

# Deposit Account Disclosure

and  
Safe Deposit Box  
Rental Agreement  
Terms and Conditions

For Business Accounts

**BANK OF THE WEST**

A trade name used by BMO Harris Bank N.A.

Currently Effective

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## DEPOSIT ACCOUNT DISCLOSURE YOUR ACCOUNT AGREEMENT WITH BANK OF THE WEST\*

### The Agreement

Please read this carefully and retain it for future reference.

If you sign the signature card or open or continue to use any Account(s), you agree to the terms of this Deposit Account Disclosure for Business Accounts ("Disclosure"), and a Schedule of Fees and Charges for Business Deposit Accounts, along with any other documents we give you pertaining to your Account(s) (collectively, the "Agreement"), together which form a contract between us and establish rules which control your Account(s) with us. If you have any questions, please call us.

As used in this Agreement the words "Bank," "we," "our," and "us" mean Bank of the West and the words "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. However, this Agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this Agreement should be construed so the singular includes the plural and the plural includes the singular.

The purpose of this document is to:

- Summarize some laws 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; and
- Give you disclosures we give for some of our policies which may be applicable to you or in which you may be interested.

Except as otherwise provided herein, if any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard Agreement, but we must agree to any variation in writing either on the signature card for your Account or in some other document.

Note: All financial institutions are required by law to validate that their customers, customers' vendors, and others involved in transactions conducted with or through the Bank are not Sanctions Targets and are prohibited from conducting transactions with Sanctions Targets including Sanctioned Countries. We comply with and review our customers and others involved in transactions with us and with our customers pursuant to Sanctions Laws. We may decline to do business with and/or to conduct transactions with any person or entity whether or not the person or entity is a Sanctions Target.

### Information Use and Sharing

To the fullest extent permitted by applicable law, all information, documents, electronic information or data, reports, materials and analyses ("Information") you supply to us or which we generate internally in connection your Account, throughout the time your Account is open, regardless of the form in which such Information is made available or maintained, whether it is written or verbal (collectively, "Covered Information") is covered by this provision. Absent an express written agreement with you or applicable law to the contrary, you agree that we may use and share Covered Information about you in connection with your Accounts and financial services (i) for everyday business purposes, such as to process your transactions, maintain your Account(s), respond to court orders and legal investigations, or report to credit bureaus; (ii) to offer our products and services to you; (iii) for joint marketing initiatives with other financial companies; (iv) for

everyday business purposes with our parent and affiliates; (v) for our regulators, our parent and/or our affiliates for purposes of regulatory oversight and risk management; (vi) for our parent and affiliates to market their products and services to you; and (vii) for nonaffiliated parties to market products and services we believe will be of interest to you. Further, if you have an account with our parent or one of our affiliates, you agree that your related account information may be shared with us and become part of your Covered Information.

### Liability

You agree, for yourself and the person or entity you represent if you sign as a representative of another, to the terms of your Account(s), including this Agreement. You authorize us to deduct fees and charges (as disclosed in our Schedule of Fees and Charges for Business Deposit Accounts) as accrued, without notice to you, directly from the Account balance either as incurred or in aggregate. If your Account's Available Balance is insufficient to pay for such fees and charges, you agree to pay us promptly for any deficiency. You will pay any additional charges for services you request which are not covered by this Agreement.

You will be liable for our costs, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your Account. This includes, but is not limited to, disputes between you and a signer on your Account or similar party; or a third party claiming an interest in your Account. All costs can be deducted from your Account when they are incurred, without notice to you. If your Account's Available Balance is insufficient to pay for such costs, you agree to pay us promptly for any deficiency.

We shall not be liable for special, indirect, punitive or consequential damages which arise under this Agreement or by law with respect to your Account. Any loss to you is reduced by your recovery of funds or services from any other source.

Should a dispute arise between the parties, it is agreed that we will make every effort to resolve it amicably. However, should the dispute not be resolved, the procedures outlined in the RESOLUTION OF DISPUTES BY ARBITRATION section of this Agreement will apply.

### Force Majeure

You agree that we will not be liable for any loss, expense, failure to perform, or delay resulting from an act or event beyond our reasonable control that prevents us from performing our obligations under this Agreement, such as acts of nature, military actions, strikes or labor disputes, embargoes, government orders, civil unrest, terrorist attacks, failure of communication or electrical systems, power outages, outbreaks, epidemics, pandemics, and any other cause not within our reasonable control.

### Our Relationship

Our relationship with you shall be one of debtor and creditor; no fiduciary, quasi-fiduciary, or other special relationship exists between us.

### Reservation of Rights

We shall not be deemed to have waived any of the provisions contained in this Agreement by having waived the same or similar provisions at any other time. We reserve the right to close any Account at any time with or without prior notice, with or without cause. We reserve the right to refuse to open any Account, and also the right to add to or to change or discontinue terms of any Account or service after opening. Examples used in this Agreement are not intended to be the only applications of the rule being explained. Examples are illustrative and not limiting. No provision in this Agreement shall be deemed to override the terms of this Reservation of Rights section.

### Compliance with Law and Governing Law

You agree to comply with applicable laws and regulations and may not use your Account or related services directly or indirectly for any illegal transaction or activity. Except as otherwise expressly indicated herein or required by applicable law or as provided in another agreement between you and us, this Agreement, all Accounts and services provided to you, and any dispute relating to such Accounts and services are governed by the laws of the state of your Branch of Account without regard to conflict of law principles. The state of your Branch of Account is determined as follows:

- If you applied for your Account in person at one of our banking offices, the state of your Branch of Account is the state where you applied.
- If you applied for your Account by mail, by telephone, over the internet, electronically, or through other remote means, the state of your Branch of Account is the state in which your primary business address, according to our records at the time of Account opening, is located, if we had a branch in that state when the Account was opened.

If your Account is a Commercial Account, please consult with your relationship manager to determine which governing law applies to your Account. In all other cases not described above, this Agreement and your Account will be governed by California law. This Agreement and your Account are also subject to all applicable federal laws and regulations, including rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this Agreement can and does vary such rules or laws).

\* Doing business in South Dakota as Bank of the West California.

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## IMPORTANT DEFINITIONS

Capitalized terms used herein but not otherwise defined herein shall have the definitions assigned to such terms in the Rate Sheet, the Schedule of Fees and Charges for Business Deposit Accounts or in other documents that make up part of this Agreement.

**Account.** Any business savings, money market, transactional (checking), or certificate of deposit account that you have with us.

**Account Holder.** Any entity that holds an ownership interest in a given Account. For fiduciaries, the business or any entity who has authority to conduct banking business for the beneficiary. An account holder may be a corporation, organization or association, including but not limited to an individual acting as a sole proprietor, a partnership, a limited partnership, a limited liability partnership, a limited liability company, a joint venture or a non-profit corporation.

**Agent.** Any person that you authorize to act on your behalf. Refer to "Agents and Powers of Attorney (Sole Proprietorships Only)" in the ADDITIONAL TERMS AND CONDITIONS section of this Agreement for additional details regarding appointment of Agents.

**Automated Clearing House (ACH).** A nationwide electronic fund transfer system that permits participating depository financial institutions to clear payments electronically. ACH transactions are governed by clearing house operating rules. Using the ACH, originating financial institutions may cause payments, such as payroll, Social Security or other government benefits, to be debited from one Account party and paid into the Account of a beneficiary. Similarly, originating financial institutions may cause direct payments, such as mortgages, loans, utility bills, or insurance premiums to be debited from a debtor's Account and paid into the Account of the creditor. Generally, ACH credits and debits are arranged by you with the originating merchant or other entity.

**Available Balance.** The total amount of funds on deposit for or those funds posted to your Account reduced by any deposit holds, authorization holds, pledges, restraints and pending transactions.

**Balance Inquiry.** Anytime your Account balance is provided or made available to you in any manner.

**Book Transfer.** A wire transfer between Bank of the West Accounts. Refer to the Analyzed Business Checking Schedule of Fees and Charges for further details.

**Branch of Account.** The banking branch where your Account is opened or to which your Account is assigned.

**Business Day.** Our business days are Monday through Friday, excluding federal holidays.

**Card.** The Debit Card.

**Collected Balance.** The balance of collected funds in the Account less any uncleared or uncollected deposits. Refer to "Accrual of Interest on Noncash Deposits" in the IMPORTANT INFORMATION ABOUT YOUR CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS section of this Agreement for further details.

**Commercial Account.** Any Account housed with the Corporate and Commercial Banking Group at the Bank.

**Debit Card.** The physical card or virtual card information issued by the Bank that may be used at ATMs and POS Terminals inside and outside the United States that accept the Debit Card.

**Direct Deposits.** Electronic deposits of periodic payments that are made into your Account through the ACH. Wire transfers, deposits you make, and transfers you make between your deposit Accounts with us are not considered Direct Deposits.

**Everyday Debit Card Transactions.** A one-time transaction or purchase in which the cardholder provides his or her Debit Card or Debit Card number to a merchant for payment of services that are not recurring. Each payment is normally authorized (usually with a PIN or cardholder's signature) at the time of the transaction or purchase. We are authorized to rely on the originating bank's or the merchant's coding of the transaction as an Everyday Debit Card Transaction for all purposes, including refusing or paying the charge and assessing the applicable fee if the Account has an insufficient Available Balance.

**Item.** Any paper check or draft whether presented in paper form or electronic form. If indicated in the context, it may include an ACH debit or credit, or any form of electronic presentment.

**Overdraft.** An overdraft results from the Bank's payment of Items or Card transactions despite an insufficient Available Balance. The Bank may assess an Overdraft Fee for this service. Refer to the OVERDRAWN ACCOUNTS AND PAYMENT OF OVERDRAFTS section of this Agreement for further details.

**Personal Identification Number (PIN).** A secret code consisting of letters and/or numbers that is used to verify the identity of the individual trying to access a computer system, network, debit card account, or other electronic system, often through an ATM or Debit Card. It is commonly assigned to Bank customers for use at ATMs and merchant POS Terminals.

**Point-of-Sale (POS).** A purchase transaction conducted at any merchant or self-service Terminal where the Debit Card is accepted.

**Provisional Credit.** Credit provided to you by the Bank on a temporary basis. Unless you are otherwise informed, you may access funds for which you have a Provisional Credit but recognize that a Provisional Credit may be reversed until it is

legally deemed to be final. If reversed, you will be liable to the Bank to the extent Provisionally Credited funds were used.

**Remote Deposit Capture (RDC).** A system that allows a customer to scan checks **remotely** and transmit the check images to a bank for **deposit**, usually via an encrypted Internet connection. Our RDC products are called the Mobile Deposit Service and the Electronic Deposit Service.

**Remotely Created Check.** Like any standard check or draft, a Remotely Created Check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an Account. Unlike a typical check or draft, however, a Remotely Created Check is not issued by the paying bank or the drawer and does not contain the signature of the Account Holder (or a signature purported to be the signature of the Account Holder). In place of a signature, the Remotely Created Check usually has a statement that the Account Holder authorized the check or has the Account Holder's name typed or printed on the signature line. For example, if a person provides an Account number in response to a telephone solicitation, the telephone solicitor can use the Account number to issue a Remotely Created Check to withdraw money from that Account. In some cases you can cause a Remotely Created Check to be created and in some cases you may receive a Remotely Created Check and wish to deposit it to your Account. Please refer to "Remotely Created Checks" in the CHECKS section of this Agreement for further details.

**Returned Item.** An Item that is presented against your Account for payment, but the Bank dishonors or rejects for payment due to an insufficient Available Balance. The Bank may assess a Returned Item Fee for this service.

**Right of Set-off.** The Bank's debiting of any deposit Account(s) you hold with the Bank (assets we owe you) to apply to a debt that you owe the Bank. Refer to "Right of Set-off and Security Interest" in the ADDITIONAL TERMS AND CONDITIONS section of this Agreement for further details.

**Sanctioned Country.** Any country or territory that is, or whose government is, the target of economic or trade sanctions under Sanctions Laws.

**Sanctions Laws.** Any economic or restrictive measures enacted, administered or enforced by the United States of America, the United Nations Security Council, the European Union, and the French Republic or other relevant sanctions authority (collectively "Sanctions Authority").

**Sanctions Target.** (a) any individual or entity that is resident in, or organized under the laws of, a Sanctioned Country; (b) the government of any Sanctioned Country; (c) any individual or entity that is the target of sanctions by a Sanctions Authority; or (d) any entity that is 50% or more owned or controlled by individuals or entities that are the target of Sanctions.

**Shared ATM Network.** Any non-Bank of the West ATM (not branded Bank of the West) that accepts the Card.

**Substitute Check.** To make check processing faster, federal law (Check 21) permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a Substitute Check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a Substitute Check as proof of payment just like the original check.

**Terminal.** An ATM, self-service terminal, or attended POS terminal; used interchangeably with either the phrase ATM or POS terminal.

**The Clearing House (“TCH”) Payments.** A new payment system developed by The Clearing House, an association of large financial institutions, which permits business entities to send funds domestically to other businesses and to consumers virtually immediately (through participating institutions) or through the next fastest route for non-participating institutions. Crediting of payments to recipient accounts is subject to the Bank’s cutoff times.

**Tiered Rate Account.** An Account that may have two (2) or more interest rates, determined by specified balance levels.

**Uncollected Funds.** The unavailable portion of a deposit to your Account that comes from Items that have yet to be cleared or collected by the Bank. Refer to “Analyzed Business Checking: Interest on Overdrafts and Uncollected Funds Used” in the IMPORTANT INFORMATION ABOUT YOUR BUSINESS CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS section of this Agreement for further details.

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## WHEN YOU OPEN YOUR ACCOUNT

### Identification Requirements

We require identification, including a Social Security Number, Taxpayer Identification Number, and/or certification of foreign status (non-resident alien), for each signer, beneficial owner, and senior managing official on an Account prior to opening the Account. We may refuse to open, and we may close, any Account for which you do not provide us with acceptable identification for any signer, beneficial owner and senior managing official and/or if you do not provide a Taxpayer Identification Number, Social Security Number, or certification of foreign status. “Beneficial owner” means any individual who has ultimate control and/or ownership of the business entity in whose name the Account is maintained. In addition, we require appropriate business documentation, including, but not limited to, documentation identifying the business entity and a Tax Identification Number, foreign identification number and/or certification of foreign status, as applicable, for the business entity prior to opening the Account.

### Account Opening Verification

We may make any inquiries that we consider appropriate to determine if we should open and maintain your Account. This may include obtaining information from governmental databases (such as OFAC), financial institutions or other third parties about your Account and/or any signer on the Account. You agree that we may verify credit and employment history on you, any manager or on any other signer on the Account by any necessary means, including preparation of a credit report by a credit reporting agency. If we decline to open an Account or provide any services based on information we receive, to the extent required by law, we will provide you with the name and address of the company that provided the information.

### Business and Other Organizational Accounts

Accounts are available for and may be opened by such legal entities as are acceptable to us, including, a corporation, organization, or association, including an individual acting as a sole proprietor, a partnership, a limited partnership, a limited liability partnership, a limited liability company, a joint venture or a non-profit corporation. The individuals authorized to open and take action on those Accounts (e.g., authorized signatories) may be required to provide the Bank with appropriate documentation (e.g. resolutions, agreements, etc.) to evidence the authority of those individuals to act on behalf of the entity. We will honor such an authorization until we receive written notice of change from the governing body of the entity. It is mutually agreed that the authority of each person named as authorized to take action with

respect to the Account shall continue in full force and effect until we receive actual written notice of revocation or change.

### Use and Purpose of Business Accounts

Accounts established under this Agreement are intended for business and commercial purposes, and may not be used for personal, family or household purposes. If any of these Accounts are being used for personal, family or household purposes, we reserve the right either to close the Account or request that you change the Account to an appropriate product type designated for personal ownerships.

### Ownership Restrictions Applicable to Interest-Bearing Checking Accounts

Federal law restricts ownership of certain types of interest-bearing checking Accounts by non-personal entities to unincorporated sole proprietorships, non-profit organizations, governmental units, and fiduciaries where all beneficiaries would be entitled to maintain an interest-bearing checking Account. If we find that you have an interest-bearing checking Account and we believe you are not entitled to one, we reserve the right to change your Account to a checking Account that is not subject to these ownership restrictions. We will notify you prior to any change.

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## GENERAL INFORMATION ABOUT DEPOSIT ACCOUNTS

### Balances and Cut-off Times

Balances shown on statements, receipts, and records may not reflect transactions and charges made but not yet posted. Unless otherwise posted, the daily cut-off time for each branch is the same as the branch lobby closing time. Most transactions made before each branch’s cut-off time will be posted on the Business Day they are presented. Check with the branch for any exceptions. Availability of your deposits for ATM and night drop transactions may be found in “Deposits at Automated Teller Machines and Cut-Off Times” in the FUNDS AVAILABILITY POLICY section of this Agreement. Cut-off times for our Online and Mobile Service may be found in the separate Online and Mobile Service Agreement.

Any knowledge, notice, or stop payment order received by the Bank, or any legal process served upon the Bank, arrives too late to affect our right or duty to pay an Item or charge your Account for the Item if the knowledge, notice, stop payment order, or legal process is received or served on the later of either 10 a.m. local time or one (1) hour after the opening of your Branch of Account the next Business Day after the Business Day on which we receive the Item. If your Branch of Account opens after 9 a.m. local time, then, for purposes of this provision, your Branch of Account shall be deemed to be our Contact Center with the stop payment cut-off time of 10 a.m. (local time of your Branch of Account). The cut-off time for the Bank to exercise Right of Set-off will be the close of the next Business Day after the Business Day on which we receive the Item.

### Identifying Your Account Number for Deposits

You are responsible for correctly identifying the Account to which you want funds deposited or payments made. We may credit a deposit to an Account based solely on the Account number listed on the deposit slip or other instruction to credit an Account, even if the name on the deposit slip or other instruction differs from the name on the Account. You are responsible for any cost, loss, or damage caused by your failure to identify correctly the Account to which a deposit is to be made.

### Change in Signers and Ultimate Beneficial Owners

The Bank must be notified of any change to the signers on your Account. Any change will be effective within a reasonable time of the Bank’s receipt and acceptance of the new signatures for your

Account(s). If you do not want any Item issued by a removed signer to be honored by us, you must stop payment on any Item(s) issued by the removed signer.

The Bank must be notified of any change to the Ultimate Beneficial Owners previously disclosed to us. In the event of a change in the Ultimate Beneficial Ownership you must be prepared to provide to us with such additional documentation as we require and any new Ultimate Beneficial Owner will be required to provide such reasonable identification as we require. See INFORMATION ON THE BANK SECRECY ACT.

