

Effective March 2019

# Deposit Agreement and Disclosures

## **Facts about corporate and commercial deposit account programs**

Welcome to Bank of America Merrill Lynch, and thank you for opening an account with us. When you open a corporate deposit account with us, you agree to the terms and conditions discussed in this publication. Please read this publication carefully and keep it for your records. Throughout this publication, the words “you,” “your” and “yours” refer to the accountholder(s). “We,” “us” and “our” refer to Bank of America, National Association.

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# General provisions

## General matters

- We may obtain credit reports and make other inquiries about you.
- Transactions that you perform are not effective until we process them.
- We may accept a check or other item for deposit to your account from anyone. We are not required to question the authority of the person making the deposit.
- We may refuse to honor a request to withdraw funds in cash from your account if we believe that the amount is unreasonably large and that honoring the request would cause us an undue hardship or security risk.
- If another person or entity makes a claim against funds in your account, or if we believe that a conflict exists between signers on the account or that there is a dispute over matters such as the ownership of the account or the authority to withdraw funds, we may take one or more of these actions without our being liable to you: continue to rely on current signature cards and other account documents; honor the competing claim upon receipt of evidence we deem satisfactory to justify such claim; freeze all or part of the funds until the dispute is resolved to our satisfaction; close the account and send a check for the balance in the account, payable to you or to you and each claimant; or pay the funds to an appropriate court for resolution. We may charge your account for expenses and fees, including attorneys' fees, we incur.
- If you deposit a demand draft (an unsigned draft) or remotely-created check into your account, you warrant and guarantee that such draft is authorized by the person identified as drawer, according to the terms on its face.
- If you deposit a substitute check or image replacement document (IRD) into your account, you give to us the same warranties and indemnities that we, as a reconverting bank, would give under Check 21 regulations.
- The services you receive pursuant to this Agreement are for business use only and not primarily for personal, family, or household use.
- We may require ID or impose other conditions before accepting a deposit.
- We reserve the right to refuse or return any deposit to your account or to charge you a balance related fee if we believe that our acceptance of such deposit may create any legal, financial or other risk or cost to us. In making any such determinations, we may consider factors such as the amount and anticipated

duration of the deposit; and whether you gave us advance notice of the deposit. If we determine not to maintain deposits that were credited to your account by Fed wire or other electronic fund transfers, you authorize us to send the funds on your behalf to their origin by wire transfer or by other means. We also reserve the right to assess a daily balance related fee on balance fluctuations over a certain threshold. The balance threshold and daily fee may change from time to time without notice. The fee will appear on your monthly analysis statement as a "Balance Related Fee" and will not be eligible for earnings credit offset.

- This Agreement is binding upon you and us and each of our respective successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person has any right under this Agreement against you or us. Nothing contained in this Agreement creates any agency, fiduciary, joint venture or partnership relationship between you and us.
- All persons authorized to execute agreements on behalf of you or us may do so electronically, at our option, and in such form and according to such processes and procedures as we may specify. You agree that any agreement executed electronically will be as enforceable as if it had been executed on paper by manual signature
- Please contact your bank representative if your deposit account with us contains the proceeds of municipal securities or municipal escrow investments, as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Otherwise, we will assume that your deposit account contains no such proceeds.
- Please contact your bank representative if your deposit account with us contains, or will contain, the assets of an employee benefit plan (such as a pension, retirement, health or welfare plan) or other entity subject to the Employee Retirement Income Security Act of 1974, the prohibited transaction rules under section 4975 of the Internal Revenue Code, or any similar law or rules. Otherwise, you represent to us that your deposit account will contain no such assets.
- You will complete a signature card to acknowledge receipt of this Agreement. Each person who signs the signature card as an authorized signer has the ability to bind the business in all transactions involving any account. You may add or delete authorized signers by submitting an Amended Signature Card Form at any time.

### **Accessing services via the internet**

We may make certain Services available via one or more Websites. In addition to any other terms and conditions applicable to your use of such Websites, you agree as follows:

We reserve the right to suspend your access to, and use of, a Website upon notice of a violation of any of the terms and conditions applicable to such access and use. In addition, we may suspend your access to, and/or use of, a Website immediately without notice where such action may be required to prevent interference with or disruption to services to other customers, to protect the integrity of our systems, or as may be required by law or regulation.

