a part of this Agreement.

#### **4.13 Business Continuity**

If there is any disruption in our ability to provide any of the Online Services, then we will take reasonable steps to restore the Online Services as quickly as possible. We shall have no liability to you if we are unable to provide the Online Services because of any disruption in our business, or because of the disruption in any service from a vendor necessary to provide any of the Online Services.

#### **4.14 Business Accounts**

If any Account is owned by a business entity, you may be required to deliver to us a fully executed resolution for the business entity that permits the business entity to use the Online Services.

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