### **Change in Address**

You are responsible for notifying us of any change in your address, name, telephone number or email address (if applicable). Unless we agree otherwise and except as provided in this Agreement or in any other agreement between us, such changes must be made in writing or online by at least one of the Account Holders. Informing us of such changes on a check reorder form or via email is not sufficient. We will attempt to communicate with you by use of the most recent statement mailing address you have provided to us. We may change your address of record if we receive an address change notice from the U.S. Postal Service, or if we receive information from another person in the business of providing corrected address information that the address in our records no longer corresponds to your address. Change of address requests may be subject to verification.

### **Signature Requirements**

Except as otherwise expressly agreed by us, if you indicate on your signature card or other Account opening documents that more than one (1) signature is required for Account opening, deposit, instructions, Account maintenance or for any form of withdrawal, that indication is for your own internal procedures. It is not binding on us. We may, but are not required to, obtain from you additional documentation disclaiming any multiple signature requirements. We may honor the request and instructions of any individual signer or business representative on the Account and pay out funds from your Account if the Item or other withdrawal instruction is signed or authorized by any one of the persons authorized to sign on the Account. You agree that we have no liability to you if we do this.

### **Review of Drawer Signatures**

You agree that the Bank does not fail to exercise ordinary care in paying an Item solely because our procedures do not provide for sight-review, provide for sight-review only for Items above a threshold level, or provide for sight-review on a sample basis, at our discretion. The Bank reserves the right not to sight-review drawer signatures because we pay Items on an automated basis to reduce costs for all customers.

To determine the authenticity of your signature, we may refer to your signature card or to an Item or other document upon which your signature appears. If we cannot accurately verify your signature on any Item by comparing it with your signature card, an Item that posted to your Account, or other document upon which your signature appears, you are responsible for any losses that may result from our inability to verify your signature.

### **Death or Incompetence**

You agree to notify us promptly in writing if any sole proprietor or any signer with a right to withdraw funds from your Account(s) dies or becomes legally incompetent. We may continue to honor your Items and instructions until: (1) we know of your death or incompetence, and (2) we have had a reasonable opportunity to act on that knowledge. We also may, at our sole discretion, freeze, set-off, refuse, and/or reverse any transaction (including but not limited to, federal or retirement benefits to the deceased) if any sole proprietor or any signer with a right to withdraw funds

from your Account dies or becomes legally incompetent. You agree that we may pay or certify any Items drawn on or before the date of death or legal incompetence for up to 10 days after your death or legal incompetence unless ordered to stop payment by someone claiming an interest in the Account. You also agree that, at our sole discretion, we may continue to honor transactions by other signers on the Account, if permitted by the Account type of ownership, until we receive written notice to the contrary.

### **Dormant Accounts and Escheatment**

State laws generally require that any Account or other property be escheated or sent to the U.S. State indicated by your last known address if, after a certain amount of time, the Account Holder has not conducted certain types of activity on the Account, including:

- Increased or decreased the balance of the Account, or
- Corresponded in writing with the Bank concerning the Account, or
- Otherwise indicated an interest in the Account as evidenced by a memorandum or other record on file with the Bank.

Note: Automatic transactions such as Direct Deposits or recurring transfers do not count as activity on the Account.

If your Account has none of the types of activity detailed above (or as detailed in the applicable State law) for a period of time, your Account may be designated as "dormant." Dormant Accounts will not receive bank statements. While dormant, the Account will continue to be charged applicable service charges. Unless your Account has a balance of under \$10, we will attempt to notify you and to advise you how to reactivate your Account. If your Account becomes dormant, any attempted activity may be dishonored. For example, credits and debits initiated through the Automated Clearing House may be rejected, and Items presented against the Account may be questioned and, if we believe appropriate, dishonored without any liability to you.

Your property may be transferred to the appropriate U.S. State if no activity occurs in the Account within the time period specified by State law. The specific length of time between the last activity or contact and escheatment varies by State law, but is generally between three (3) and seven (7) years. The time period begins whenever you do any of the activities above or when a certificate of deposit matures.

Unless your Account balance is less than \$10, we will attempt to notify you by sending a letter to your last known address before your deposit may have to be sent to the State. If no response to the letter is received from the Account Holder of the Account, the funds will be sent to the State indicated by your last known address. Once this has occurred, you will have to file a claim for the return of the funds with the State. Further information may be obtained from the State. Once your funds are surrendered to the State, you agree that we no longer have any liability or responsibility with respect to the funds.

The Bank may assess an Inactive Account Letter Fee for each communication sent to you regarding inactivity, dormancy, and escheatment.

### **Changes in Terms and Conditions**

We may amend, add, or delete any provisions of the terms and conditions detailed in this Disclosure or any of the documents forming the Agreement between us at any time. To the extent and in the manner and time frames required by law, we will notify you in advance of any changes that affect your rights and obligations. You indicate that you accept a change we make by continuing your Account relationship with us or, if the change affects your certificate of deposit, by allowing the certificate of deposit to renew after the change becomes effective.

## Sub-Accounts

For our internal accounting purposes, your checking Account consists of two sub-Accounts. One of these is a transaction sub-Account (e.g., a checking sub-Account). You will transact business on this sub-Account. The other is a nontransaction sub-Account (e.g., a savings sub-Account). The sub-Accounts will only occur on our books. You cannot directly access the non-transaction sub-Account, but you agree that we may automatically, and without a specific request from you, initiate individual transfers of funds between sub-Accounts from time to time at no cost to you. This Account organization will not change the amount of federal deposit insurance available to you, your Available Balance, the information on your periodic statements, your fees, your bank statement or the interest calculation on your Account, if this is an interest-bearing Account.

## Positive Pay Service

For business Accounts, if you do not have a positive pay service, we reserve the right to require you to accept or decline a positive pay service at Account opening and/or on a periodic basis after Account opening. You acknowledge that your failure to use our positive pay service could substantially increase the likelihood of undetected fraudulent activity on your business Account(s) and that it is not unreasonable under the circumstances for us to require you to use a positive pay service. You agree that if you fail to implement a positive pay service, you will be precluded from asserting any claim against us for paying an unauthorized, altered, counterfeit or other fraudulent Item that the positive pay service was designed to detect or deter, and we will not be required to re-credit your Account or otherwise be liable to you for paying such Item, provided we used ordinary care in the payment of any such Item or transaction.

## Automated Clearing House Transactions

We may accept on your behalf payments to your Account which have been transmitted through one or more Automated Clearing House. Credit for ACH transactions is provisional until we receive final settlement for the transaction through a Federal Reserve Bank. If we do not receive final settlement, you agree that we are entitled to a refund of the amount credited to your Account for the transaction, and the party making payment to you shall not be deemed to have paid you the amount of the transaction.

We will notify you of the receipt of ACH Items through the periodic statements we provide to you. Although we will not provide next day notice via mail, you may verify ACH transactions by accessing the various business Online Banking services or by contacting our Contact Center at the address or phone number listed at the end of this Agreement.

These transactions are not subject to the Electronic Fund Transfer Act. Your rights and obligations with respect to ACH transactions involving your Account are governed by the laws of the state of New York, as well as the operating rules of the National Automated Clearing House Association.

## Unlawful Internet Gambling

Banking regulation prohibits banks from processing restricted transactions through a business account. Restricted transaction means any of the following transactions or transmittals involving any credit, funds, instrument, or proceeds that prohibit any person engaged in the business of gambling, betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service) from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling: (1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card); (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on

behalf of, such other person; or (3) any check, draft, or similar instrument that is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution.

## Disclosed Fees

Fees disclosed in the Schedule of Fees and Charges for Business Deposit Accounts or in any related account addenda and in the Analyzed Business Checking Schedule of Fees and Charges represent the Bank's stated fees for the services indicated. The Bank does not represent that such fees disclosed are the lowest fees obtainable for the desired services, or lower than fees for the same or similar services obtained elsewhere. You may receive the same or similar services elsewhere for lower or no fees.

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## DEPOSITS TO YOUR ACCOUNT

### Accepting Deposits

At our sole discretion, we may accept or reject deposits to your Account from any source and need not question the authority of the depositor to make the deposit. In accepting Items for deposit, we will give only Provisional Credit until collection is final for any Item we accept for deposit (including Items drawn "on us"). Provisional Credit is subject to final verification by 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. The Bank may refuse to accept any Item. If the Bank accepts an Item, the risks in the check collection process shall be borne solely by you. You acknowledge that if an Item has "cleared" or has been "paid," the Item is still subject to reversal and chargeback to your Account whenever the Bank is unable to collect the funds from the drawee/issuer institution. If the institution upon which an Item is drawn does not honor the Item, if an Item you deposit is returned unpaid, or if an Item is lost in transit, the Bank is authorized to reverse the deposit to your Account (or debit your Account for checks cashed or paid), to reverse any related interest, and to pursue a collection action against you if necessary, all without regard to the timeliness of the return of the Item.

We reserve the right either not to credit your Account or, if already credited, to charge your Account for any Items lost in transit. In the unlikely event that your deposit is lost in transit, you will be asked to recreate the check portion of your deposit. Therefore, you should maintain adequate records to permit identification of the drawer of any deposited Item that is reported lost in the payment process and to provide that drawer with adequate information to take whatever action is appropriate for cancellation and/or replacement of the Item which you deposited. You agree that Bank of the West is not responsible for Items lost while not in our possession. We may reverse any Provisional Credit for Items that are lost, stolen, or returned (or debit your Account for checks cashed). We also may reverse any related interest without regard to the timeliness of the return of the Item. If you give us cash that we later determine to be counterfeit, we will charge your Account for the amount we determine to be counterfeit. 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. We are not responsible for transactions by mail or outside depository until we actually record them. 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 an Item for collection, the Item will be deposited to your Account when payment of the Item is received by the Bank. At our discretion, our Collection Fee may be netted from the proceeds of the collected Item. In addition, institutions that pay Items on collection typically remit



the amount of the Item less any fee they assess. If we accept a third-party check for deposit, we may require any third party endorsers to verify or guarantee their endorsements, or present acceptable identification and endorse in our presence. We reserve the right to require that any check be made payable to, and be deposited into the Account of, a named payee. Any Items that the Bank is unable to collect may be returned to you by standard U.S. mail.

### **Verification of Deposits**

All transactions, including those for which the Bank has provided a receipt, are subject to the Bank's final verification. Verification of a deposit does not occur at the teller window (or upon deposit into an ATM). Consequently, the receipt that you receive at the time of your deposit is not evidence that your deposit has been verified.

If you give a written verification of deposit to a third party that requests us to release your Account-related information, we will assess a fee to the third party for this service.

### **Correction of Deposit Errors**

You must ensure that the amount indicated on the deposit slip (or ATM screen) is correct even if you did not prepare a deposit slip. If we later determine that the amount indicated on the deposit slip or reported on an ATM receipt is incorrect, we may make the appropriate debit or credit adjustment to your Account. The Bank may reverse or otherwise adjust any credit it determines was erroneously made to your Account at any time without prior notice to you.

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## **CHECKS**

### **Check Cashing**

We may require that you first deposit to your Account any Item you have requested be cashed. At our discretion, however, we may permit the negotiation of Items payable to you for cash with or without your endorsement. If any cashed Item is returned to us for any reason, we may charge the Returned Item to any of your Accounts. A Deposited Item Returned Fee may also be assessed on your Account. We may require that any Item drawn on your Account be presented for cashing at your Branch of Account.

We may also require reasonable identification to cash such an Item. We will decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

The inability or refusal to provide the fingerprint by any person presenting an Item for cashing is grounds for us to refuse to cash the Item. You agree that we shall have no liability, including, without limitation, liability for wrongful dishonor, for our refusal to cash an Item under these conditions.

### **Check Cashing by your Payees**

We may require reasonable identification to cash any Item drawn on your Account presented by the payee. We will decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include without limitation, complete name, permanent street address, Taxpayer Identification Number, birthdate, occupation or business, and an identification number, such as a driver's license or passport, the payee's phone number, date of birth, Social Security Number or collection of a thumbprint or fingerprint. Should your payee decline or be unable to provide any of the required information, we may decline to cash the Item. You agree that we shall have no liability including, without limitation, liability for wrongful dishonor for our refusal to cash an Item under these conditions.

### **Check Cashing Fee - Bank of the West Check**

We may charge a fee to anyone who does not have an eligible deposit Account with us who is cashing an Item drawn on your Account, with certain exceptions. Refer to our Schedule of Fees and Charges for Business Deposit Accounts for details.

In many states, employers are obligated to provide payroll payments to employees such that there are no bank fees for their employees to negotiate the payroll payment at the bank. We offer services whereby employers can fulfill statutory obligations to employees. Check with your Branch of Account.

### **Remotely Created Checks Deposited**

You warrant and agree to the following for every Remotely Created Check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the Remotely Created Check in the amount and to the payee that appears on the Remotely Created Check; (2) you will maintain proof of the authorization for at least three (3) years from the date of the authorization, and supply us the proof if we ask; and (3) if a Remotely Created Check is returned to us unpaid, you owe us the amount of the Remotely Created Check, without regard to when the Remotely Created Check is returned. At any time, should you deposit or wish to deposit Remotely Created Checks, we may require that you execute additional agreement(s) and that you establish a reserve Account, pledged to us, that would serve as a fund to accept chargebacks of Remotely Created Checks. Any reserve Account would be required to be maintained for the length of the applicable statute of limitation. We may take funds from any of your Accounts, including any reserve Account, to pay the amount you owe us. If there is an insufficient Available Balance in your Account to pay the amount of our loss, you shall promptly pay the remaining balance owed to us.

### **Requirements When Creating or Depositing a Remotely Created Check**

Any Remotely Created Check you seek to deposit must contain the following information for the account of the person for whom you have created the check:

- The account holder's bank account number.
- The account holder's name, printed or typewritten.
- Refer any questions on your creating a Remotely Created Check to your vendor who supports this service.

You also must include an External Processing Code (EPC) of a "6" in position 44 of the MICR line to the immediate left of the routing number and such other features including any size or check processing requirements as we may require from time to time.

With respect to any Remotely Created Check you deposit, you represent that you are entitled to enforce each Remotely Created Check.

We may immediately terminate or limit our acceptance of Remotely Created Checks at any time without prior notice. You agree to indemnify, defend and hold us harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses that we may incur arising directly or indirectly from your deposit of Remotely Created Checks. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

### **Postdated and Void-Dated Checks**

A postdated check is one which bears an issue date later than the date on which the check is written. We may properly pay and charge your Account for a postdated check even though payment was made before the date of the check, unless we have received a stop payment order in time to have a reasonable opportunity to act. If you wish a postdated check to be honored

on or after the date written on the check, you must release the stop payment order on the date you want the postdated check to be paid. Because we process checks mechanically, your stop payment order will not be effective and we will not be liable for failing to honor your stop payment order unless it precisely identifies the number, date, amount and payee of the Item. If you put a void-date on your check (a date or number of days after which the check is not good), we may pay the check and charge it to your Account even if it is presented for payment after the void-date. If you do not want us to pay a void-dated check, you must place a stop payment order on it on or after the void date. Refer to "Stop Payments" in this section of this Agreement.

#### **Stale-Dated Checks**

We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment more than six months after its date. If you do not want us to pay a stale-dated check, you must place a stop payment order on the check. Refer to "Stop Payments" in this section of this Agreement.

#### **Checks Drawn in Non-U.S. Dollars and/or Drawn on Foreign Banks**

We may refuse to accept any Item(s) for deposit or collection if they are payable in a currency other than U.S. dollars. If we accept any Item for deposit, we may assume that any Item drawn on an institution outside the United States of America ("Foreign Bank") is payable in the currency of the country where the Foreign Bank is located. If we accept an Item drawn on a Foreign Bank, you assume all risk of loss associated with currency value fluctuations and late returns. We may use our current buying or selling rate, as applicable, when processing foreign currency Items and may recover from your Account, or from you, any costs or loss incurred in connection with our processing of such Items. Refer to "Accepting Deposits" in the DEPOSITS TO YOUR ACCOUNT section of this Agreement.

#### **Endorsements or Notations on Items**

All Items presented for deposit should be properly endorsed. To ensure that your Item is processed without delay, you must endorse it (sign it on the back) in a specific area. Your entire endorsement (whether a signature or a stamp) along with any other endorsement information (e.g. additional endorsements, ID information, driver's license number, etc.) must fall within 1 $\frac{1}{2}$ " of the "trailing edge" of an Item. Endorsements must be made in blue or black ink, so that they are readable by automated check processing equipment. As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all endorsement information within 1 $\frac{1}{2}$ " of that edge. If an Item is not endorsed, the Bank is authorized to supply any missing endorsement or collect any Item without endorsement. You warrant all endorsements are genuine.

There may, however, be some instances in which the Bank may require your endorsement before accepting an Item for deposit or encashment. We may accept or pay Items bearing restrictive endorsements or other notations, whether on the front or the back of the Item. You agree that such restrictive endorsements and other notations shall have no effect on us. You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses related to or arising out of our acceptance or payment of such Items. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

We reserve the right to refuse to cash or accept Items bearing qualified endorsements (e.g., an endorsement "without recourse" or "no protest"). If we agree to accept such Items, you agree that such qualified endorsements shall have no effect on us. We reserve the right to refuse to cash or accept for deposit Items

which bear more than one (1) endorsement or the endorsements of payees who are not known to us. If you wish to deposit or cash an Item that has been endorsed by a payee who is not known to us, we reserve the right to require that: (1) all endorsers be present and endorse in our presence before we accept an Item; or (2) all endorsements be guaranteed by a financial institution.

#### **"Mechanized" and Facsimile Check Signatures**

If you use a procedure or mechanism that causes Remotely Created Checks or any other type of check to be drawn on your Account with a typed signature, facsimile signature, notation, mark, or other form of mechanical symbol (collectively, the "Mark") that is not the signature that is on the signature card that you signed when you opened your Account, you are adopting the Mark as your signature and authorizing the Bank to pay checks on which the Mark appears or purports to appear. You should understand, however, that it is easier for someone to imitate, duplicate, or counterfeit a form of mechanical signature than it is for someone to imitate, duplicate, or counterfeit a unique and distinctive signature. For this reason, by adopting a form of Mark, you are assuming all risk of loss resulting from the unauthorized use and/or forgery of the Mark, and are explicitly authorizing the Bank to pay any and all checks presented against your Account which contain any mechanical signature which reasonably resembles the form you have adopted regardless of:

- whether the Mark is actually that which you have adopted,
- how or by whom the Mark was affixed, and
- whether the check which bears or purports to bear the Mark was, in fact, authorized by you.