Websites shall be used only for lawful purposes. Without limiting the foregoing, you agree not to use a Website in any way that would:

- infringe any third party copyright, patent, trademark, service mark, trade secret or other proprietary rights or rights of publicity or privacy
- be fraudulent or involve the use of counterfeit or stolen items
- violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, anti-discrimination, defamation or false advertising)
- violate any contractual provision by which you are bound
- be false, misleading or inaccurate
- create liability for us or any service provider(s) or cause us to lose (in whole or in part) the services of any service provider
- be defamatory, trade libelous, unlawfully threatening or unlawfully harassing
- interfere with or disrupt computer networks connected to the network(s) used by you
- interfere with or disrupt the use by any other customer of the Website and/or of any services accessed via the Website

Violations of system and network security are prohibited, including but not limited to unauthorized access to, or use of, systems or data. You agree not to attempt to probe, scan or test the vulnerability of a system or to breach security or authentication measures or to seek to interfere with any system or network security. We will investigate violations of system and/or network security and may involve law enforcement if criminal conduct is suspected. Indirect or attempted violations of these terms and conditions by you, and any actual or attempted violations by a third party on your behalf, shall be considered violations by you.

You agree to follow all our procedures and requirements with respect to security in accessing and using a Website and not to misrepresent your identity. Where passwords or other access information may be required, you are solely responsible for the security of such access information and will hold us harmless from any unauthorized access to or use of systems that may result from your failure to properly maintain the security

of such access information.

You agree to cooperate with us and any service provider(s) with regard to your access to, and use of, a Website, including providing such technical assistance and information as we may reasonably request.

You agree to access and use Websites only for the purpose intended and not for any purpose of commercial exploitation.

### **Changes of address**

You must notify us if you change your physical address or Client Email. If we receive notice from the United States Post Office or one of its agents that your address has changed, we may change your address on our records to the address specified by the Post Office; and we may send statements and other notices regarding your accounts to that new address.

### **Changes to agreement**

We may change this Agreement at any time. For example, we may add, delete or modify terms. These terms include, but are not limited to, fees and charges for our services. We generally will try to inform you of any changes prior to the effective date of the change. Your continued use and maintenance of your account will constitute your receipt, review of, and acceptance of the Agreement as changed.

### **Charging an account**

We may deduct fees and other amounts you owe us under this Agreement from your accounts with us or our affiliates at any time without prior notice of any deduction, except that this provision does not apply to any consumer credit covered by the Federal Truth in Lending law. If there are not enough funds in your account to cover the fees and other amounts you owe us, we may overdraw your account. You agree to immediately pay us all amounts you owe us.

### **Closing an account or suspending and terminating a service**

You or we may generally close your account at any time without advance notice. This Agreement continues to govern matters related to your account even after your account closes.

If at any time we believe (i) that our provision of any Service to you may create a risk of financial loss for us or result in an unacceptable credit exposure to us, or (ii) that an account associated with any Service may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our sole discretion, immediately, without prior notice to you, suspend or modify our provision of any such Service until such time that such risk, exposure, or activity is eliminated or otherwise resolved, notwithstanding anything to the contrary in

this Agreement. Either you or we may terminate any or all Services upon 30 calendar days' prior notice to the other party. Notwithstanding the foregoing sentence, we may terminate any or all Services effective immediately, and we will notify you of the termination, if any of the following occurs:

- You breach any of the terms and conditions in this Agreement or any other agreement with us.
- You terminate, liquidate or dissolve your business or dispose of a substantial portion of your assets.
- You fail generally to pay your debts as they become due.
- You, voluntarily or involuntarily, become the subject of any bankruptcy, insolvency, reorganization or other similar proceeding.
- You initiate any composition with your creditors.
- You experience a material adverse change in your financial condition or your ability to perform your obligations under the terms and conditions in this Agreement.
- Any guaranty of your obligations to us terminates, is revoked or its validity is contested by the guarantor, or any of the events set forth in the above six bullet points attributable to you occur to the guarantor.
- The account necessary to provide any Service is closed.

If a Service you are using is terminated for any reason, you will do the following:

- Immediately stop using any materials relating to the terminated Service.
- Erase or delete any software we have provided relating to the terminated Service to the extent it is stored in your computers.
- At our option, either return to us or destroy all materials relating to the terminated Service and certify to us that you have done so.

These obligations will continue after a Service you are using has been terminated.