If you adopt a facsimile check signature, you agree to indemnify, defend and hold us and our correspondent banks harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses which we or they may suffer arising directly or indirectly out of the misuse, unlawful, or unauthorized use of a facsimile signature by any person, including but not limited to, the payment of all Items bearing, or purporting to bear, your authorized facsimile signature, even if the facsimile signature was affixed by copying or otherwise counterfeiting the facsimile signature. Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your Items. You must notify us at once if you suspect that your facsimile signature is being or has been misused. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

#### **Returned Deposited Items**

If an Item you deposit to or cash against your Account is returned to us for any reason, without regard to the timeliness of the return, the amount of the Item and a Deposited Item Returned Fee will be charged to your Account. If we receive an affidavit, declaration under penalty of perjury, or another form of certification stating, as to any Item on which we make a warranty, (1) that an endorsement of the Item deposited to or cashed against your Account is forged, unauthorized, or missing, (2) that the Item contains an alteration, or (3) that the Item is otherwise unauthorized so that we may have breached a warranty we make as a depository bank, we may rely on the truthfulness of the affidavit, declaration, or certification. Without prior notice to you, the Bank reserves the right in its sole discretion to place a hold on the funds pending an investigation or to charge back to your Account the amount of any Item deposited to your Account or cashed for you 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 judgment, justifies reversal of credit. We reserve the right to deposit the funds at issue with an appropriate court. Once we have debited your Account for the amount of the Returned Item

and the Deposited Item Returned Fee, the Item may be mailed back to you by standard U.S. mail at the address we have on our records for the Account in question.

### **Advanced Notification of Returned Item**

If we receive advance notification that any Item which you deposited or cashed is being returned by the drawee institution, we reserve the right to place a hold on your Account for the amount of those funds. We will mail you a notice advising you of this action. Upon our actual receipt of the Item, it may be charged to your Account and, unless an Overdraft is created, will be returned to you so you may take whatever action you deem appropriate.

### **Stop Payments**

Before we pay a check or third-party transfer, you have the right to place a stop payment order ("Order") on the Item, provided that:

- The Bank is authorized to deduct from your Account the Bank's applicable Stop Payment Fee.
- Each Order applies ONLY to the Items that conform EXACTLY to the descriptions you provided on the Order. If any of the information concerning the Item is not given or is incorrect (including your failure to give the precise amount of the Item, to the penny), the Bank may not be able to honor the Order.
- The Bank must receive each Order at a time and in a manner that allows the Bank a reasonable opportunity to act on the Order for the Order to be honored. Each Order shall not be effective if the Bank has already: (1) accepted or certified the Item; (2) paid the Item in cash; or (3) settled for the Item without having the legal right to revoke the settlement under statute, rule, or agreement.
- Each Order will terminate at the earliest of the following: (1) 13 months from the date it is received by the Bank; (2) your closure of the Account; or (3) in the case of non-recurring ACH Orders, after the ACH Item is returned one (1) time. Unless the Order is renewed (and the fee applicable at the time charged), the Item may be paid if it is presented for payment after the Order terminates. If the Order terminated as a result of you closing the Account, a new Order must be placed at the fee applicable at that time if you later reopen the same Account.
- If the Bank is able to and does stop payment on the Item, the payee or other holder of the Item may be able to recover from you the amount of the Item plus other appropriate fees and damages.
- If more than one person is permitted to draw (make withdrawals) on your Account, any of those persons may stop payment on any Item.
- You agree to indemnify, defend and hold the Bank harmless from and against any and all losses, damages, claims, judgments, liability, costs and expenses that the Bank may either incur or be assessed due to honoring the Order. You authorize the Bank to debit your Account for any such amount due the Bank. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.
- If the Bank re-credits your Account after paying the Item over a valid and timely Order, you agree to transfer to the Bank all of your rights against the payee or other holder of the Item and to assist the Bank in any later action taken against said payee or other holder.

### **Order of Paying Checks and Other Items**

We post many transactions in "groups" at the end of each Business Day as follows: First, we credit your Account for Items and funds that have been accepted for deposit to your Account. Charges against your Account are then generally processed in

the following sequence: (1) previously authorized transactions (e.g., ATM withdrawals, POS Debit Card transactions, checks you cash at a branch, checks drawn on the Bank that are negotiated at one of our branches, and ACH credit entries to third parties originated through us); (2) wire transfers and TCH Payments; (3) transfers of funds between Bank of the West Accounts; (4) Bank fees; (5) checks presented for payment against your Account; (6) debit transactions presented through the ACH; (7) sweep transactions to or from your Account; and (8) monthly service charges. Note: Online Banking bill payments may be processed as either checks or ACH transactions.

Within each of the groups discussed above, we generally pay Items as follows: If Items have a machine readable date and/or time stamp, we pay the Items in the order of the date/time stamp. If we have no date/time stamp, we pay those Items after Items with a time stamp, sequenced from the lowest amount to the highest amount. If the Items are checks, we pay them in check number order (from low to high). When we cannot readily determine check numbers, we pay those checks after checks with identifiable check numbers in sequence from the lowest amount to the highest amount. The order in which transactions are paid can affect the total amount of Overdraft/Returned Item Fees.

On any given Business Day, we may have system issues that could cause us to change the order in which groups and transactions are processed. Our order of posting depends on a number of factors, including when a transaction occurs, whether it has already been approved by us or has become final, the order in which it is presented, the amount, system availability, risk to the Bank, and the type of transaction in question, among other variables. We will not give you prior notice of any change to the general posting order described above. We always reserve the right to post transactions that are payable to Bank of the West first, and we may post any transaction earlier or later in the process than is indicated above. As such, if you want to avoid an Overdraft or the possibility of a rejected transaction, you should take steps to ensure that your Account has a sufficient Available Balance to cover each of your transactions and fees.

Note: We may provide you with balance, transaction and other information throughout the day via Online Banking, the Contact Center, or a branch employee. Since many transactions are not ordered, posted or processed until the end of the Business Day, we cannot guarantee which Items or transactions (with a few exceptions, such as checks cashed at a branch) will be paid until processing has been completed. In addition, balance information may not include applicable charges or fees that have not yet posted or interest that may be paid on the next statement. See the DEPOSITS TO YOUR ACCOUNTS section in this Agreement.

### **Check Printing**

If you do not purchase your check stock from us, you must be certain that we approve the check stock you purchase. We may refuse any withdrawals or transfer requests which you attempt on forms not approved by us or by any method we do not specifically permit. Even if we honor a nonconforming request, we are not required to do so later. On most Accounts, there will be a charge for check printing. The printing charge will vary according to the check design, style and quantity you select.

### **Check Processing**

We process Items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the Items. This means that we do not individually examine all of your Items to determine if the Item is properly completed, signed and endorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have not failed to exercise ordinary care solely

because we use our automated system to process Items and do not inspect all Items processed in such a manner. Using an automated process helps us keep costs down for you and all Account Holders.

### **Checks Accepted for Deposit**

Checks accepted for deposit to, or to be cashed against, your Account may not be available for immediate withdrawal. Refer to the FUNDS AVAILABILITY POLICY section of this Agreement for information about when you can withdraw funds you deposit. Also, although we attempt to identify and prevent fraudulent transactions, we have no duty to you to determine whether any check you deposit or cash is forged, counterfeit, altered, improperly endorsed, or otherwise improper.

### **Electronification of Checks**

Many transactions which are initiated with a paper check may be converted into an electronic fund transfer through the Automated Clearing House (ACH) at some point in the payment process. This section describes four common ACH programs that may affect your Account and may be identified on your Account statement.

- **Point of Purchase Program (POP):** Merchants participating in the "Point of Purchase" program are able to take one (1) of your checks and scan it at the point of purchase thereby converting it into an electronic payment through the ACH. Participating merchants are required to: (1) inform you of their participation in the program; (2) request your signature; (3) return your check to you marked "Void" or "Not Negotiable"; and (4) give you a receipt. This electronic transaction will be debited from the Account on which the check was drawn and will appear on your statement with the details of the transaction, including the check number. To participate in the Point of Purchase Program, you must use a check with a preprinted check number on it. You may not use a check that you have previously used, whether or not it has been marked "Void" or "Not Negotiable." You may stop payment on these transactions before your Account is debited if you notify us that the check was converted to a Point of Purchase electronic payment. If you fail to notify us of the conversion of your check into an electronic payment, we will not be liable for our failure to stop payment on the electronic payment.
- **Accounts Receivable Truncated Checks Program (ARC):** Some payees that you pay on a regular basis, such as utilities, credit card companies, and insurance companies participating in the ARC Program, may convert the check you mail to them into an ACH electronic debit from the Account upon which the check was written. The debit will appear on your Account statement with the check number, the payee's name and the indicator "Check Payment." The payee keeps the check and it will not be returned to you. When the payee participates in this program, the payee must notify you. You should review all statement messages and materials accompanying your bill closely for this notification. You may stop payment on these transactions as long as your stop payment request is received before the transaction is posted and all information we require to place the stop payment is provided.
- **Back Office Conversion Program (BOC):** Merchants or manned bill payment locations participating in the ACH "Back Office Conversion" program will accept your check for payment and later scan it in a back office environment converting it to an ACH electronic debit to your Account. Participating merchants and bill payment locations are required to inform you of their participation in the program with conspicuous signage as well as provide notification on your receipt to include a phone number for questions. This electronic transaction will be debited from the Account on which the check was drawn and will appear on your

statement with the details of the transaction, including the check number, payee information and date. You may stop payment on these transactions before your Account is debited provided you give us all the information we require to place the stop payment.

- **Represented Checks Program (RCK):** Some payees may convert a returned unpaid check into an ACH electronic debit from the Account upon which the check was written. The debit will appear on your Account statement with the check number, the payee's name, and the indicator "Converted Paid Item." The payee keeps the check and it will not be returned to you. When the payee participates in this program, the payee must notify you. You should review all signage and postings at merchant locations for this notification when writing a check. You may stop payment on these transactions as long as your stop payment request is received before the transaction is posted and all information we require to place the stop payment is provided.

### **Merchant Capture Program**

Merchants may participate in a merchant capture program with their bank. This program allows merchants to transmit checks electronically to their bank for deposit to the merchant's account rather than physically deposit the checks at their bank. Merchants are not required to notify you when they are participating in a merchant capture program. When you write a check to a participating merchant, the merchant will retain and later destroy the check; the check will not be returned to you. The debit will appear on your Account statement along with your other payments. You may stop payment on these transactions as long as your stop payment request is received before the transaction is posted and all information we require to place the stop payment is provided. You may or may not receive a Substitute Check or image of the check in your statement.

### **Check Deposits by a Mobile (Also Known as Remote) Deposit Service**

Both consumers and businesses to whom you make checks payable may participate in a mobile deposit service with their bank whereby they may make deposits of checks to their checking, savings, or money market account from their home or other remote locations by scanning eligible checks. The images of the checks and associated deposit account information will be delivered electronically to their bank rather than be physically deposited at their bank. Please be aware that a participant in a mobile deposit service is not required to notify you when they make such a deposit. If you write a check to a participant and the check is deposited using a mobile deposit service with their bank, the participant will retain the check, and the check generally will not be returned to you. The debit will appear on your Account statement along with your other payments. You may stop payment on these transactions as long as your stop payment request is received before the transaction is posted and all information we require to place the stop payment has been provided. You may or may not receive a Substitute Check or image of the check in your statement.

**Your Agreement to Indemnify.** If you deposit checks using our Mobile Deposit Service, you agree to indemnify, defend, and save us and our parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively, "Indemnitees") harmless from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Loss and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to our own gross negligence or willful misconduct):

1. We warrant to a warrantee that (i) the electronic image of a check accurately represents all of the information on the front and back of the original check that was truncated, and the electronic information includes an accurate record of all MICR line information required for a Substitute Check and the amount of the check ("Image Quality Warranty"); and (ii) the warrantee will not receive a presentment or otherwise be charged for an electronic check, an electronic returned check, the original check, a Substitute Check, or a paper or electronic representation of a Substitute Check, such that the warrantee will be asked to make payment based on a check it has already paid ("No Double Debit Warranty"). In the case of transfers for collection or payment, we make the Image Quality Warranty and the No Double Debit Warranty to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer. In the case of transfers for return, we make the Image Quality Warranty and the No Double Debit Warranty to the transferee returning bank, any subsequent returning bank, the depository bank, and the owner. If any Indemnitee suffers any Losses or Liabilities arising directly or indirectly or related to a breach or any of these warranties, you will indemnify the Indemnitee and not hold it responsible or liable.

2. Through our providing the Mobile Deposit Service to you, we are required to indemnify a depository bank that accepts the original check from which an electronic check is created for losses incurred by that depository bank if the loss is due to the check having already been paid. If any Indemnitee suffers any Losses or Liabilities arising directly or indirectly from or related to such depository bank indemnity obligation, you will indemnify the Indemnitee and not hold it responsible or liable.

3. If we transfer or present an "electronically created item" and receive settlement or other consideration for it, we are required to indemnify each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses that result from the fact that (i) the electronic image or electronic information is not derived from a paper check; (ii) the person on whose account the electronically created item is drawn did not authorize the issuance of the item or to the payee stated on the item; or (iii) a person receives a transfer or presentment, or return of, or otherwise is charged for an electronically created item such that the person is asked to make payment based on an item or check it has paid. If any Indemnitee suffers any Losses or Liabilities arising directly or indirectly from or related to such electronically created item indemnity obligation, you will indemnify the Indemnitee and not hold it responsible or liable."

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## FUNDS AVAILABILITY POLICY

### Your Ability to Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first Business Day after the Business Day we receive your deposit. Electronic Direct Deposits and wire transfers will be available on the Business Day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use the funds to pay Items presented against the Account.

Incoming wire transfers are subject to review under Sanctions Laws and for other reasons and may require additional information be provided to the Bank. Such funds will be available if the review is successfully completed. Refer to "Reservation of Rights to Funds Transfers" in the FUNDS TRANSFERS section of this Agreement.

### Determining the Availability of Your Deposits

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 one of our branches on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit at one of our branches on a non-Business Day, we will consider that the deposit was made on the next Business Day we are open.

Deposits made at one of our night drop facilities are considered to be received and deposited when we remove them from the night drop. We will remove and process deposits once a day not later than the next Business Day following the day the deposit was placed in our night drop.

### Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first Business Day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second Business Day after the day of your deposit. The first \$225 of your deposits, however, will be available on the first Business Day after the day of your deposit.

If we are not going to make all of the funds from your deposit available on the first Business Day after the day of your deposit, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, some or all of the 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 \$5,525 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your Account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

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

We are under no obligation to pay any Items you have authorized against funds that are not yet available. The Bank may pay such Items at our discretion and overdraw your Account or they may be returned due to an insufficient Available Balance. Refer to the OVERDRAWN ACCOUNTS AND PAYMENT OF OVERDRAFTS section of this Agreement for further details.

### Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your Account is open. When opening a business Account, you are generally considered a new customer even if you currently have a personal checking Account with the Bank.

Funds from electronic Direct Deposits and wire transfers to your Account will be available on the day we receive the deposit. Funds from deposits of cash and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first Business Day after the day of your deposit if the deposit meets certain conditions. For example, the

checks must be payable to you. The excess amount over \$5,525 will be available on the ninth Business Day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second Business Day after the day of your deposit. Funds from all other check deposits will be available on the ninth Business Day after the day of your deposit.

#### **Deposits at Automated Teller Machines and Cut-Off Times**

If you make a deposit at one of our ATMs before 4:30 PM Pacific Time (PT) on a Business Day we are open, we will consider that day to be the day of your deposit. However, if you make the deposit after 4:30 PM PT, or on a non-Business Day, or on a day we are not open, we will consider the next Business Day we are open to be the day of your deposit.

The first \$225 of funds from any deposit (cash or checks) made at ATMs we own or operate will be available on the first Business Day after the day of your deposit, unless a longer hold applies.

#### **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 that are 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.

#### **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. The funds in the other Account would then not be available for withdrawal subject to the time periods described in this section for the type of check that you deposited.

#### **Effect of Release of a Hold**

Our voluntary release of a hold on funds, or the expiration of a hold, does not guarantee that the funds are "good" or that the check in question will not be returned. If any Item you deposited is returned for any reason, your Account may be charged for such returned Item(s).

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## **WITHDRAWALS AND ACCOUNT CLOSURES**

### **Closure of the Account**

We may close your Account at any time, with or without cause, with or without prior notice to you and tender of the Account balance (including any accrued and payable interest if applicable, subject to any agreement concerning maturity or the Bank's Right of Set-off) either in person or by mail. Items presented for payment after the Account is closed may be dishonored. Any prior notice depends on the circumstances, and in some cases, such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the closure or when Account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your Account, we might immediately freeze or close your Account and then give you notice.

If your checking, savings, or money market Account reaches a zero dollar balance (\$0) and maintains that balance for 120 days or more, your Account may be closed without any notice to you. In addition, your Account will be subject to closure as a result of inactivity and escheatment of the balance in accordance with applicable State law. Refer to "Dormant Accounts and Escheatment" in the GENERAL INFORMATION ABOUT DEPOSIT ACCOUNTS section of this Agreement.

When you close your Account, you are responsible for leaving enough money in the Account to cover any outstanding Items to be paid from the Account. If you close your Account, any accrued interest that has not yet been credited to the Account will be forfeited. This includes Account closings caused by legal process.

### **Referrals to Reporting Agencies and Collection Actions**

Negative information reflecting on your credit may be submitted to credit reporting agencies if:

- We initiate a collection activity against you for indebtedness arising out of a default in your Account relationship. Further, you shall be liable to us for interest, at the legal rate, for any and all indebtedness you incur based on your Account activity from the date the indebtedness is incurred;
- You fail to fulfill the terms of your obligations with regard to your deposit Account(s) with the Bank; or
- In the Bank's judgment, you do not satisfactorily maintain your Account or if we close your Account for cause.

Depending on the situation, a negative report may occur even if the Bank does not incur a loss in connection with your Account.

Information we report usually includes, as applicable, your name, business name, address, Taxpayer Identification Number or Social Security Number, driver's license number, and the date and reason the Account was closed. The consumer reporting agency may supply this information to others. Adverse information provided to a consumer reporting agency may affect your ability to open another deposit account at other financial institutions.

### **Right to Advance Notice of Withdrawal or for Cash Withdrawals**

We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing checking Account (unless you are informed otherwise), savings Account or money market Account. Additionally, if you require a withdrawal from your Account in the form of cash, we reserve the right to require indemnification from you and not less than 7 days' notice in writing before the withdrawal. We reserve the right to obligate you to execute an indemnity for large cash withdrawals.

### **Authority to Withdraw**

Unless clearly indicated otherwise on the Account records, any signer on your Account, acting alone, who signs to open the Account or has authority to make withdrawals may withdraw or transfer all or any part of the Account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person who signs or has authority to make withdrawals to endorse any Item payable to you or your order for deposit to this Account or any other transaction with us. The Bank may honor all transactions authorized by any signer on your Account, including third-party drafts, POS transactions, electronic transfers, and ATM transfers and withdrawals, as previously arranged, from any Account.

For some Accounts, the Bank may require you to surrender any certificate or other writing evidencing the funds on deposit.

### **Other Withdrawal Limitations**

We, at our sole discretion, reserve the right to pay out any withdrawal from your checking Account in the form of a cashier's check. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal 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. In addition, we may place limitations on the Account until your identity is verified. Refer to the IMPORTANT INFORMATION

ABOUT YOUR BUSINESS CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS section of this Agreement for details related to frequency limitations on withdrawals from your savings and money market Accounts.

Withdrawals from a certificate of deposit prior to maturity or prior to any notice period may be restricted and may be subject to a penalty. Refer to the IMPORTANT INFORMATION ABOUT YOUR BUSINESS CERTIFICATE OF DEPOSIT ACCOUNTS section of this Agreement for details related to any applicable withdrawal penalty.

### **Availability of Funds**

Refer to the FUNDS AVAILABILITY POLICY section of this Agreement for information about when you can withdraw funds you deposit. For those Accounts to which our Funds Availability Policy does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. We may determine the amount of available funds in your Account for the purpose of deciding whether to return an Item for insufficient funds at any time between the time when we receive the Item and when we return the Item or send a notice in lieu of return.

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## **DEBIT CARD SERVICES FOR BUSINESS ACCOUNTS**

Indicated in this section of the Agreement are types of transactions that you may conduct using your business Debit Card. Your business Debit Card permits you to access your Account via Bank of the West ATMs, ATMs which are branded as Bank of the West, or Shared ATM Networks, to obtain cash at other financial institutions using the Mastercard® network, to conduct merchant and self-service POS purchases, and to conduct such other activities as we permit to holders of a Card, subject to certain transaction limitations as outlined below. In addition, you may arrange to have electronic funds transfers to or from your business Account that are authorized by you and initiated by third parties. Please read this section of this Agreement carefully because it tells you your rights, liabilities and obligations for the transactions listed.

### **Bank of the West ATM Account Access \***

A business Debit Card (available to all businesses), along with a PIN, allows you access to Bank of the West's ATMs. Most of our offices have ATMs, and the ATMs are available almost 24-hours a day. Consult a branch office for specific hours and locations.

You may use your Card and PIN to perform any of the following transactions:

- make deposits to your linked business checking, money market, or savings Account(s);
- withdraw cash from your linked business checking, money market, or savings Account(s);
- transfer funds among your linked business checking, money market, or savings Account(s);
- make payments from your linked business checking, money market, or savings Account(s), such as loan payments, accepted by Bank of the West;
- obtain the Account balance of your linked business checking, money market, or savings Account(s); and
- obtain a statement of the last ten (10) transactions (where available) on your Account(s).

Some of these services may not be available at all Terminals. The types of ATM transactions you may perform depend on the types of Accounts you maintain with us and the type of Terminal.

### **Designation of Primary Funding Account**

You may link all your checking, money market savings, and savings Accounts to your Card, but you must, however, designate one checking Account to be your primary funding Account. If you have more than one (1) checking Account linked to your Card, you may change your primary Account designated for use by contacting our Contact Center at the number listed at the end of this Agreement.

### **Shared ATM Network Account Access \***

You may access your Account(s) at a Shared ATM Network using your Debit Card and PIN to:

- withdraw cash from your primary business checking, savings, or money market Account(s);
- transfer funds among your linked business checking, money market and savings Account(s); and
- determine the Available Balance in your linked primary business checking, savings, or money market Account(s).

Some of these services may not be available at all Terminals. The types of ATM transactions you may perform depend on the types of Accounts you maintain with us and the type of Terminal. Each Shared ATM Network transaction fee disclosed on the Schedule of Fees and Charges for Business Deposit Accounts is a separate fee charged for every ATM function shown.

### **Frequency and Dollar Limitations at Bank of the West and Shared ATM Networks \***

Unless you are informed otherwise:

- you may make an unlimited number of cash withdrawals from Bank of the West ATMs or Shared ATM Networks each calendar day; and
- you may withdraw up to \$500 (or such other maximum amount as is agreed upon between you and the Bank) in cash each calendar day.

For Shared ATM Networks, the dollar limitation includes the amount of any fees imposed by the owner of the ATM. We reserve the right to change these maximum daily limits on cash withdrawals, which we make based on periodic risk assessments.

### **Types of Debit Card Point-of-Sale Transactions \***

You may access your primary checking Account to purchase goods (in person, online, or by phone), pay for services (in person, online, or by phone), get cash from a merchant, if the merchant permits it, or from a participating financial institution, and otherwise make any purchase with participating merchants who have agreed to accept the Debit Card.

### **Frequency and Dollar Limitations on Point-of-Sale Transactions \***

Unless you are informed otherwise, using your Debit Card:

- you may make up to 30 merchandise transactions per calendar day, per Debit Card. These transactions include PIN-based POS, signature-based POS, phone, electronic payments, and Internet purchases each calendar day;
- you may purchase up to \$3,000.00 (or such other maximum amount as is agreed upon between you and the Bank) worth of goods or services each day that you use your Debit Card; and
- you may withdraw up to \$500.00 in cash each day when you use your Debit Card to obtain cash from other financial institutions using the Mastercard® Network.

Please note that the dollar limitation includes the amount of any fees imposed by the merchant. Also, the dollar limitations on POS transactions may vary depending on the type of Account(s) you maintain with which the Debit Card is associated. We

reserve the right to change these maximum daily limits on cash withdrawals and purchases, which we make based on periodic risk assessments.

\* All transactions are subject to funds availability and applicable transaction limits.

### **Currency Conversion and Foreign Transaction Fees**

For any transactions conducted in a currency other than U.S. dollars, the merchant, network, or card association that processes the transaction may convert any related debit or credit into U.S. dollars in accordance with its then-current policies. Mastercard® currently uses a conversion rate that is either (a) selected from a range of rates available in the wholesale currency markets (which rate may be different from the rate Mastercard® itself receives), or (b) the government-mandated rate. The conversion rate may be different from the rate in effect on the date of your transaction and the date it is posted to your Account.

Your foreign transaction will incur a Mastercard® fee and a Bank of the West fee for each transaction that you conduct outside the United States in a foreign currency. These variable fees will be separately disclosed on your periodic statement. The applicable fees are set forth in our Schedule of Fees and Charges for Business Deposit Accounts.

### **Advisory Against Illegal Use**

It is your responsibility to use the Card only for valid and lawful purposes. If you use the Card for any other purpose or transaction, including, without limitation, unlawful gambling activity, you agree to assume all responsibility and liability for all losses, costs, and expenses you or we incur as a result of such use. We reserve the right to block and/or not approve any authorization request for use of the Card in any activity we believe is not lawful, including online gambling. If you breach any of the terms and conditions of this Agreement, unless otherwise limited by law, you agree to indemnify, defend and hold us harmless from and against any and all resulting losses, damages, claims, judgments, liability, costs, and expenses. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in all jurisdictions in which you may be located. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

If you use your Card for any illegal transaction, this Agreement also applies to such transaction, and you agree to pay any and all amounts related to such transaction pursuant to the terms of this Agreement. We may, in our sole discretion, restrict the use of or terminate your Card if we notice excessive use of your Card or other suspicious activities or if we reasonably believe the Card is or has been used for one or more illegal transactions.

### **Use of Your Debit Card**

Your Card is property of Bank of the West, and we may revoke your Card and privileges to access electronic services at any time without notice. You must follow the procedures used by the merchant, online merchant or financial institution for using your Card. We have no control over and will not be liable for the actions, business practices, fees, procedures or ATM functions of Shared ATM Networks, independent ATM operators, merchants, financial institutions, or other third parties, including for any Terminal or Card transaction screen operated by them or for any language used thereon.

### **Information About Debit Card Purchase Transactions**

When you use your Debit Card for an Everyday Debit Card Transaction, you are making a withdrawal from your primary checking Account. You may be asked to use your PIN, sign a sales slip or other document, or only to provide your Debit Card number. Some merchants may assess a fee for this type of

transaction. We are not liable if a merchant or financial institution refuses to accept your Debit Card or Debit Card number. We are authorized to rely on the merchant's coding of the transaction as an Everyday Debit Card Transaction for all purposes, including refusing or paying the charge and assessing an Overdraft Fee if the Account has an insufficient Available Balance.

When a Debit Card transaction is conducted, the merchant requests that we authorize the transaction. In deciding whether to authorize the transaction, we look first at the Available Balance in your primary checking Account. If that is not sufficient we look at the amount of any available credit in a BusinessLink Reserve Line linked to the primary checking Account. And lastly, we may, at our discretion, apply the Bank's Standard Overdraft Practices (if you've not opted out of it). If the balances in any of these sources do not, in the aggregate, have funds sufficient to cover the requested transaction, we will not authorize the merchant to accept the transaction and the transaction, generally, will be declined. If, however, there are sufficient funds available in the various sources available to you, we will give authorization to the merchant to permit you to conduct the transaction.

- (1) *When a Debit Card transaction is conducted as a PIN-based transaction*, we deduct the amount of your transaction, including any charge imposed by the merchant, almost immediately from the Available Balance in the primary checking Account that you designate for this service.
- (2) *When a Debit Card transaction is conducted as a signature-based transaction*, we give authorization to the merchant to permit you to conduct the transaction, and we place a hold ("Authorization Hold") for the amount of the transaction on the Available Balance in your primary checking Account pending settlement from the merchant (refer to "Effect of Authorization Hold on Other Transactions" below). The Authorization Hold is placed for up to three (3) Business Days, excluding the time in which we conduct our nightly processing of deposits and Items presented for payment; however, for some types of purchases we may place an Authorization Hold for a longer period. The merchant is responsible for submitting and settling the transaction, and the Bank has no control over merchants to require that they do so in a timely manner.

We have no responsibility for whether a merchant submits a Debit Card transaction as PIN-based or signature-based but may rely on the manner of presentation of the transaction to us.

NOTE: Merchants such as, but not limited to, car rental companies, and hotels may request approval from us for an estimated amount of your purchase (which may be more or less than the actual final amount of the purchase) since the merchant does not always know the exact amount of your purchase when it requests an authorization.

- (3) *When you use your Debit Card number for an online purchase*, some online merchants (through a participating network) request approval of the transaction but the amount is not deducted from your Available Balance until the merchant ships your purchase and submits settlement to the Bank. The Bank has no control over this arrangement with the online merchants or participating network.

As is true with all your Debit Card transactions, you are responsible for ensuring you maintain a sufficient Available Balance in your Account to cover all transactions you conduct until they are debited from your Account.

### **Information About Settlement of Signature-Based Debit Card Transactions**

Once we have given authorization to the merchant on a signature-based Debit Card transaction and any Authorization Hold has been placed on your Account, the merchant must settle



the transaction by submitting the final transaction amount to the Bank for processing.

- (1) If the merchant settles within three (3) Business Days, the transaction will be paid and the Authorization Hold will expire immediately.
- (2) If the merchant does NOT settle within three (3) Business Days, or the Bank cannot match a presented transaction with, the Authorization Hold due to, among other reasons, a variation between the amount of the presented transaction and the amount of the authorization provided to the merchant, the Authorization Hold will expire.

When the merchant settles the transaction, if the then current Available Balance is not sufficient at the time of settlement, the transaction may cause the Account to incur an Overdraft Fee. See "Effect of Authorization Hold on Other Transactions" below.

In all situations described above, the Bank is legally obligated to pay the actual final amount of the pre-authorized transaction to the merchant.

### **Effect of Authorization Hold on Other Transactions**

You are responsible for maintaining a sufficient Available Balance in your Account equal to the actual amount of your transaction (e.g., including the additional tip placed on a restaurant transaction) plus any other transactions you have conducted that may post to your Account during the Authorization Hold. The purpose of the Authorization Hold is to " earmark" the funds pending merchant settlement and may affect other transactions as follows:

- (1) During nightly processing, the Authorization Hold may still allow other transactions to post to your Account according to the order in which we pay Items (refer to "Order of Paying Checks and Other Items" in the CHECKS section of this Agreement). As such, when the merchant finally settles, the Bank is legally obligated to pay the transaction even if you have conducted other transactions that have depleted your Available Balance, and in that case, you may experience an Overdraft Fee. For example, if another transaction, such as a check or ACH transaction is presented for payment in an amount greater than the Available Balance in your Account after the Authorization Hold has been placed, and we decide to pay the transaction, your Account may become overdrawn and you may be subject to an Overdraft Fee. If we do not pay the presented transaction, the Item(s) may be returned and you may be subject to a Returned Item Fee. Refer to the OVERDRAWN ACCOUNTS AND PAYMENT OF OVERDRAFTS section of this Agreement for details.
- (2) During the day, the presence of an Authorization Hold (which may be for more than the actual amount of the purchase) on your Account could affect the Available Balance needed to cover other transactions that may be trying to post to your Account (e.g., PIN-based Debit Card transactions and in-branch transactions). This may result in other transactions being declined at the point of purchase.

If you do not ultimately use your Debit Card to pay for your purchases or if the actual amount of purchases posted to your Account varies from the estimated amount authorized by us, it is the responsibility of the merchant, not the Bank, to cancel the prior authorization based on the estimated amount. The failure of the merchant to cancel a prior authorization may result in a temporary reduction of your Account balance. If the authorization is for an amount higher or lower than the actual purchase amount, the hold may remain on your Account even after the actual purchase is paid from your Account. The actual purchase amount will be paid from your Account whenever the merchant sends it to us, even if that is after the hold has expired.

NOTE: Your Available Balance (when viewed through online and mobile services may not immediately reflect the amount of a Debit Card transaction during the day of the purchase.

### **Stop Payment on Purchase Transactions**

You may not stop payment on a purchase transaction. Instead, you must settle directly with the merchant any disputes you have about goods and services for which you pay with your Card or with the financial institution where you obtain cash with your Card. Merchants are independent of us, and we are not responsible for representations made by merchants from which you choose to purchase goods and services with your Card.

### **Chip Cards at Merchant Terminals**

With the introduction of chip card technology, all ATM and Debit Cards are issued with an imbedded chip which provides increased security from fraudulent or counterfeit card usage. Chip cards used at merchant chip card terminals will typically require transactions to be processed as PIN-based, and signature-based processing of transactions may not be an available option at all Terminals. Merchants who process purchase transactions are independent of us, and we are not responsible for the options they may offer for processing transactions using their chip card terminals.

### **Debit Card Security Measures**

We reserve the right to monitor Card transaction activity as a means to deter fraudulent transactions. If any unusual transaction activity is detected, we may attempt to contact you to confirm the authenticity of the activity. You owe us a duty to cooperate with us in any investigation of activity we believe is unusual and potentially fraudulent. However, if we are unable to contact you regarding any unusual or suspicious activity, we may, at our sole discretion, block your Card in an effort to prevent fraudulent transactions. In the event that you confirm the transaction activity as legitimate, we may, at our discretion, unblock your Card. We reserve the right to terminate all rights to use your Card if we have reason to believe that there has been an unauthorized use of your Card or PIN. We may, in our sole discretion, restrict the use of or terminate your Card if we notice excessive use of your Card or other suspicious activities. We reserve the right to decline transactions at the POS to deter possible fraud. It is your responsibility to update Bank of the West in a timely manner regarding any change in contact information, name, address, and phone number(s). Our right to monitor your Card transaction activity does not replace your responsibility to review your Account activity or change your liability regarding reporting unauthorized activity to us. **You may not "opt out" of this process.**

### **Limitations on Frequency of Transfers from Savings and Money Market Accounts**

Additional limitations on withdrawals and transfers from savings and money market Accounts may apply. Refer to "Transaction Limitations on Savings and Money Market Accounts" in the IMPORTANT INFORMATION ABOUT YOUR BUSINESS CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS section of this Agreement.

### **Related Fees**

Please refer to our Schedule of Fees and Charges for Business Deposit Accounts for additional information about fees. Also, refer to "Currency Conversion and Foreign Transaction Fees" above in this section. When you use an ATM or make a purchase at a Terminal not owned by us, you may be charged fees by the Shared ATM Network, ATM operator, or any network used (and you may be charged fees for a Balance Inquiry even if you do not complete a fund transfer). We have the right to rely on information provided to us by any Shared ATM Network, ATM operator, merchant, financial institution, or other third party with regard to whether you made a Balance Inquiry on your Account.

## Your Liability for Use of Debit Card

You are responsible for selecting individuals from your business who are authorized to hold Cards ("users"). You agree that the Bank will charge your Account for the amount of each authorized transaction in which the Card or the Card number is used. You agree to indemnify, defend and hold the Bank, its directors, officers, employees, and agents harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses arising from or relating to the issuance of any Card and/or payment of any and all transactions and charges incurred with the Card. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

You will require users to comply with the provisions of this Agreement and all other applicable agreements. You are fully responsible for the failure of any user to comply with this Agreement. You agree that you are responsible for obtaining the Card from any user who leaves your business or any user that you determine is no longer authorized to have a Card and canceling the Card immediately. You remain responsible for all transactions with any Card that occur before the Card is cancelled with Bank of the West.

You agree and warrant to the Bank that all Cards issued to you for the purpose of accessing your business Accounts shall be used solely for business or commercial purposes. Notwithstanding any of the foregoing, your use of the Cards for prohibited personal or consumer transactions will in no way relieve you of any liability to pay for, or any other obligation with, such transactions.

## Settling with the Merchant

You may have to settle directly with the merchant any disputes that you have about goods and services that you purchase using your Card. If a merchant misrepresents the quality, price, or warranty of goods or services that you pay for using your Card, we are not responsible for any damages or liability that result from such misrepresentation.

## Returned Merchandise

If you or an authorized user of your Card subsequently returns merchandise or requests credit for services purchased with your Card, the merchant or other third party may furnish you with a credit slip or receipt. You must save this credit slip or receipt and compare it with your Account statement. We will not process any credit transaction to your Account without proof that a credit has been issued by the merchant.

## Mastercard® Debit Card Zero Liability

Mastercard® imposes certain limits on cardholder liability for a Debit Card. You will not be liable for any unauthorized transactions using your Debit Card, if: (1) you can demonstrate that you have exercised reasonable care in safeguarding your Debit Card from the risk of loss or theft; and (2) upon becoming aware of a loss or theft, you promptly report the loss or theft to us. If you do not meet these conditions, you may be liable for the full amount of the unauthorized transaction(s).

## Electronic Fund Transfers Initiated By Third Parties

In addition to transactions you may conduct with your Debit Card, you may authorize a third party to initiate electronic fund transfers between your business Account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to pay electronically a returned check charge can occur when a merchant provides you with

notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your Account number and bank information. This information can be found on your check as well as on a deposit or withdrawal slip. Thus, you should only provide your bank and Account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these transfers. Examples of these transfers include, but are not limited to:

- *Preauthorized credits:* You may make arrangements for certain Direct Deposits to be accepted into your checking, money market, or savings Account(s).
- *Preauthorized payments:* You may make arrangements to pay certain recurring bills from your checking, money market, or savings Account(s).
- *Electronic check conversion:* You may authorize a merchant or other payee to make a one-time electronic payment from your checking Account using information from your check to pay for purchases or pay bills as discussed in "Electronification of Checks" in the CHECKS section of this Agreement.
- *Electronic returned check charge:* You may authorize a merchant or other payee to initiate an electronic fund transfer to collect a charge in the event a check is returned for insufficient funds.