Termination of a Service you use does not affect your payment obligations for services we provide to you before the Service is terminated, and any such termination is in addition to our other rights under applicable law and under the terms of this Agreement. Also, termination of any Service you use does not release you or us from any of our respective obligations which arose or became effective before such termination. Upon termination, all amounts owed by you and outstanding will become immediately due and payable, and we may debit your account for all amounts owed.

## **Compliance**

All financial institutions are required by law, including the USA Patriot Act, to obtain, verify and record



information that identifies each customer who opens an account with that financial institution.

On each day you use your account or Service under this Agreement or any other agreement between us you make the following representations and warranties to us:

- You are duly organized and in good standing under the laws of the jurisdiction of your organization.
- You have all powers, licenses, authorizations and approvals to operate your business as now conducted.
- You are responsible for full compliance with all anti-money laundering, anti-terrorist financing and other laws and regulations of all applicable jurisdictions, including without limitation the United States.
- All information you may have provided to us regarding the beneficial ownership of your organization is, to the best of your knowledge, complete and correct, and to the extent it is not or becomes outdated, you agree to provide us with updated information as required by law.
- If you are required to implement an Anti Money Laundering program pursuant to the USA Patriot Act, its implementing regulations, or any non U.S. law or regulation applicable to you then you shall:
  1. (a) monitor, for the purpose of identifying suspicious activities, all transactions of its customers conducted through the Accounts or using services provided by Bank, and (b) file suspicious activity reports (“SARS”) and any other reports as required by applicable law relating to transactions conducted through the Accounts; and
  2. (a) take all reasonable and necessary actions to enable sharing of information in accordance with Section 314(b) of the USA PATRIOT ACT and its implementing regulations (including maintaining a current registration on FinCEN’s 314b list of participants) or as permitted by local law; and (b) promptly share with the Bank or the Bank’s registered 314(b) designee, unless prohibited by applicable law, all unusual or suspicious activities that relate to an Account that my involve potential money laundering or terrorist financing.
- You will notify the Bank if you become aware of any material event, investigation, litigation, indictment, conviction, or enforcement action involving you, your officers, directors, employees, or agents, and involving any non-compliance with any Anti Money Laundering or economic sanctions law or regulation.
- You will not use our products and Services to engage either directly or indirectly in business with Shell Banks.

- You perform on-going customer due diligence in a manner that ensures compliance with applicable jurisdictional requirements.
- You will not allow your customer to directly access the correspondent banking services provided by us without our prior knowledge and express consent.
- You have implemented reasonable processes and controls to identify and prevent the criminal misuse of the products and Services provided by us.
- You acknowledge we may intercept and investigate payment instructions; make further inquiries and, where required, block or reject services due to domestic or global economic or trade-based sanctions.
- You must not use your account or any Service for illegal transactions, for example those prohibited by the Unlawful Internet Gambling Enforcement Act. 31 U.S.C. Section 5361 et. seq.
- You agree to comply with applicable laws and regulations includes United States economic sanctions laws and regulations, including regulations issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, and Executive.

Regulations issued by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury contain certain prohibitions regarding banking transactions involving certain countries or their nationals. For the most current information regarding countries subject to OFAC sanctions, refer to the OFAC website at <http://www.treas.gov/ofac>; or call OFAC at 202.622.2490 or 800.540.OFAC.

We will not be liable for any related loss or negative outcome resulting from the failure of your compliance with these representations and warranties.

Unless expressly permitted by us, you will not provide downstream correspondent services that enable any third-party direct access to our products and services. In the event that such usage is permitted by us, you will provide us evidence, upon our request, of the anti-money laundering controls of the third parties to whom you offer these services, including but not limited providing a list of customer names and information that allows us to readily identify them in a manner consistent with our AML (Anti-Money Laundering) program requirements.

### **Using and disclosing information**

We may access, analyze, and use, for any lawful purpose (including research, relationship management, marketing, analyzing market trends, data analysis and audits, and developing or providing products and services to our customers), information about you, your accounts, your transactions, or any other information that we obtain in connection with providing our products and services. Such permissible uses include, for

example, the generation and analysis of de-identified or aggregated information for our own internal use and for sharing with other customers or third parties as described in the paragraphs below concerning disclosure.

We may disclose information about your accounts to credit reporting agencies and to other persons or agencies who, in our judgment, have a legitimate purpose for obtaining information. We may charge you for providing such information.