## Errors or Questions Concerning Your Card and Certain Other Transactions

Write or call us at the phone number and/or address listed at the end of this Agreement as soon as possible if you believe that your statement or any transaction receipt is incorrect or if you need more information about a Card transaction or electronic fund transfer listed on the statement or transaction receipt. We must hear from you no later than 30 days after we sent you the first statement on which the error or the problem appeared. You can call us, but doing so may not preserve your rights. When you call or write, specify your designated Account number, Card number, the dollar amount of the suspected error, a description of the error, and an explanation of why you believe there is an error. If you tell us orally, we may require that you send us your complaint or question in writing within 10 Business Days. If we decide no error was made, we will send you a written explanation after we finish our investigation. You can request, and we will provide, copies of the documents used in our investigation. We may assess a reasonable fee to cover our duplication costs.

## Lost and Stolen Cards

If any user's Card is lost or stolen, you or any user or designee must notify us immediately either orally or in writing. You may call or write to us at the address or phone number listed at the end of this Agreement.

## Termination of Business Debit Card Services

We may terminate your business Debit Card services at any time without cause. We specifically reserve the right to terminate these services if: (1) you or any user of a business Debit Card should breach any of the terms and conditions set forth in this section of this Agreement; (2) you are in default of any other Agreement with the Bank (including but not limited to your failure to pay any indebtedness owed to us when due should your business close, or in the event of bankruptcy, insolvency, or liquidation). You may cancel the business Debit Card services by calling us or writing us on your business letterhead at the address listed at the end of this Agreement. In your letter, please identify the Debit Card number, your designated Account number, and the service and/or Debit Card(s) to be canceled.

## **Debit Card Usage Not Governed by Electronic Fund Transfer Act**

Your Debit Card transactions as well as any electronic transfer of funds to or from your business Account are not governed by the Electronic Fund Transfer Act. You understand and agree that you are not a "consumer" within the meaning of the Federal Electronic Fund Transfer Act and the Bureau of Consumer Financial Protection Regulation E, and the Act/Regulation shall not apply to any dispute arising between you and the Bank.

## **Mastercard® Easy Savings™ Program**

Mastercard® Easy Savings Program Cardholder Terms & Conditions: Cardholder must be enrolled in the Mastercard® Easy Savings Program. Payments must be made at participating merchant locations with only an eligible Mastercard® card issued by a US bank. PIN-based debit transactions are not eligible. Participating merchants and rebate offers subject to change. Restrictions apply. If you do not wish to receive these rebates, contact the financial institution that issued your Mastercard® small business card to cancel your enrollment in the Mastercard® Easy Savings Program. Go to <http://www.easysavings.com> for more details.

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## **FUNDS TRANSFERS**

### **Funds Transfers**

A funds transfer is the transaction or series of transactions that begins with the originator's (sender's) payment order, made for the purpose of making payment to the beneficiary (recipient) of the order. A funds transfer is completed by the acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's order. Funds transfers are commonly called wire transfers but may also be transfers through an Automated Clearing House, though other transactions may be covered in this "Funds Transfers" section. Refer to the separate WIRE TRANSFER REQUEST or any other wire transfer agreement that is required to be executed at the time of any funds transfer for terms and conditions that apply.

### **Reservation of Rights on Funds Transfers**

All incoming and outgoing Funds Transfers are subject to review under Sanctions Laws and for other purposes and, as such, may be delayed or stopped at any point in the payment process. You and any party involved in a Funds Transfer may be required to provide information concerning a Funds Transfer at any time.

At our sole discretion and without liability to you or any third party, we reserve the right, for any or no reason, to reject, impose conditions on, cancel, delay or suspend any instructions to initiate any funds transfer on your behalf (even if previously accepted); similarly, at our sole discretion and without liability to you and without prior notice, we reserve the right to refuse to receive any funds transfer on your behalf. If we take any such action described in the previous sentence, we will use reasonable efforts to notify you of such action by communicating with you in a method allowed by these policies or in some other commercially reasonable manner, including verbally notifying you or your designated representative, but we shall have no liability to you or any third party if we are unable to give such notice to you. In the event we take any such action as described above in this paragraph, you agree that you will indemnify us and hold us harmless from all loss, cost or expense arising from such action, including without limitation, with respect to claims by third parties. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

## **Notice of Receipt of Funds Transfer**

In the event we receive a funds transfer for your Account, we are not responsible for notifying you of our receipt of the funds transfer. The funds transfer will be reflected on your Account statement for the applicable period. You agree that we shall not be liable for any damages, claims, or losses including, without limitation, loss of any interest incurred by you for any failure on our part to notify you of receipt of a funds transfer.

## **Funds Transfer's Reliance on Identification Numbers**

If a funds transfer order designates the beneficiary by both name and an identifying Account number, we, or any bank receiving the funds transfer order, may pay the funds transfer order based upon the number alone, even if the Account number does not belong to the named beneficiary. If a funds transfer order designates an intermediary bank or a beneficiary's bank by both name and an identifying number, we, or any bank receiving the funds transfer order, are entitled to rely on the identifying number alone, even if the number does not belong to the named bank.

## **Transmitting and Recording Information About You in the Funds Transfer Payment Process**

Any funds transfer (or payment order) executed by us is subject to rules and regulations applicable to funds transfers, including the Federal Bank Secrecy Act and its regulations. In order to comply with all applicable laws and regulations in executing any funds transfer, we may transmit information regarding you, such as your name, address, and Account number, as part of the payment process. In addition, when we receive any funds transfer or payment order, we may require and record your name and Account number and other information. By sending or receiving funds transfers through us, you agree that you will assist us in complying with the applicable laws and regulations and hold us harmless from any liability in connection with our compliance with the laws or regulations.

## **Transfers Received Through the Automated Clearing House**

If the Bank receives a credit entry on your behalf or for your Account where the credit entry was transmitted through the Automated Clearing House and if the Bank does not receive payment for the credit entry from the financial institution originating the payment, the credit to your Account may be reversed.

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## **ACH AND INTERNATIONAL ACH TRANSACTIONS**

Financial institutions are required by law to scrutinize or verify any international ACH transaction (IAT) that they receive against lists contained in various Sanctions Laws, including OFAC's Specially Designated Nationals (SDN) list. This action may, from time to time, cause us to temporarily or permanently suspend processing of one or more IATs and may affect the settlement and/or availability of such payments.

At our sole discretion and without liability to you or any third party, we reserve the right to refuse to initiate or receive ACH transactions for any or no reason, including, without limitation, any ACH transfer to or from any person or entity located in a country with which the Bank has determined not to engage.

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## **INFORMATION ABOUT FDIC INSURANCE**

### **FDIC Insurance**

Funds in your Account(s) with us are insured by the Federal Deposit Insurance Corporation (FDIC) and backed by the full faith and credit of the United States. The amount of insurance

coverage you have depends on the number of Accounts you have with us that are of different "ownership." An individual Account is one unique form of "ownership." A joint Account, a pay-on-death Account, and a self-directed qualified retirement Account (e.g., an IRA) are examples of other forms of "ownership." Deposit insurance for a person's self-directed qualified retirement Account is provided up to the maximum amount permitted by law. (An IRA is a self-directed qualified retirement Account as is any Account where the Account Holder decides where and how to invest the balance.)

Deposits owned by corporations, partnerships, and unincorporated associations (including for-profit and not-for-profit organizations) are insured together under the same ownership category up to the maximum amount permitted by law. Such deposits are insured separately from the personal deposits of an organization's owners, stockholders, partners or members. To qualify for insurance coverage under this ownership category, a corporation, partnership or unincorporated association must be engaged in an "independent activity," meaning that the entity is operated primarily for some purpose other than to increase deposit insurance coverage.

If you want a more detailed explanation or additional information, please contact the FDIC directly at 1-877-ASKFDIC (1-877-275-3342). You can also visit the FDIC website at [www.fdic.gov](http://www.fdic.gov) and click on the "Deposit Insurance" link. The link includes detailed contact information as well as a deposit insurance estimator.

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## IMPORTANT INFORMATION ABOUT YOUR BUSINESS CHECKING, SAVINGS AND MONEY MARKET ACCOUNTS

### Rate Information

Interest rates are variable and are determined by Bank policy and market conditions. Within any product type the rates applicable to your Account may differ according to a variety of factors including the location of your Branch of Account, the day on which you open your Account, its daily balance, your total deposit Account relationship with us and how long you have had Accounts with us.

### Frequency of Rate Changes

We may change the interest rate on your Account as frequently as daily. Rate change notices will not be sent; however, our current rates are available at [www.bankofthewest.com](http://www.bankofthewest.com) or by telephoning any Bank of the West branch or our Contact Center at the number listed at the end of this Agreement.

### Tiered Rate Accounts

For tiered rate Accounts, interest will be paid on the entire Collected Balance at the interest rate set for the tier into which the entire end-of-day Collected Balance falls. We reserve the right to pay the same interest rate on more than one balance tier. We also reserve the right to pay lower interest rates on the higher or highest balance tiers.

### Compounding and Crediting Frequency

Interest will be credited monthly on interest-bearing business checking, savings, and money market Accounts. Refer to the Bank's current Rate Sheet (or the related Account Addendum, if applicable) to determine the compounding frequency for your checking, savings or money market Account, as applicable. Interest is available for withdrawal when it has been credited to your Account.

At the end of each interest crediting period any fractional amount of interest less than half of one cent will be rounded down and any fractional amount of interest equal to half of one cent or more will be rounded up to the next whole cent.

### Computation Method

We use the daily balance method to calculate the interest on your Account. This method applies a daily periodic rate to the principal in the Account each day. For all interest-earning checking Accounts and money market Accounts, interest is accrued and calculated on the daily collected ending balance. On savings Accounts (other than money market savings Accounts), interest is accrued and calculated on the daily ending balance. Interest is calculated on an actual/365-day basis (actual/366-day basis in leap years).

### Annual Percentage Yield or APY

The annual percentage yield quoted for your Account assumes that interest earned remains in the Account, that all funds remain on deposit for one (1) year from the date of deposit, and that the interest rate does not change. Interest withdrawn will reduce the annual percentage yield earned.

### Effect of Closing an Account

If you or we close your Account before interest is credited or change your Account to a non-interest bearing Account within the statement period, you will not receive the accrued interest. You will not forfeit interest if your Account closes because you are transferring it to another Bank of the West branch.

### Accrual of Interest on Noncash Deposits

Interest begins to accrue no later than the Business Day we receive credit for the deposit of noncash items (for example, checks). Items drawn on other financial institutions usually take one (1) to three (3) Business Days before we receive Provisional Credit for them at which time the item becomes collected. We may reverse interest that has been earned on any deposit that is reversed for any reason.

### Transaction Limitations on Savings and Money Market Accounts

For savings and all money market Accounts you may make up to nine (9) transfers or withdrawals by means of a preauthorized, automatic, or telephone transfer to another Account of yours or to a third party or by check, draft, Debit Card, or similar order to a third party or to another Account (includes Online Banking transfers) during either the statement cycle period (for money market Accounts) or the calendar month (for savings Accounts). A preauthorized transfer includes any arrangement with us to pay a third party from your Account at either: (1) a predetermined time; (2) on a fixed schedule; or (3) upon oral or written orders including orders received through the Automated Clearing House (ACH). If the transfer or withdrawal is initiated in person, by mail, messenger, or at an ATM, then there is no limit on the number of payments that may be made directly to you or directly to us for amounts you owe us, or transfers to other Accounts you have with us. Withdrawals by phone are also unlimited if you are requesting that a check be mailed to you.

If you exceed the nine (9) countable transfers in the statement cycle period (for money market Accounts) or calendar month (for savings Accounts), the Bank will notify you. In addition, for money market Accounts, the Bank may transfer the balance of your money market Account to a checking product type that does not have transaction limits. Transfers and payments are counted as of the end of the day the funds are actually withdrawn to determine whether any transfer threshold has been exceeded.

### Analyzed Business Checking Balance Related Terms

*Average Ledger Balance.* The average daily ledger balance for the Account for the analysis cycle. This figure is equal to the aggregated daily ledger balance (positive and negative) for the cycle, divided by the number of days in the cycle.

**Average Daily Float.** The average daily float is equal to the aggregated daily balances not collected for the cycle, divided by the number of days in the cycle. Float calculations are based on the time assigned for the collections of deposited Items which may be longer or shorter than the actual collection time.

**Average Daily Collected Balance.** The average daily Collected Balance is equal to the average ledger balance less the average daily float.

**Negative Collected Balance.** The negative Collected Balance equals the total of the Account's daily negative Collected Balances for the cycle divided by the number of days in the cycle. The negative Collected Balance is used to determine interest on unavailable funds.

**Average Daily Adjusted Collected Balance.** The average daily adjusted Collected Balance is the sum of the negative Collected Balances and the average daily Collected Balance. This figure is used to calculate the reserve requirement.

**Legal Reserve Requirement.** Reserves are funds which the Bank is required to maintain at a Federal Reserve Bank for deposits. Reserves are calculated by multiplying Average Daily Adjusted Collected Balances by a fixed factor of 10%, regardless of the actual reserve requirement for your funds. The Bank's actual reserve requirement may be lower based on sub-accounting and other factors.

**Balance to Support Services.** The balance to support services is equal to the average Collected Balance less the reserve requirement.

**Average Daily Ledger Balance Overdraft.** The average daily ledger balance Overdraft is the total of the Account's daily ledger Overdraft balances for the cycle divided by the number of days in the cycle. The average daily ledger balance Overdraft is used to determine interest on ledger Overdraft.

**Earnings Credit.** The earnings credit is a credit earned by the customer to apply toward the payment for services provided. This figure is calculated by multiplying the balance to support services by the earnings credit rate in effect, divided by the number of days in the year, multiplied by the number of days in the month. The earnings credit rate is subject to change without prior notice. Current pricing information is available from your relationship manager.

**Prime Rate.** The prime rate shall mean an index for a variable interest rate which is quoted, published, or announced by Bank of the West as its prime rate and as to which loans may be made by Bank of the West at, above, or below such rate.

#### **Analyzed Business Checking: Interest on Overdrafts and Uncollected Funds Used**

For information on interest on Overdrafts or Uncollected Funds, please refer to the Analyzed Business Checking Schedule of Fees and Charges. Interest on Overdrafts is applied to the average daily ledger balance Overdraft for the month. Interest on Uncollected Funds used is applied to the negative Collected Balance for the month. Interest shall be adjusted concurrently with any change in the Prime Rate. Interest on each advance shall be computed on a 365/365 day basis (366-day basis for a leap year), and charged on the actual number of days elapsed.

#### **Auto-Save Feature**

The Auto-Save feature allows you to increase your savings by having a fixed amount of money regularly transferred from your linked checking Account to an eligible savings or money market Account. Linked Accounts must have the same ownership. Refer to the Schedule of Fees and Charges for Business Deposit Accounts for details. The Auto-Save feature may be set up at Account opening, or at any time through our Online Banking at bankofthewest.com, by calling us at the number listed at the end of this Agreement, or by visiting your local branch.

If there are not sufficient funds in your checking Account to complete a scheduled transfer, such as Auto-Save, to your eligible savings or money market Account, no transfer will occur, even if you have available Overdraft protection for your checking Account through Savings Overdraft Protection and/or a BusinessLink Reserve Account. This means that if your eligible savings or money market Account monthly service charge would have been waived as a result of an eligible Auto-Save transfer from your checking Account, your money market or savings Account will incur the applicable monthly service charge for that statement cycle.

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## **IMPORTANT INFORMATION ABOUT YOUR BUSINESS CERTIFICATE OF DEPOSIT ACCOUNTS**

### **Rate and Term Information**

You will be paid interest on your certificate of deposit (CD) at the disclosed rate until the first maturity of your CD. Your CD will mature as stated on your CD receipt.

### **Compounding Frequency**

Interest will be compounded monthly.

### **Crediting Frequency**

For CDs with terms of 32 days or longer, you may choose the frequency of interest payments. Interest can be paid as frequently as monthly, but must be paid at least once a year. Interest may be reinvested into the CD, credited to another checking, money market or savings Account, or paid to you by check. CDs with terms of 7 to 31 days will receive interest only at maturity. Interest may be reinvested into the CD or deposited to a checking, money market or savings Account.

### **Computation Method**

We use the daily balance method to calculate the interest on your CD. This method applies a daily periodic rate to the principal in the CD each day. For all CDs, interest is accrued and calculated on the daily ending balance on an actual/365-day basis (actual/366-day basis in leap years).

### **Annual Percentage Yield or APY**

The annual percentage yield quoted for your CD assumes that interest earned remains in the CD, that all funds remain on deposit for one (1) year from the date of deposit (even for shorter term deposits), and that the interest rate does not change.

### **Effect of Closing an Account**

If you close your CD before interest is credited, you will receive the accrued interest. CDs closed during the grace period will forfeit any interest that accrued during the grace period.

### **Accrual of Interest on Noncash Deposits**

Interest begins to accrue on noncash deposits on the Business Day you deposit them (such as checks).

### **Grace Period**

All automatically renewing CDs with terms of 32 days or longer have a 10 calendar day "grace period" following the maturity date of the CD when you can withdraw funds or make changes to the CD without an early withdrawal penalty. CDs with terms of 7 to 31 days have a 1-day grace period.

### **Additional Deposits**

Unless we tell you otherwise, additional deposits of \$100 or more can be made only within the grace period on automatically renewable CDs. Interest on the additional funds, both cash and non-cash, will begin to accrue on the Business Day you make your deposit and will be at the same rate as the renewed CD. The additional deposit(s) will mature at the same time as the renewed CD.

### Withdrawals of Interest Prior to Maturity

Interest which has been credited to the CD during the term of the CD may be withdrawn without penalty at any time.

Interest which has been reinvested at maturity may be withdrawn without penalty at any time provided that the CD term and interest rate have not changed since the renewal. If either the term or interest rate of the CD changes upon renewal, any credited interest becomes part of the principal of the CD. A withdrawal of interest will reduce earnings.

### Withdrawals of Principal Prior to Maturity

You may make withdrawals of principal from your CD before maturity only if we agree at the time you request the withdrawal. Your withdrawal prior to maturity may be subject to an early withdrawal penalty. Principal withdrawn before maturity is included in the amount subject to the early withdrawal penalty.