From time to time, subject to any applicable financial privacy laws or other laws or regulations, we may provide information on you and your accounts for other reasons, including:

- To anyone whom we reasonably believe is conducting a legitimate credit inquiry, including inquiries to verify the existence or condition of an account for a third party such as a lender, merchant or credit bureau
- In response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance
- In connection with collection of indebtedness or to report losses incurred by us
- In compliance with any agreement between us and a professional, regulatory or disciplinary body
- In connection with potential sales of businesses
- In connection with a service, we may provide ourselves or through a third party or vendor, including, for example, audit confirmations and industry or sector analyses
- At our discretion internally within our company, and to our affiliates and subsidiaries
- To our agents and service providers who help us meet your needs, assist us in providing or offering our products or services, or help us in analyzing or processing information
- In de-identified and/or aggregated form to you, other customers, business partners, and other third parties, including as part of the products and services we make available to our customers, such as benchmarking reports and cash forecasting
- In order to complete transfers and transactions to an account verification or account information service in order to substantiate ownership or with regard to account closures, or for the other reasons. Information disclosed may include, but is not limited to, your name, address, TIN, and the date and reason for an account closure, and the service may supply this information to others.

For reasons other than stated above, with your consent, or upon your request (for example, to third parties you work with to process your requests for products or services).

This section does not limit our ability, or that of our affiliates to access, use, disclose, deidentify, aggregate, or otherwise process transaction data related to any service or account provided to you in connection with our or their business.

The provisions of this section will govern our uses and disclosure of data, notwithstanding any contrary terms contained in other agreements applicable to your use of any Service.

## **Fees**

When you open your account, we may make available a list of charges for our deposit services. The list of charges that applies to your account is part of the contract between you and us. You agree to pay for our services in accordance with the fees that we tell you apply to your account.

The fees for many of our products and services may vary from state to state or between regions within a state.

We set our fees based on many factors, including the value we offer, our competitive position, deterrence of misuse of an account by our customers, consideration of profit and the safety and soundness of the Bank. We may also consider costs in setting fees, but we do not set our fees based only or primarily on the direct or overall costs and expense associated with providing the particular account or service involved.

Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us. We may send or make available a notice if your account fees or terms vary from the information described in this Agreement.

Deposit Bank Assessment -Bank of America may, at our discretion, charge you a Deposit Bank Assessment on your average positive ledger balances. The assessment rate is variable and we may change it at any time without notice.

## **“Freezing” your account**

If we decide to close your account, we may freeze it. If we do this, we may in our discretion either accept or return credits and debits including deposits, checks and other items including ACH and wires that we receive after we freeze your account without being liable to you.

If at any time we believe that your account may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our discretion, freeze the funds in the account and in other accounts you maintain with us, without any liability to you, until such time as we are able to complete our investigation of the account and transactions. If we do freeze your account funds, we will provide notice to you as soon as reasonably possible. We may not provide this notice to you prior to freezing

the account if we believe that such notice could result in a security risk to us or to the owner of the funds in the account.

### **General inquiries**

For questions regarding this Agreement or general inquiries, please contact your account representative or the phone number which appears on your bank statement.

### **Governing law**

This Agreement is governed by and interpreted according to the law of the State of New York, without reference to principles of conflicts of law other than those applying the substantive law of New York, subject to any supervening United States federal law, rule or regulation applicable to a national banking institution or unless otherwise required by your state law.

### **Information you give us**

When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change and we have had a reasonable time to act on the new information.

### **Liability**

We will not be liable for any failure to act on our part if we reasonably believe that our action would have violated any law, rule, regulation or court order or decree.

In no event will we be liable for any indirect, consequential or punitive loss, damage, cost or expense of any nature or any economic loss or damage, expense and loss of business, profits or revenue, goodwill and anticipated savings, loss of or corruption of your data, loss of operation time or loss of contacts, even if advised of the possibility of such loss, damage, cost or expense.

### **Electronic Communications**

The Parties agree that electronic communication is an accepted form of communication and you consent to the communication and delivery of communications through the Website or any other electronic means, which may include electronic mail, CashPro® Assistant, SWIFT, Host to Host (H2H) or Application Programming Interface (API). Electronic communications include methods of conveying messages through technology having electronic, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. We are authorized, but not obliged, to rely upon and act in accordance with any such communication received by us (including but not limited to secure email or through the Website) purporting to be a communication given on your behalf by an Authorized

Officer or Authorized Officers without inquiry on our part as to the source of the communication or the identity of the person making or purporting to make such communication and regardless of the circumstances prevailing at the time of such communication. An "Authorized Officer" means in relation to any matter the person or persons who, according to an authorization lodged with us, are empowered to act on behalf of you in relation to that matter or any other person(s) that we reasonably believe is acting on your behalf in relation to that matter. You must notify us of any change to electronic mail address(es) or any other such information supplied by you.

At our discretion, electronic records and signatures may be used for the execution of this Agreement and all agreements, documents and notices related to the User Documentation, Services and/or the transactions relating thereto. If executed electronically by one or more parties to this Agreement, this Agreement or one or more of its signed counterparts is an electronic record and you agree that such electronic record is as legally valid and enforceable as if it had been executed on paper by manual signature. All electronic communications will constitute a "writing," such that any reference to a "writing" or "written" in this Agreement will include electronic communications. You agree that all references to a signature may include electronic, digital, facsimile or stamp signatures. Any communications from a party using such party's identifications and passwords shall be binding on such party. You hereby waive any claim or defense that the offers, acceptances, contracts and other communications are not binding or enforceable or do not have their intended effect as a result of being communicated electronically rather than in writing.

You agree that we may send any communication to you electronically. You agree that all references to a signature may include electronic, digital, facsimile or stamp signatures.

**Physical Copies.** Generally, we will not provide physical copies of Communications executed or delivered electronically. You may obtain a paper copy of a Communication by printing it or by requesting that we send a physical copy. To request a paper copy, you may contact your Bank representative, and may be assessed a fee, in accordance with law.

**Withdrawal of Consent.** We may, in our sole discretion and without notice, discontinue the use of or change the terms and conditions pursuant to which we accept electronic Communications and Non-written signatures in transactions with you.

**Hardware and Software Requirements.** You are responsible for installation, maintenance, and operation of your own computer, browser and software, which includes a Compatible Version of a web browser, access to the Client Email, computer storage space to save Communications, a printer to print Communications, and a computer or mobile device with internet or mobile connectivity utilizing a Compatible Version of an operating system capable of supporting all of the foregoing requirements. "Compatible Version" means a version of the software that supports access to the Bank's Website and other approved access channels.

## **Notices**

Unless otherwise provided in this Agreement, any Communication or notice by us to you in connection with a this Agreement and your accounts ( "Notice") may be: (a) mailed, faxed or sent by electronic means (including email or hyperlink) to your address, using the details given by you when you opened an account, or agreed to this Agreement, or any other address or details subsequently communicated by you to us; (b) included with or on your Account Analysis Statement or deposit account statement; or (c) made available on Bank of America CashPro® Online (or any successor application) and/or any other Website. When providing Notice, we may specify that the content of the Notice is available on a Website or by contacting an account representative.

Notice is effective upon the earlier of the date the Notice is made available to you on a Website, mailed to you via post or electronic means, or upon receipt, where confirmation of such receipt has been requested.

If, at your request, we hold your Notices and you do not call for them in 30 days, we may either make them available to you by any means permitted under this Agreement for Notice or destroy them. If we hold a Notice at your request, or one is returned to us, the actions, disclosures, changes or amendments contained in the Notice will be effective. A returned Notice will be effective upon the earlier of the date it is made available to you on a Website or mailed to your last known address (including email address) and held Notices are effective on the date of the Notice. It is your obligation to notify us 30 business days in advance of any changes to your mailing or email address.

## **Protecting your account**

Your role is extremely important in the prevention of wrongful use of your checks or account. You must promptly examine your statement upon receipt. If you find that your records and ours disagree, or if you suspect that a check, endorsement or other withdrawal order is altered or forged, call us immediately at the telephone number on your account statement.

**Bookkeepers or Third Parties.** In the event you authorize any third person to retain possession of or prepare or transmit items for you, you agree to assume full responsibility for any errors or wrongdoing by such third person if we should pay or process such items.

**Cellular/cordless phones or wireless devices.**

Caution should be used when using cellular or cordless telephones or other wireless devices to conduct your transactions with us. Confidential account information can be intercepted over airwaves without your knowledge or authorization.