### Early Withdrawal Penalties

Any early withdrawal penalties assessed may reduce the principal balance remaining in your CD after the withdrawal. For CDs with terms of 7 to 31 days or terms of 60 months and longer, the penalty is calculated at the interest rate in effect on the CD at the time of the withdrawal. The penalties on the amount withdrawn are as follows:

CD TERM	PENALTY
7 to 31 Days	\$25 + 31 days simple interest
32 Days to 11 Months	\$25 + 1% of the amount withdrawn
12 to 59 Months	\$25 + 3% of the amount withdrawn
60 Months or Longer	730 days simple interest

### Additional Withdrawals

Additional withdrawals without penalty are permitted upon a depositor's death or mental incapacity (whereby the Bank may, at its option, require a certified copy of the death certificate or a court or administrative order or decree establishing mental incapacity). Withdrawals at any other time may be permitted at the Bank's discretion but may be subject to early withdrawal penalties.

### Automatically Renewable Certificates of Deposit

An automatically renewable CD will automatically renew at maturity for the same term (unless we tell you otherwise). Each renewal term will be the same as the original term, beginning on the maturity date (unless we tell you otherwise). The interest rate will be the same interest rate that we offer on new CDs on the maturity date for the same term, minimum balance (if any) and other features as the original time deposit (unless we tell you otherwise).

### Renewal Notices

If your CD automatically renews, we will mail a renewal notice approximately fifteen (15) days prior to the maturity date (except for CDs with terms of 7 to 14 days). The renewal notice will include a phone number you can call on the maturity date (or shortly thereafter) to inquire about the interest rate and annual percentage yield on your renewed CD.

### Non-Automatically Renewable Certificate of Deposit

Any non-renewable CD will not automatically renew at maturity. Interest will not accrue after the maturity date. We will mail a maturity notice approximately fifteen (15) days prior to the maturity date (except for 7-14-day terms). The maturity notice will include a phone number you can call if you would like to open another CD or advise us what you would like done with the funds from your matured CD.

### Returned Interest Disbursements

In the event an interest disbursement from your CD is returned to the Bank or cannot be disbursed, we will do the following:

- **By Check:** If an interest distribution check is returned to the Bank for any reason, we will do two things: (1) cancel the distribution check and credit the funds to your CD, and (2) no longer mail interest distribution checks to you but rather credit any interest to the CD. If you provide us with a valid address, you may then request that we reinstate the mailing of interest distribution checks on the CD. Please note that in the event an interest check is credited back to a CD, and the CD subsequently renews, all interest credited will become part of the principal if either the CD term or interest rate change at renewal. As such, any withdrawals after the grace period may be subject to an early withdrawal penalty.
- **By ACH or Internal Transfer:** If an interest payment in the form of an ACH debit or internal transfer from your CD cannot be disbursed for any reason, we will do two things: (1) issue a check payable to you in the amount of the payment and mail it to you at the last known address we have on our records for you; and (2) issue all future interest payments in the form of a check payable to you. We will continue to issue these payments in the form of a check until you notify us that the necessary corrections to the ACH or internal transfer information have been made and you request that we reinstate the ACH debit or internal transfer of the interest payments.

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## OVERDRAWN ACCOUNTS AND PAYMENT OF OVERDRAFTS

### Overdrawn Accounts or Insufficient Funds

If your business Account is overdrawn for any reason including: (1) the Bank cannot collect the funds from a deposit you have made; (2) the Bank has intentionally or unintentionally paid items for which you do not have a sufficient Available Balance; or (3) there was not a sufficient Available Balance to cover the amount of a service or other Bank charge, then you agree to reimburse the Bank for the amount of the Overdraft (including any Returned Item or Overdraft Fee) without regard to the signer on the Item(s) that created the Overdraft or who benefited from the charge or Overdraft.

Payment of an overdrawn Account is due immediately or upon demand by the Bank. Absent an earlier demand and declaration of default or absent your request to declare an Account in default, if you fail to pay the amount of the overdraft on an Account within 60 calendar days, we will deem the Account to be in default and will take such actions as we deem appropriate for collecting an Account in default. Such actions include, without limit, closing an Account and sending the Account for collection.

**You are responsible for managing your Account to ensure a sufficient Available Balance is maintained to cover your transactions. You can help avoid Returned Item and Overdraft Fees by maintaining a record of your deposits and withdrawals by check, recurring payments and Debit Card transactions.**

In the event your Account does not have a sufficient Available Balance to cover an electronic transaction conducted in any manner, including at the ATM or at a merchant either with or without a PIN, we reserve the right, in our sole discretion, to pay or dishonor the electronic transaction. If your Account is overdrawn by reason of an electronic transaction, an Overdraft or Returned Item Fee may be charged to your Account (as applicable). Should we choose to honor your electronic

transaction, you will not be advised or warned that the transaction is causing your Account to become overdrawn and will not have the prior right to cancel the transaction. Overdraft or Returned Item Fees are in addition to any applicable fees related to the transaction.

It should be understood that the Bank is under no obligation to pay any checks, drafts, electronic or other Items you have authorized which may overdraw your Account.

Also, the fact that we may honor withdrawal requests when you have an insufficient Available Balance in your Account does not obligate us to do so later. So you can NOT rely on us to pay Overdrafts on your Account regardless of how frequently or under what circumstances we have paid Overdrafts on your Account in the past. We can change our practice of paying Overdrafts on your Account without notice to you. We may use subsequent deposits, including Direct Deposits of social security or other government benefits, to cover such Overdrafts and Overdraft Fees.

### **Standard Overdraft Practices**

We may choose, at our discretion, to assist you with an **unplanned or occasional Overdraft** by paying checks, ATM withdrawals, ACH, recurring and nonrecurring Debit Card transactions and purchases, and other Items drawn on your Account and charging you an Overdraft Fee when your Account does not have a sufficient Available Balance to cover those Items either at the time of the transaction or at the time the transaction is received by the Bank for posting to your Account. Whether we will pay a particular Item is decided by the Bank, at our sole discretion, by evaluating a number of factors relating to your Account.

**Opting Out - If you do not want us to pay checks, ATM withdrawals, ACH, or recurring or nonrecurring Debit Card transactions or purchases when doing so will overdraw your checking Account, please contact your local branch or call our Contact Center at the number listed at the end of this Agreement. Your opt out choice will become effective within two (2) Business Days of your request.**

**Even if we do not pay an Item, you will incur a Returned Item Fee if we return an Item because your Account has an insufficient Available Balance. ATM and business Debit Card transactions will generally be declined. Even when you have opted out, there still may be times when an Item will be paid (or an ATM or Debit Card transaction will not be declined), an Overdraft occurs, and an Overdraft Fee is charged.**

The dishonoring of a check, ACH Item, recurring or nonrecurring Debit Card transaction, or other Item drawn on your Account could result in additional fees or other consequences imposed under your agreement with the payee or by law.

The Bank reserves the right to amend or terminate our standard Overdraft practices without notice at any time. Additionally, there are certain instances where checking Accounts are not eligible for our Standard Overdraft Practices.

### **Overdraft Program Alternatives**

**We offer Overdraft programs, such as BusinessLink Reserve (line of credit; credit approval required) and Savings Overdraft Protection (for sole proprietorships), which may be less expensive than our Standard Overdraft Practices. Refer to the Schedule of Fees and Charges for Business Deposit Accounts for applicable fees for these Overdraft program alternatives.**

### **Savings Overdraft Protection for Sole Proprietorships**

A sole proprietorship is the only non-personal entity for which Savings Overdraft Protection may be set up. It is not available for any other type of business entity. Savings Overdraft Protection is available for sole proprietor Accounts only when an individual

either does not want or does not qualify for our BusinessLink Reserve product.

This service is available if you have a business savings or business money market Account and any business checking Account. The Account Holder(s) of the business checking Account must be the same as the Account Holder(s) of the business savings or business money market Account.

If, during nightly processing, there is an insufficient Available Balance in your business checking Account to cover the amount of Items presented for payment, we will automatically transfer funds from the Available Balance in your linked business savings or business money market Account to your business checking Account. We transfer funds in increments of \$50 up to the amount of the Overdraft, including any Savings Overdraft Protection Transfer Fee ("Transfer Fee"), up to the amount of the Available Balance in your linked business savings or business money market Account. The total of all \$50 increments is considered one transfer, and we charge a Transfer Fee per transfer each day that a transfer occurs. If your business savings or business money market Account does not have a balance of \$50, but there is a sufficient Available Balance to cover the Overdraft amount and the Transfer Fee, then the entire business savings or business money market balance will be transferred into the business checking Account. If one (1) or more Items are presented against your business checking Account and there is a sufficient Available Balance in your linked business savings or business money market Account to cover one (1) or more of the Items plus the Transfer Fee, we will transfer enough to cover as many of the Items as possible plus the Transfer Fee, up to the remaining Available Balance in your business savings or business money market Account. If, after the transfer of funds from your linked business savings or business money market Account, there continues to be an insufficient Available Balance to cover one (1) or more Items presented against your business checking Account, you may still be charged an Overdraft Fee or a Returned Item Fee, in addition to the Transfer Fee.

If you have Savings Overdraft Protection and a transfer occurs to a linked business checking Account that is overdrawn \$5 or less, no Transfer Fee will be assessed.

Each Savings Overdraft Protection transfer counts as one (1) of the nine (9) limited transactions you are allowed each calendar month from your business savings Account or each statement cycle from your business money market Account.

Savings Overdraft Protection does not cover ATM and Everyday Debit Card Transactions as they post to your Account throughout the day. Savings Overdraft Protection only covers transactions that post during nightly processing. Accordingly, if you attempt to make an ATM or Everyday Debit Card Transaction against an insufficient Available Balance in the business checking Account then the transaction may be declined even if you have Savings Overdraft Protection and there is a sufficient Available Balance to transfer from your business savings or business money market Account to cover the transaction. Savings Overdraft Protection is not available for bill pay transactions scheduled through Online Banking Bill Payment Service.

### **BusinessLink Reserve Line**

If you have a BusinessLink Reserve Line as Overdraft protection for your linked business checking Account and one (1) or more Items are presented against your business checking Account, we will transfer enough funds to the business checking Account to cover as many of the Items as possible plus the Loan Advance Fee, up to the available credit limit in your BusinessLink Reserve Line. If, after the transfer of funds from your BusinessLink Reserve Line, there continues to be an insufficient Available Balance to cover one (1) or more Items presented against your business checking Account, you may still be charged an Overdraft Fee or a Returned Item Fee, in

addition to the Loan Advance Fee. Transfers will be made in multiples of \$100 or in the amount of credit available from your BusinessLink Reserve Line.

However, if the available credit limit in your BusinessLink Reserve Line is insufficient to cover any one (1) of the Items plus the Loan Advance Fee, no transfer from your BusinessLink Reserve Line will occur.

The BusinessLink Reserve Line as Overdraft protection for your linked business checking Account covers checks, ATM withdrawals, Debit Card transactions, ACH debits, automatic electronic payments and other transactions from your business checking Account.

You must apply for the BusinessLink Reserve Line. Total Overdraft coverage is determined by your available credit limit, and credit is subject to credit approval. Please refer to the BusinessLink Reserve Line Agreement and Addendum for full details.

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## ABOUT YOUR ACCOUNT STATEMENTS

### Account Statements in General

Statements are a valuable tool to help prevent fraudulent or mistaken transfers. Your statement will show the transactions that occurred in connection with your Account during the statement period. Statements on checking and money market Accounts are generated monthly based on the statement cycle date of the Account. Your first statement cycle on any Account may be less than 30 days. Statements on savings Accounts (excluding money market Accounts) are generated quarterly unless there has been electronic transaction activity on the Account in which case a statement will be generated for the month in which the electronic transaction activity occurred.

### Statements and Your Responsibility to Review

Periodic statements include all Account activity for the statement period. It is important that you review each statement upon receipt and notify us in writing of:

- Any error, omission, alteration, unauthorized transaction, unauthorized signature, or other irregularity in any deposit, withdrawal, transfer, or fee; and
- Any loss, theft, improper or unauthorized use of any instrument evidencing funds on deposit, or any banking forms relating to an Account.

You must examine your statement of Account or any checks that the Bank has mailed, delivered or made available to you with "reasonable promptness." If you discover (or reasonably should have discovered) any errors, omissions, unauthorized transactions, unauthorized signatures, alterations, forgeries including unauthorized, missing, or forged endorsements for which you should have a reasonable basis to identify as authentic or valid, or other irregularities on your Account ("Unauthorized Transactions"), you must promptly notify us of the relevant facts. Nevertheless, you agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 30 days from the earliest date of when the statement is first mailed, delivered or made available to you. You agree that the mailing, delivery or the making of the availability of your statement constitutes your discovery or circumstances under which you should reasonably have discovered any Unauthorized Transaction.

**If you do not report Unauthorized Transactions within 30 days after the earliest date the statement is mailed, delivered, or made available, we will not be liable for payment of any Unauthorized Transaction shown on the statement.** Your loss could be not only with respect to

Unauthorized Transactions on the statement but other Unauthorized Transactions by the same wrongdoer. In the event that Unauthorized Transactions are committed by the same person, the 30 days begins on the earliest date the first statement in which the first Unauthorized Transaction appears is mailed, delivered, or made available.

Reports of Unauthorized Transactions or incorrect activity not involving electronic fund transfers must be made in writing and submitted to us as instructed. For claims of check forgery, you may initially contact your Branch of Account or call our Contact Center at the number listed at the end of this Agreement. You may be required to visit a branch to sign a claim of forgery in the presence of a Bank employee.

You agree that you will have at least two different people review your statements, notices and returned checks, or in the alternative, the person who reviews those will be someone who does not have authority to transact on the Account.

You agree to cooperate in any investigation we may undertake regarding your claim. We reserve the right to investigate your claim fully and we reserve a reasonable length of time for our investigation. We reserve the right to exercise all of our legal defenses to your claim.

Please note that the Bank stops preparing and sending statements for dormant Accounts and Accounts for which the Bank has received returned mail from the address on file.

### Combined Statements

Multiple checking, savings, money market, and certificate of deposit Accounts may be automatically combined on one (1) statement if they have the same ownership and mailing address.

### Check Safekeeping

With our Check Safekeeping service, we keep copies of your deposit slips and canceled checks in an electronic form for seven (7) years rather than return the originals to you in your statement. With this service, you agree that you will not receive your canceled checks. To request copies of deposit slips or paid checks, contact your Branch of Account or call our Contact Center at the number listed at the end of this Agreement. When requesting a copy of a deposit slip or check, please provide the following information, as applicable, which is shown on your Account statement: Account name, Account number, check number, dollar amount of the deposit slip or check, and the date shown on the deposit slip or posting date of the check. In most instances, we will mail the copy to you within two (2) Business Days. If you prefer, you may pick up the copy at your Branch of Account. If you request copies of more than two (2) Items per statement period, there will be a fee.

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## IRS REPORTING

### Tax Identification Number and Interest Reporting

Federal tax law requires us to report interest payments we make to you of \$10 or more in a calendar year and to include your Taxpayer Identification Number (TIN) on the report. Interest includes dividends, interest, incentives and bonus payments for purposes of this rule. Therefore, we require you to provide us with your TIN and to certify that it is correct. The TIN is either a Social Security Number (SSN), or an Employer Identification Number (EIN). For most organization or business Accounts other than sole proprietorships, the appropriate TIN is the EIN of the organization or business entity. For sole proprietorships, either the SSN or the EIN is appropriate. The appropriate TINs for various types of Accounts are:



Type of Account	TIN
Sole Proprietorship	SSN or EIN of the owner (as determined by IRS requirements)
Corporation	EIN of the corporation
Partnership or LLP	EIN of the partnership or LLP
Limited Liability Company (LLC)	EIN of the LLC or SSN of the single member (if applicable)

### Backup Withholding

In some circumstances, federal law requires us to withhold and pay to the IRS a percentage of the interest that is earned on funds in your Accounts. This is known as backup withholding. The percentage withheld will be determined by the rate in effect under IRS regulations at the time backup withholding begins. We will not have to backup withhold on interest payments when you open your Account if you certify your TIN and certify that (a) you are exempt from backup withholding, (b) you have not been notified by the IRS that you are subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding. We may subsequently be required to begin backup withholding if the IRS informs us that you supplied an incorrect TIN or that you underreported your interest income. Withholding will occur at the time interest is paid. The amount of backup withholding will be reported to you and the IRS.

If you are a foreign person (either an individual who is a nonresident alien or a foreign organization) you must certify your foreign status on the appropriate IRS Form W-8 (Certificate of Foreign Status). Your foreign status must be recertified on a new IRS Form W-8 every three (3) years. If you do not recertify when required, your Account will be put on backup withholding at the expiration of the current Form W-8 on file with the Bank. Backup withholding may also occur at any time upon any request served to the Bank by the IRS. The percentage withheld will be determined by the rate in effect under IRS regulations at the time backup withholding begins.

If you are an exempt payee (receiver of interest payments), you need to supply us with your TIN, certify that your TIN is correct, and certify your exempt status. Some examples of exempt payees include corporations, organizations exempt from tax under Section 501(a) of the Internal Revenue Code, and an individual retirement plan or a custodial Account under Section 403(b)(7) of the Internal Revenue Code.

If you do not supply us with the appropriate TIN or Form W-8, we may refuse to open your Account.

All Account Holders agree to be jointly and severally responsible for amounts that the Bank is required to withhold. You also agree that the Bank is permitted to remove funds from any Account in any of your names for the amount of the backup withholding if it cannot be obtained from the Account to which interest has been credited. The Bank will inform you if the funds are removed from any Account other than the one to which interest was paid to pay the withholding. Any questions regarding tax withholdings should be directed to the IRS.

### Notice to All Non-Resident Aliens

IRS regulations require that we report to the IRS all deposit interest of \$10 or more paid to Accounts belonging to certain non-resident aliens, even if you provided us with a signed Certification of Foreign Status (Form W-8). Interest includes dividends, interest, incentives and bonus payments.

*Requirement for a withholding agent to collect Foreign Taxpayer Identification Number (FTIN):* In Chapter 3 regulations (published January 2017), the IRS specifies that beginning **January 1, 2017**, a US financial institution (or US branch of a foreign financial institution) must obtain a non-US Account Holder's foreign taxpayer identification number (FTIN) (and, for non-US individual Account Holders, a date of birth, in addition to the FTIN) on the withholding certificate (Form W-8). With regards to the date of birth **ONLY**, if the withholding agent has the date of birth in its files but not on the withholding certificate itself, then this is acceptable. The withholding certificate will not be invalid as long as the date of birth is in the withholding agent's files.

- Non-US individuals are impacted and must provide their date of birth and FTIN on Form W-8 BEN. However, if the date of birth is in our files, then it is acceptable for the form to NOT contain the date of birth.
- Non-US entities are impacted and must provide their FTIN on Form W-8 BEN-E; Form W-8 EC; Form W-8 EXP. With regards to Form W-8 EXP **ONLY** if the entity is a government, central bank of issue, international organization or resident of a US possession then it need not provide its FTIN on Form W-8EXP. The FTIN for the entity may be provided via email or on the actual form itself. (See IRS FAQ 22).

*For US source payments made after January 1, 2018*, the Form W-8 must contain the FTIN and date of birth (as applicable). If the FTIN is not on the form, a written statement must be provided to explain why there is no FTIN. If there is no explanation and the FTIN is missing, then the Form W-8 is considered invalid and subject to Chapter 3 withholding (this is assuming there is a proper FATCA status for the non-US entity; refer to Form W-8BEN-E for further details).

*For new foreign Accounts beginning January 1, 2018*, Forms W-8 must include an FTIN or the withholding agent must have a reasonable explanation for the lack of an FTIN subject to certain exceptions. If FTIN or reasonable explanation is not provided, 30% withholding must apply.

*For pre-existing Accounts prior to January 1, 2018:*

- A US financial institution is not required to validate the FTIN unless it has actual knowledge or reason to know that the FTIN is incorrect.
- A FTIN (or explanation) is not required to be collected from an Account Holder in a jurisdiction which does not have an income tax treaty with the US or a jurisdiction which does not issue TINs.
- A valid Form W-8 will not be treated as invalid for payments made to an Account Holder prior to January 1, 2018 even if the Form W-8 does not contain a FTIN.
- Beginning tax year 2018, Form 1042-S reporting will be required to contain the FTIN/date of birth.

*Withholding after January 1, 2018:*

- If we do not have the FTIN and date of birth (as applicable) for non-US direct Account Holders, we must apply withholding. For non-US individuals for whom we do not have appropriate documentation, you will be presumed to be a US individual and subject to backup withholding at 24%, and non-US entities for whom we do not have appropriate documentation would be presumed to be a foreign entity and subject to backup withholding at 30%.
- After January 1, 2018, if withholding is applied, it can be reversed with the use of an affidavit attached to a new Form W-8 provided by the Account Holder.

## COMPLIANCE WITH NON-US TAX LAWS AND REGULATIONS

This section is applicable to any individual non-resident alien and any individual non-resident Ultimate Beneficial Owner of a Private Investment Vehicle such as a trust or family partnership.

You understand:

- The responsibility to understand and comply with all tax obligations and requirements applicable to you under the laws and regulations of the country in which you reside and any other relevant jurisdiction.
- The responsibility to seek, when necessary, independent professional advice.
- The obligations include the obligation to disclose to all applicable tax authorities all Accounts you hold with us, all assets and investments (including available investments, securities and other investments) deposited with us under your name or for which we are acting as intermediary, and any income or dividends resulting therefrom, as required by the applicable country's laws and regulations.
- Your obligations and requirements under the applicable tax laws and regulations.

You affirmatively state to us that all your Accounts with us, all assets and investments (including available investments, securities and other investments) deposited with us or for which we are acting as intermediary, and any income or dividends resulting therefrom, are currently and will continue to be fully disclosed to the tax authorities (or any other competent authority) in the country in which you reside (is located) and any other relevant jurisdiction.

You agree:

- To fully comply with all applicable tax laws.
- To accept the consequences of the tax laws and regulations applicable to you.
- That if any of the statements or agreements in this section are incorrect or in the future become incorrect, and you do not immediately correct the situation and prove the correction to us, we, in our sole discretion, may terminate the relationship with you without prior notice and without liability to you.

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## ACCOUNT SECURITY

### Your Responsibility

It is your responsibility to protect the Account number(s), Card(s) and PIN(s) for your Account(s). Do not discuss, compare, or share information about your Account number(s), Card(s) or PIN(s) with anyone unless you are willing to give them full access to your money. Checks and electronic withdrawals are processed by automated methods, and anyone who obtains your Account number, Card or PIN could use it to withdraw money from your Account, with or without your permission.

You agree that if we offer you services appropriate for your Account to help identify and limit fraud or other unauthorized transactions against your Account, such as positive pay or commercially reasonable security procedures, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered, provided we used ordinary care in the payment of any Item or transaction.

### Account Numbers

Thieves can encode your Account number on a check, which looks and functions like an authorized check and can be used to withdraw money from your Account. Your Account number can also be used to issue a "Remotely Created Check." If you have truly authorized the Remotely Created Check (to purchase a

service or merchandise, for example), it is properly payable. But it can be risky to authorize a Remotely Created Check. A swindler could issue a Remotely Created Check in an amount greater than you authorized, or issue additional Remotely Created Checks that you have not authorized. We will not know if the withdrawal is unauthorized or in an amount greater than the amount you have authorized. Payment can be made from your Account even though you did not contact us directly and order the payment.

### Closing a Compromised Account

If you or we suspect that your Account is or may be compromised (this means, for example, third parties may have access to your Account number or there may have been or there is reason to suspect that there may be unauthorized transactions on the Account), we may recommend that you close your Account and open a new Account. If we recommend that you close your Account and you do not do so, we are not liable to you for subsequent losses or damages on the Account due to unauthorized transactions; provided we used ordinary care in the payment of any Item or transaction. When you open a new Account, you are responsible for notifying any third parties that need to know your new Account number.

### Blank Checks

You must safeguard your blank checks. Notify us at once if you think your blank checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself, or share the loss with us if we failed to use ordinary care which substantially contributes to the loss.

### Claim of Loss

If you claim a credit or refund because of a 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 must 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. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you.

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.

### Preventing Fraud and Other Losses

You have a duty to protect your Account against abuse:

- Watch for out-of-sequence checks and checks made payable to cash or to a bank. Review your transaction activity often for unexpected fluctuations.
- Do not keep your PIN with or written on your Debit Card. Do not permit unauthorized access to your Debit Card, including virtual card information issued by us.
- Do a thorough background check on Agents, bookkeepers, accountants, or other employees who may be handling any part of your banking and/or who have access to your confidential records.
- Assign different individuals the responsibility for opening mail, reconciling bank statements and issuing checks.
- Require that the owner or principal of the business open bank statements.
- Do not assume missing checks are not a problem. Destroy any checks that you do not intend to use.

- Notify us immediately if an employee who has been authorized to transact business with the Bank leaves your company. Refer to “Change in Signers and Ultimate Beneficial Owners” in GENERAL INFORMATION ABOUT DEPOSIT ACCOUNTS. Please note that we reserve the right to a reasonable amount of time to act on your instructions.

Refer to “Statements and Your Responsibility to Review” in the ABOUT YOUR ACCOUNT STATEMENTS section of this Agreement for details related to your obligation to review your Account statements.

## RESOLUTION OF DISPUTES BY ARBITRATION

PLEASE READ THIS ARBITRATION PROVISION CAREFULLY EXCEPT AS THIS ARBITRATION PROVISION OTHERWISE PROVIDES. YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION.

### Agreement to Arbitrate Disputes

Except as this arbitration provision otherwise provides, if you have a dispute with the Bank, and you are not able to resolve the dispute informally, you and we agree that upon demand by either you or us the dispute will be resolved through the binding arbitration process set forth in this arbitration provision.

### Disputes Covered By Arbitration

Except as this arbitration provision otherwise provides, any dispute relating to or arising out of your Account or this Agreement, including any aspect of any agreement that is governed by this Agreement, or prior or later versions of this Agreement as well as any changes to the terms of this Agreement, will be subject to arbitration. Except as expressly provided, all disputes are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. Disputes also include (1) any unresolved claims concerning any services relating to your Account, including, without limitation, safe deposit box services, wire transfer services, your use of any of the Bank’s banking locations or facilities, or to any means you use to access your Account(s); (2) any claims that arose before we entered into this Agreement (such as disputes related to advertising) and after the termination of this Agreement; (3) not only claims made directly by you, but also made by anyone connected with you or claiming through you, such as a joint Account Holder, Account beneficiary, employee, representative, Agent, predecessor or successor, heir, assignee, or trustee in bankruptcy; (4) not only claims that relate directly to the Bank, but also its parent, affiliates, successors, assignees, employees, and agents and claims for which we may be directly or indirectly liable, even if we are not properly named at the time the claim is made; (5) claims based on any theory of law, contract, statute, regulation, tort (including fraud or any intentional tort), or any other legal or equitable ground, and include claims made as counterclaims, cross-claims, third party claims, interpleaders or otherwise; (6) claims made as part of a class action or other representative action, it being expressly understood and agreed to that the arbitration of such claims must proceed on an individual (non-class, non-representative) basis; and (7) claims relating to the enforceability or interpretation of this arbitration provision.

A party who initiates a proceeding in court may elect arbitration with respect to any dispute advanced in that proceeding by any other party.

This arbitration provision shall survive any termination of your Account(s) or relationship with us.

### Disputes Not Covered By Arbitration

Disputes filed by you or by us individually in a small claims court are not subject to arbitration, so long as the disputes remain in such court and advance only an individual claim for relief.

### Commencing an Arbitration

The party initiating arbitration must choose one of the following arbitration forums to administer the arbitration:

- The American Arbitration Association (“AAA”) under AAA’s Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes), except as modified by this Agreement. AAA’s Rules may be obtained from [www.adr.org](http://www.adr.org) or 1-800-778-7879 (toll-free).
- JAMS under JAMS’ Comprehensive Arbitration Rules & Procedures or Streamlined Arbitration Rules & Procedures except as modified by this Agreement. JAMS’ Class Action Procedures shall not apply. JAMS’ rules may be obtained from [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267 (toll free).

### Arbitration Procedure

The arbitration shall be decided by a single neutral arbitrator selected in accordance with AAA’s or JAMS’ rules, as applicable.

The arbitrator will decide the dispute in accordance with the terms of our agreements and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. Except as this arbitration provision otherwise provides, the arbitrator may award damages or other relief (including injunctive relief) available to you or us 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 dispute 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.

Any arbitration hearing shall take place in the same city as the U.S. District Court that is closest to your home address, unless the parties agree in writing to a different location or the arbitrator so orders.

If you seek a total recovery of \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing in accordance with AAA’s or JAMS’ rules.

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, subject to judicial review only to the extent allowed under the Federal Arbitration Act. You or we may seek to have the award vacated or confirmed and entered as a judgment in any court having jurisdiction.

### No Class Action or Joinder of Parties

You and we agree that no class action, private attorney general or other representative claims may be pursued in arbitration, nor may such action be pursued in court if either you or we elect arbitration. 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 and/or related Accounts, or parties to a single transaction or related transaction).

## Public Injunctive Relief Waiver

If either you or we elect to arbitrate a dispute, neither you nor we will have the right to seek a public injunction in arbitration or in court, if such a waiver is permitted by the FAA. If any waiver of public injunctive relief in this arbitration provision (as set forth in this paragraph or any other part of this arbitration provision) is found to be invalid or unenforceable, and that decision is not reversed on appeal, any claim for a public injunction will be decided in court after all other disputes to be decided in arbitration under this arbitration provision are arbitrated and the arbitration award regarding individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated. As set forth in "Severability" below, the invalidity or unenforceability of this paragraph will not affect the validity or enforceability of the remainder of this arbitration provision.

## Applicable Law

You and we agree that you and we are participating in transactions that involve interstate commerce and that this agreement and any resulting arbitration are governed by the Federal Arbitration Act. To the extent state law applies, the laws of the state governing your Account relationship apply. No state statute pertaining to arbitration shall apply.

## Severability

Except as provided in "Public Injunctive Relief Waiver," if any part of this arbitration provision regarding joinder, consolidation, class actions, class arbitrations, or private attorney general actions is found to be invalid or unenforceable, that invalid part shall not be severable and this entire arbitration provision shall be unenforceable. If any other part of this arbitration provision, including "Public Injunctive Relief Waiver," is deemed to be invalid or unenforceable, that invalid part will be severed from the remainder of this arbitration provision and the remainder of this arbitration provision will be enforced.

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## INFORMATION ON THE BANK SECRECY ACT AND SANCTIONS LAWS

### Introduction

To help the government fight the funding of terrorism and money laundering activities, the Bank Secrecy Act, a federal law, requires all financial institutions to obtain, record, and sometimes report identification information on persons conducting specific types of activities. We are also required to comply with Sanctions Laws. We trust that you will provide us with the necessary information and/or documents to assist Bank of the West in doing our part in these very important battles.

### Reports of Cash Transactions

Bank of the West, like all financial institutions; is required to report cash (currency and coin) transactions over \$10,000 to the Internal Revenue Service. A Currency Transaction Report must be completed and submitted by the Bank for any single cash transaction of more than \$10,000 and for multiple cash transactions totaling more than \$10,000 in a single day.

The branch or department accepting the transaction must obtain the information to prepare the report at the time the transaction is performed. Without your cooperation, we may not complete the transaction. To complete the report, the Bank is required to obtain certain information about the person(s) conducting the transaction as well as the person(s) or organization(s) for whom the transaction is being conducted. This information includes the complete name, permanent street address, Taxpayer Identification Number, birthdate, occupation or business, and an identification number such as a driver's license or passport. The Bank may request the

identification information listed above for cash transactions below \$10,000.

### Structuring Cash Transactions to Avoid Currency Transaction Reporting

Federal law prohibits structuring a transaction in a manner designed to avoid currency reporting requirements, such as splitting a single cash deposit of more than \$10,000 into multiple smaller cash deposits or reducing the cash deposit amount to under \$10,000 upon being told of the reporting requirements.

### Exemptions from Reporting of Cash Transactions

The law allows us to grant some businesses, if qualified, an exemption from reporting of cash transactions. Exemptions are granted at our discretion. In order for a business to qualify, the business must: 1) conduct cash transactions over \$10,000 on a regular basis; 2) have a transaction account with us for at least a year; 3) be authorized to conduct business in a state or in the United States; 4) present all documents requested by us; and 5) be engaged in a business which the law permits to be exempt.

### Establishing a Relationship – Individuals

By law, we, like all financial institutions, are required to obtain, verify and record information that identifies each person who establishes a relationship (including loan, lease, deposit, safe deposit box, etc.) with us. When you seek to establish a relationship, the branch or department establishing the relationship will ask for your name, street address, date of birth, your Taxpayer Identification Number or alien identification number and other information that will allow Bank of the West to identify you. Bank of the West may also ask to see your driver's license or other identifying document.

### Establishing a Relationship – Businesses or Other Entities

When you seek to establish a relationship with the Bank, the branch or department establishing the relationship will ask for the name of the entity, street address, your Taxpayer Identification Number or alien identification number, and other information that will allow us to identify the entity. We may also ask to see identifying documents such as articles of incorporation, a business license or estate papers. We may also request identifying documents and information for the principals and authorized signers involved in the business or entity similar to that requested when establishing a relationship with an individual.

Federal law requires each U.S. financial institution to verify and record information about each individual (if any) who owns directly or indirectly, 25%<sup>1</sup> or more of the equity interests of the business customer (Ultimate Beneficial Owner, e.g., each natural person that owns 25% or more of the shares of a corporation) and for each individual with significant responsibility for managing the business entity customer (Senior Managing Official, e.g., the president, chief executive officer, chief financial officer, chief operating officer, managing member of an LLC, general partner of a general or limited partnership).

Change of Ultimate Beneficial Owners – See "Change in Signers and Ultimate Beneficial Owners" in the GENERAL INFORMATION ABOUT DEPOSIT ACCOUNTS section.

<sup>1</sup>For some legal entities, this requirement extends to owners of 10% of the equity interest in the legal entity.

### Cash Purchase of Monetary Instruments

We, under Federal law that applies to all financial institutions, are required to obtain, verify and record identification information for all individuals who purchase an aggregate total of \$3,000 to \$10,000 of monetary instruments (traveler's checks, cashier's checks, money orders, etc.) in a single day. The branch processing the purchase transaction will request your name, address, Taxpayer Identification Number or alien identification

number and your date of birth. The Bank will ask to see your driver's license or other identifying document and record the number, issuer and expiration date in our records of the transaction. We must record this information whether or not you have an on-going relationship with the Bank.

### **Funds Transfers**

The Bank, as well as all other financial institutions, is required to obtain and record the true name and street address of the originator of every outgoing wire \$3,000 or more. We are also required to forward this information along with the funds transfer instructions.

### **Questions or Additional Information**

If you have questions about reporting cash activity, contact the Internal Revenue Service (IRS) at [www.irs.gov](http://www.irs.gov); if you have questions about any of the other requirements mentioned above, contact the Financial Crimes Enforcement network (FinCEN) at [www.Fincen.gov](http://www.Fincen.gov).

### **Sanctions Laws**

You agree to comply with all applicable laws and regulations, including Sanctions Laws and laws and regulations relating to anti-bribery, anti-money laundering and the fight against terrorism. You may not use your Account or related services directly or indirectly for any illegal transaction or activity. You represent that you and your officers and directors, if applicable, are not Sanctions Target(s). You agree not to use your Account to engage in any activity or transactions directly or indirectly involving a Sanctioned Country or a Sanctions Target. You agree that the Bank may refuse to process or delay processing any fund requests or transfers and/or restrict or freeze part or all of your Account if you are a Sanctions Target or if you attempt to engage, or engage, in any transaction prohibited by Sanctions and/or involving a Sanctioned Country or Sanctions Target. You agree to notify the Bank immediately if you become a Sanctions Target, or a citizen, temporary or permanent resident of, or incorporated under the laws of a Sanctioned Country. You agree to hold the Bank harmless from liability for any action taken by the Bank to comply with laws and regulations, including Sanctions Laws.

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## **ADDITIONAL TERMS AND CONDITIONS**

### **Legal Processes**

If we are served with any legal process (subpoena, restraining order, levy, search warrant, writ of attachment or execution, or similar order) which we believe to be valid and which we believe applies to your Account or relationship with us, even if we are not a party, we may comply with such legal process. We may comply with any legal process without regard to the location served or the manner of service. The result is that we may accept legal processes in person, by mail, electronically, or by facsimile transmission at any branch or office, including locations other than the branch or office at which funds, property, or records are held. This means that, unless otherwise expressly prohibited by law, a legal process issued and served in one state may affect an Account held at any of our branches in any other state.

Unless prohibited by law, we may charge you a fee for each legal process. Any fees or expenses we incur in responding to any legal action (including, without limitation, our internal expenses) may be charged to your Account. On subpoenas or other requests for information, unless prohibited by law, if we are not fully reimbursed for research and other handling costs by the party who served the process, we may charge those costs to your Account. If there is an insufficient Available Balance in your Account, you agree to promptly pay us any deficiency.

You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, judgments, liability,

costs and expenses associated with our compliance with any legal process that we believe to be valid. Accounts opened with trust or fiduciary designations, in particular, may be subject to legal process. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you.