**Electronic Mail.** If you choose to use unencrypted electronic mail to communicate with us, you agree to bear the risk that such electronic mail may be corrupted, modified, garbled, hacked, or its confidentiality may be breached by a third party; and that you will bear risk that we will rely on such mail, which appears to be from you but which is unauthorized; and that such reliance will result in a loss.

**Protecting your checks.** To safeguard against potential misuse of your account, never leave unused checks, check stock, signature plates or passwords out in the open or in an easily accessible location. These items can be stolen or misused, so it is important for you to keep them locked in a safe place, preferably under dual control. When discarding checks, ensure that they are properly destroyed by shredding or other means so that they cannot be copied or used.

If unused checks disappear, either individually or several at a time, call us immediately at the telephone number on your account statement. We may recommend that you close your current account and open a new one. If we recommend you close your account and you do not do so, we are not liable to you for subsequent losses on the account. You must notify any third parties that need to know your new account number. By taking prompt action, you help us protect your account.

In addition to the precautions that you can take, we may make available certain products and services that are designed to detect and /or deter check fraud, and to reduce the likelihood that a fraudulent unauthorized or altered check or other item will be paid. You acknowledge that your failure to use such products and services could substantially increase the likelihood of fraud.

You agree that if you fail to implement any of these products or services, or you fail to follow these and other precautions reasonable for your particular circumstances, you will be precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such item.

We may deny a claim or monetary loss due to forged,



altered or unauthorized checks, if you do not guard against improper access to your checks.

When you write checks, you agree to use a dark colored permanent ink, make sure the written and numeric amounts match and are readable, and ensure there are no blanks or open spaces in the places where words and numbers are to be inserted.

**Check processing.** We receive checks in great volume and process them for payment by automated means. We do not individually examine most checks. It is critical for you to take care of your checks, promptly review your statement, and immediately report any fraudulent activity to us.

**Helping to prevent fraud.** Fraud can be a serious problem for businesses. To help you prevent embezzlement and other types of fraud, and to protect your business assets, the following are some of the preventive measures you should consider.

- Assign responsibilities for opening mail, reconciling bank statements and issuing checks to different individuals.
- Reconcile bank statements as you receive them.
- Watch for out-of-sequence checks and checks made payable to cash.
- Review your transaction activity for unexpected fluctuations.
- Convert as many payments as possible to an electronic format, and subscribe to blocks and filters or other fraud mitigation tools where available.
- Use Positive Pay or Teller Positive Pay or Payee Positive Pay service (where available) on all paper disbursement accounts. Failure to use these services may be considered lack of “ordinary care” as defined by the Uniform Commercial Code. Review your Positive Pay exceptions daily and respond to the bank by the published cutoff time.
- Make frequent, unannounced audits of your check stock and electronic payment system.
- Limit the number of authorized signers, and immediately notify us of any changes in this authority.
- Be cautious about giving someone your account number. If you give your account number to a third person and authorize that person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person, even if you did not intend to authorize a particular transaction.

These suggestions are by no means a complete list of the preventive measures you may take; other or additional actions may be appropriate for your particular circumstances, including closing your account and opening a new account that has not been compromised.

### **Protection from third parties**

To the extent permitted by law, you will indemnify us against and hold us harmless from and defend us

against any and all liabilities, claims, costs, expenses and damages of any nature (including legal expenses) arising out of or relating to disputes or enforcement of laws, fines or rules, legal actions, by parties other than you and us concerning any Service. The obligations contained in the preceding sentence will continue after a Service you are using is terminated. This section does not apply to any cost or damage attributable to our gross negligence or intentional misconduct.

Further, with respect to any Service where we receive payment from a third party on your behalf, the amounts received (less related charges, disbursements and/or expenses) will be paid to you, except that if we are required to return any such payment received upon the insolvency, bankruptcy or reorganization of such third party or for any other reason, you will repay to us the amount paid to you together with interest thereon from the date we returned the payment and so notified you at the rate specified by us in our schedule of charges with regard to the applicable Service.

### **Resolving disputes or controversies**

If you or we request, any controversy or claim (“controversy”) concerning your deposit account relationship with us or your use of any service described in this Agreement, including any claim based on or arising from an alleged tort, will be determined by arbitration, reference, or trial by a judge, as provided below. A controversy that involves an amount in dispute of less than \$1 Million – except for a dispute or controversy that arises from sending an electronic funds transfer – will be determined by arbitration, as described below. Any other controversy, including one that arises from sending an electronic funds transfer, will be determined by judicial reference of the controversy to a referee appointed by the court or, if the court where the controversy is venued lacks the power to appoint a referee, by trial by a judge without a jury, as described below. The arbitration, judicial reference or trial by a judge will take place on an individual basis, without resort to any form of class action.