Legal processes must be served before our cut-off hour of 10 a.m. local time where the applicable branch is located to be effective against checks posted but not yet finally paid.

### **Right of Set-off and Security Interest**

We may (without prior notice and when permitted by law) set-off the funds in your Account against any due and payable debt you owe 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. The amount of the set-off may be further limited by applicable law. If 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 due for which we properly accelerate under the note.

If the Bank debits funds from a certificate of deposit Account, the funds withdrawn may be subject to an early withdrawal penalty. If the debt is owed to us by a sole proprietor, the Bank may also debit any personal Accounts of the sole proprietor. If the debt is owed to us by a partnership, the Bank may debit any personal Account of any general partner.

For example, the right of set-off does not apply to an Account if: (1) it is a tax-deferred Account, or (2) the debtor's right of withdrawal only arises in a representative capacity.

We will not be liable for the dishonor of any Item when the dishonor occurs because we set off a debt against your Account. You agree to indemnify, defend and hold us harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses arising as a result of our exercise of our right of set-off. Your indemnification obligations under this provision shall survive any termination of our Account relationship with you. In addition, you grant the Bank a security interest in all of your deposit Accounts to secure any obligation you owe to the Bank.

### **Pledges and Security Interest to Others**

You cannot give a security interest or pledge your Account to someone else without first getting the Bank's written consent. We are not required to give consent to a security interest or pledge.

### **Transfer of Ownership**

Accounts are NOT TRANSFERABLE. Federal regulations exclude from the definition of transfer an Account pledged as collateral for a loan or the passing of title upon death, divorce, marriage, incompetency, or by operation of law. Neither transfer between natural persons when made on the books at Bank of the West nor the addition or subtraction of names of other natural persons is regarded as a transfer.

### **Agents and Powers of Attorney (Sole Proprietorships Only)**

You may wish to appoint an Agent to conduct transactions on your behalf. (We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the Agent are for your benefit.) If you want to give another person access to your Account, please talk to your Branch of Account well in advance of the date by which you wish to allow this access. As a sole proprietor, you may name additional signers to your Account. Those signers are your Agents. The Bank makes available a durable power of attorney form that is limited to a specific deposit Account as identified on the power of attorney form and which will remain valid notwithstanding the incapacity of the principal.

If you name an Agent or an attorney-in-fact on a non-Bank form, we may require that the form naming the Agent or attorney-in-fact be reviewed and approved according to our procedures.

If you have more than one power of attorney or agency appointment on file with the Bank, we will honor each one independently unless you tell us to do otherwise or one power of attorney clearly revokes all prior appointments. For example, unless there is a clear revocation of other powers of attorney, if you have named two (2) different persons as attorneys-in-fact on separate powers of attorney, we will permit each to act in accordance with the information on the power of attorney on which they are named.

If the power of attorney is not "durable," it is revoked when you become incompetent. We may continue to honor the transactions of the Agent until: (1) we have received written notice or have actual knowledge of the termination of the authority or the death of the grantor of the power of attorney, and (2) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an Agent acting under a valid power of attorney.

We reserve the right to refuse attorneys-in-fact access to certain banking services which you may have, such as the Online and Mobile Service. You agree that we will not be liable to you for any loss or damage you incur as a result of actions by any Agent/attorney-in-fact.

### **Conflicting Demands**

In case of conflicting certifications or demands, a dispute about ownership of the Account, ownership of any funds in the Account, or any Account Holder's authority or capacity to act on the Account, we may refuse to honor any request or order concerning your Account or any check drawn on your Account until we receive: (1) joint instructions regarding the Account, or (2) a court order. At our sole discretion, we may require the signatures of all Account Holders and/or all signers on your Account to comply with a specific request or for the withdrawal of funds and/or closing of an Account. In such event, we may also refuse to honor any further transactions and may return checks and other Items. We reserve the right to interplead or deposit with the courts any disputed funds. We will not be liable for any losses incurred or any Items that are dishonored as a consequence of placing a hold on funds in your Account for these reasons. Nothing in this provision shall be deemed to prevent us from, at our sole discretion, closing your Account and sending any closing payment to your address of record.

### **Investigative Freezes**

As part of our loss prevention program, when we suspect that irregular, unauthorized, or unlawful activities may be involved with your Account, we may "freeze" (or place a hold on) the balance in your Account (and in other Accounts you maintain with us) pending an investigation of such suspected activities. You will be notified of any investigative freeze. While your Account is frozen, all withdrawals from the Account are generally blocked. We will not be liable for any losses incurred or any Items that are dishonored as a consequence of placing a hold on funds in your Account for these reasons.

### **Enforcement**

You agree to be liable to the Bank for any liability, loss or expense that the Bank incurs as a result of any dispute involving your Account or services. You authorize the Bank to deduct any such liability, loss or expense from any of your Accounts without prior notice to you. You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses in connection with or arising out of this Agreement. Your obligations under this provision shall survive any termination of our Account relationship with you.

### **Instructions by Facsimile, Email or Voicemail**

Unless required by 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 voice mail or on a telephone answering machine or make by email.

### **Our Communications with You**

By entering into an agreement with us, you expressly agree and consent that we, any of our affiliates, agents, independent contractors or service providers:

- May monitor and record telephone calls to assure the quality of our service or for other reasons;
- May use written, electronic or verbal means to contact you; and
- May contact you by using any email address or any telephone number you provide, including a telephone number for a cellular phone or other wireless device, regardless of whether you incur any charges as a result.

By your entering into an agreement with us, you are expressly consenting to, without limitation, contact by manual calling methods, prerecorded or artificial voice messages, text messages, emails and/or automatic telephone dialing systems regarding any current or future accounts, loans or other banking services, with the exception of any alerts applicable to your Account or any service. Our communications with you regarding any alerts are governed by the Terms and Conditions applicable to such alerts.

### **Notices**

In addition to your agreement to the Bank's electronic communication with you as described above, you agree that we may provide notice to you by mailing it via U.S. mail to any postal address that you have provided to us. Written notice to you from the Bank is deemed to be effective (1) if sent by mail, when deposited in the U.S. mail, or (2) if sent by electronic communication, when sent, absent actual notice of non-delivery received by us. Any electronic notice the Bank gives to you is deemed received by you no later than twenty-four (24) hours after it is sent. Notice by postal mail is deemed received by you no later than three (3) Business Days after it is mailed by U.S. mail, postage prepaid, and addressed to you at your statement mailing address.

Any written notice you give to the Bank is effective when it is actually received by the Bank, and after we have had a reasonable opportunity to act on it.

### **Retaining Records**

We may retain records related to your Account in any form including (but not limited to) paper, film, fiche, and electronic medium. If we are not able to produce the original or a copy of your signature card or any other document relating to your Account or service, our records (in whatever form we retain such records) will be deemed conclusive. If there is a discrepancy between your records and our records, our records will be deemed conclusive.

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## **SAFE DEPOSIT BOX RENTAL AGREEMENT TERMS AND CONDITIONS**

This Safe Deposit Box Rental Agreement Terms and Conditions ("SDB Agreement"), together with the Safe Deposit Box Rental Signature Card or other safe deposit box rental agreement you have on file with us, and the Schedule of Fees and Charges for Personal Deposit Accounts or the Schedule of Fees and Charges for Business Deposit Accounts, as applicable, as those documents are added to, deleted from or otherwise amended from time to time, form the contract between us concerning your safe deposit box rental with us.

**Definition.** A Safe Deposit Box ("Box") is an individually secured container located in a branch vault (or other secured area within a branch) used to store possessions which you deem valuable, including important documents, etc. Boxes are available for rent in

various sizes at select branch locations. Capitalized terms used herein but not otherwise defined herein shall have the definitions assigned to such terms in the Deposit Account Disclosure for Personal Accounts or the Deposit Account Disclosure for Business Accounts, as applicable (each, as applicable, the "Agreement").

If you are a party to a Safe Deposit Box Rental Agreement or another form of box rental agreement with us or if you use our services, such as pay annual fees arising from the rental of the Box ("Box Fees"), have or receive Box keys or access a Box, you ("Renter") agree to the following terms and conditions:

**Our Agreement and Responsibilities.** We agree to lease to you a Box located in our vault pursuant to this SDB Agreement, as it is added to, deleted from or otherwise amended from time to time in accordance with this SDB Agreement. Our only responsibility under this SDB Agreement with respect to Box services is to exercise ordinary care in allowing access to the Box and in the safekeeping of the Box vault area. If we do this, we will not be liable to you in any way.

**Your Agreement and Responsibilities.** You acknowledge receiving two keys which you agree not to duplicate. If you lose either of the keys, you agree to notify us immediately. You agree to pay our usual charges for lost keys or for a locksmith's services, if needed, to open the Box, whether before or after the Box is surrendered. You must return all keys upon surrender or forfeiture of your Box or upon termination of this SDB Agreement.

**Contents; Nebraska Limitation.** You agree to put only possessions which you deem valuable in the Box. You will not use the Box to store any liquids, narcotics, weapons, contraband, anything the possession of which is prohibited by law or regulation, any property of an explosive, malodorous or destructive nature, or anything which is or may become a nuisance to us or to any other customer. In Nebraska, you agree not to place money, currency, jewelry, bearer securities, tangible property of value or choses in action in the Box. If you do so, however, you shall assume the entire risk of loss thereof or damage thereto without liability on our part for any loss or damage in any event or for any cause. We may require you to close the Box immediately if we have reasonable cause to believe you have violated this section, and if you do not do so, we may force open the Box and remove its contents. If we believe the contents present an immediate threat, we may force open the Box without prior notice to you. In such cases, you will be responsible for our expenses for forcing open the Box. Except as otherwise specified in the SDB Agreement, in the event we remove the Box contents for any reason, such contents will be inventoried and held in safekeeping; provided that you agree that we may turn over to law enforcement or any other governmental agency any item which we believe, in our sole discretion, to be prohibited by the terms of this SDB Agreement, and we will bear no liability for doing so. You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, judgments, liability, costs, and expenses related to or arising out of any actions we take with respect to such prohibited items. Your indemnification obligations under this provision shall survive any termination of our relationship with you. If you place property in the Box which causes damage to the Box, you will be liable to us and promptly reimburse us for the cost to repair or replace the Box.

**Term; Fees; Failure to Pay.** The Box is rented on an annual basis. You agree to pay all Box Fees in advance, including a non-refundable set up fee at the time the Box is rented. The rental of the Box is renewed annually unless you or we terminate the rental in accordance with the terms of this SDB Agreement. We may change the Box Fees at the end of any annual lease period with 30 days prior written notice to you. Box Fees, with the exception of the annual rental fee, can be found in the Schedule of Fees

and Charges for Personal Deposit Accounts or the Schedule of Fees and Charges for Business Deposit Accounts, as applicable.

You authorize us to debit a designated checking, savings or money market Account maintained by you (whether individually or jointly or in trust where you are the settlor-trustee) to pay for any unpaid Box Fees, but we are not required to do so. If you designate an Account that contains protected funds, you authorize us to debit such Account regardless of the presence of such protected funds. At our option, we may refuse to permit you access to the Box at any time the Box Fees are unpaid. If the Box Fees are not paid when due, a late fee may be charged. If you fail to pay any Box Fees and we are unable to debit any Account to pay those Box Fees, we are entitled to immediately terminate this SDB Agreement and cause the Box to be opened and the contents thereof to be removed, inventoried, and held in safekeeping. To the extent permitted by law, we have a lien on the contents of the Box. Absent a lien, to the extent permitted by law, you grant us a security interest in the contents of the Box. In compliance with applicable State law, we will give you prior written notice of your failure to pay the Box Fees and of our intention to force open the Box. In the absence of any applicable State law, we will mail a notice to your last known address by U.S. mail, return receipt requested, advising that you have 30 days to pay all unpaid Box Fees in order to avoid our forcing open the Box, and taking inventory of and storing in safekeeping its contents. All Box contents will be handled and maintained pursuant to applicable State laws and/or regulations. To the extent we are legally permitted to do so, we may exercise any rights we have to recover unpaid Box Fees from the contents; otherwise, we will handle the contents in accordance with the applicable State laws on unclaimed and abandoned property.

**Risk; Insurance.** You acknowledge that neither we nor the FDIC has insured the Box's contents. You acknowledge that it is not possible for us to guard against every possible physical loss. Accordingly, we recommend that you obtain insurance for the contents of the Box from your personal insurance company.

**Limitation of Liability; No Presumptions of Negligence of Bank.** The relationship between us and you is that of lessor and lessee and NOT bailor and bailee. We are not liable for any loss or damage caused by any failure of the vault doors or locks to operate. We are not liable to you for loss or damage to the contents of your Box caused by fire, flood, earthquake, water damage (including water damage caused by fire-suppression systems), burglary, riot, war or any other event beyond our reasonable control. No loss, damage or breach of duty by Bank shall be presumed or established by your alleging the loss or disappearance of any of the Box's contents from one entry to another. Further, your allegation of loss or damage to the Box contents shall not impose the burden of proof on us to prove that the loss/damage was not caused by us or our agents. We are not liable to you for incidental or consequential damages. Our liability for any loss in connection with the Box for whatever reason shall not exceed the greater of twenty (20) times the annual rent charged for the Box or \$20,000.

**No Right to Sublease or Transfer Your Rights.** You may not sublet the Box; nor is your right to rent the Box to, or transfer or assign any other right under this SDB Agreement to, another person or entity.

**Change of Box.** We reserve the right to change the Box's location or to substitute a Box of similar size if we do not charge you for making the change.

**Access to Box; Reviewing the Box Contents; Agents; Waiver of Privacy.** Access to the Box is limited to our normal business hours on any Business Day. You agree that we will only admit you or your authorized and designated Agent into the Box vault area and that access may be only in the presence of a Bank

employee. We may refuse to allow more than two persons in our vault at the same time. You agree that you and/or your Agent will furnish us with personal identification acceptable to us and will sign any appropriate entry form prior to being granted access to the Box vault area and the Box. Each Renter of a Box shall have the power to appoint, in writing, an Agent without the consent of any other Renter of the Box. Each Renter of a Box or his/her respective Agent, acting independently, shall have the authority to access the Box at any time to remove any or all of its contents and/or surrender the Box. We provide room(s) for you to examine the contents of the Box. Should you wish to examine the contents of the Box in the vault, you do so in the presence of our employee and, thus, you waive any right to privacy claim against us and expressly assume the risk of breach of confidentiality as to the contents of the Box. It is your obligation to remove and replace the Box in our vault. You may not remove your Box from our premises. You acknowledge that any handling of the Box by our employees or agents is done as an accommodation for you, and you release us from any loss or damage that may arise as a result of the handling of the Box by our employees or agents.

**Access after Incapacity or Death of any Co-Renter.** You agree to notify us in writing of the death or incapacity of any person who has a right of access to the Box. We shall not be liable for permitting an Agent to have access to or to remove any or all of the Box's contents until such time as we receive written notice that the Agent's authority has been revoked or otherwise terminated, whether or not by reason of the Renter's death, incapacity or otherwise. Any Renter shall retain the right to enter the Box, remove any and all contents from the Box, and to surrender the Box after the death or incapacity of any other Renter and we shall have no liability to any Renter or to any Renter's heirs, assigns, or successors-in-interest for any loss or claim.

**Special Terms for Co-Tenancy or Legal Entities.** If you are a legal entity, access to and control of the Box shall be limited to the individual(s) identified in the resolution and/or authorization provided to us. You certify that the Box is for the sole and exclusive purpose of safeguarding assets of the legal entity. If the Renter consists of two or more individuals and/or business entities, it is agreed that the joint rental of the Box does not create a joint tenancy in or otherwise establish joint ownership in any of the Box's contents.

**Adverse or Conflicting Claim; Legal Process.** We may require the consent of all of the co-Renters before allowing access to the Box if there is a conflict among co-Renters. We may deny you and/or your Agent access to the Box, if required under any Federal or State law, regulation, or any (a) court order, (b) writ, (c) warrant, (d) legal process or (e) adverse claim that may be served on us. We will not be liable to you for any property taken from the Box pursuant to any court order, writ, warrant or other legal process served on us.

**No Knowledge.** Absent your waiver of your privacy rights under this section or otherwise, you agree that the Box's contents shall be unknown to us at all times unless and until we forcibly open the Box as described above. We will not retain any Box keys that, if used alone, would open a Box.

**Termination.** Except as otherwise provided under this SDB Agreement, we may terminate your Box services at any time with 30 days prior notice. The notice shall be mailed to your last known address, via first class U.S. mail. We may terminate your Box services immediately, with or without prior notice, in the event of your breach of any of the terms of this SDB Agreement. Upon termination of your Box services, if you fail to surrender the Box and its keys within 30 days, we have the right to forcibly open the Box (at your expense), remove its inventory, and hold the Box's contents in safekeeping. You may terminate this SDB Agreement at any time by surrendering to us possession of the Box and its

keys and by paying any unpaid Box Fees. In the event of any termination by you or termination by us for your breach of this SDB Agreement, you shall not be entitled to any refund of your prepaid Box Fees. Upon closure of your Box, you are required to collect your property in person from the branch where your Box is located. Absent an express written agreement, the Bank will not mail the contents of your Box to you.

**Safe Deposit Box Rental Waiver or Discount.** In the event any annual rental discount or waiver has expired or any qualifying criteria to receive such discount or waiver is no longer met, the Bank reserves the right to begin charging the full annual rental amount. You will be notified of such action via your annual billing notice.

**Successors and Assigns; Amendment.** This SDB Agreement shall be binding upon, apply and inure to the benefit of us, each Renter, and each party's respective heirs, personal representatives, permitted assigns and successors. We may amend this SDB Agreement at any time upon giving any Renter thirty (30) days prior written notice of any such amendment.

**Governing Law.** This SDB Agreement shall be governed by the laws of the state in which the Box is located.

**Deposit Account Disclosure.** The terms of the Agreement, including the Resolution of Disputes by Arbitration provision, are hereby incorporated into this SDB Agreement and made a part hereof, as applicable. In the event of a conflict between this SDB Agreement and the Agreement, the terms of this SDB Agreement will prevail.

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## CONTACT CENTER

### Call our Contact Center at:

Phone: 1-800-488-2265  
1-800-659-5495 (TTY users only)  
[Exit Code] + 1 + 925-975-3202 (Calling from Outside US)

6:00 AM - Midnight (Central Time) Monday - Friday  
7:00 AM - Midnight (Central Time) Saturday, Sunday,  
and federal holidays

Calls may be randomly monitored or recorded  
to ensure quality service and for other banking purposes.

### Write to our Contact Center at:

Bank of the West  
Branch Service Center  
13505 California Street  
NE-BBP-03-GA  
Omaha, NE 68154



Member FDIC  
Form # 030-08511 (Rev. 12/21)

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BOW-AIB-B 12/01/2021 Custom TCM-5By,3q,4n,5