WHETHER THE CONTROVERSY IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, YOU AGREE AND UNDERSTAND: (I) THAT YOU AND WE ARE GIVING UP THE RIGHT TO TRIAL BY JURY, AND THERE WILL BE NO JURY, AND (II) THAT THIS AGREEMENT PRECLUDES YOU AND US FROM HAVING THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY FORM OF CLASS ACTION OR ANY OTHER LITIGATION FILED IN COURT BY OTHERS.

**Arbitration.** Since this Agreement touches and concerns interstate commerce, an arbitration under this Agreement will be conducted in accordance with the United States Arbitration Act (Title 9, United States

Code), notwithstanding any choice of law provision in this Agreement. Arbitration, including selection of an arbitrator, will be conducted in accordance with the then-current rules for arbitration of the American Arbitration Association (“AAA”). You may contact the AAA at 800.778.7879 to obtain rules and forms to initiate arbitration or visit their Website at [www.adr.org](http://www.adr.org) for more information. If the AAA is unable or unwilling to serve as the provider of arbitration or to enforce any provision of this Resolving Disputes section, we may substitute another national arbitration organization with similar procedures. The arbitrator(s) will follow the law and will give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable will be determined by the arbitrator(s). The award of the arbitrator(s) will be in writing and include a statement of reasons for the award. The award will be final. Judgment upon the award may be entered in any court having jurisdiction, and no challenge to entry of judgment upon the award will be entertained, except as provided by Section 10 of the United States Arbitration Act or upon a finding of manifest injustice.

**Judicial reference or trial by a judge.** If you or we request, any controversy concerning your deposit account relationship with us that is not submitted to arbitration as provided above will be determined by reference to a referee appointed by the court who, sitting alone and without a jury, will decide all questions of law and fact. The referee will be an active attorney or retired judge. If the court where the controversy is venued lacks the power to appoint a referee, the controversy instead will be decided by trial by a judge without a jury.

**Self-help and provisional remedies.** Either you or we may exercise self-help remedies (such as setoff) or obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or reference. Neither the obtaining nor the exercising of any such remedy will waive the right of either party to demand that the related or any other controversy be determined by arbitration or reference as provided above.

**Jurisdiction and venue.** Any arbitration, lawsuit or other proceeding regarding your account must be brought in the state where we opened or, if different, currently maintain your account; and you submit to the personal jurisdiction of that state.

## **Checking and money market savings accounts**

We offer a variety of business checking and money market savings accounts.

Our non-interest-bearing and interest-bearing checking accounts are for businesses, including non-profit organizations and sole proprietorships and government

entities, that qualify for our deposit services and have unlimited activity.

Our money market savings accounts are for businesses, including non-profit organizations and sole proprietorships, that qualify for our deposit services and have limited transactions.

### **Account conversions**

We may either close your account or convert it to another type of account, when we consider it appropriate or necessary to do so.

As examples, we may close, revoke privileges, or convert your account to another account type if:

- You frequently exceed the transaction limits on a money market savings account.
- Your account frequently has debits against uncollected funds.
- Your account has excessive deposit activity.

If we convert your account, we may send you information about your new account. Interest-bearing accounts are converted to non-interest-bearing accounts.

### **Transaction limits for money market savings accounts**

For all money market savings accounts, you may make an unlimited number of withdrawals from your account and transfers to your other Bank of America deposit accounts each statement period, at one of our banking centers or by mail.

Federal regulation limits you to six transactions each monthly statement cycle (each month for a quarterly statement cycle) from among the following:

- Pre authorized transfers from your account
- Telephone transfers from your account. Telephone transfers include instructions sent to us by facsimile or data transmission.

Our practice is to monitor the number of limited transactions. If you are counting the number of transactions you make each statement period, you should know that we count an item on the date we post it to your account. This date may be different than the date you authorize, transfer or write the item, which means the item may not be counted until a later statement period.

If you frequently exceed the transaction limits, we may revoke your privileges on that account or convert it to another type of account. (See “Account conversions” in this Agreement.)

For some accounts, we may charge you a fee for each transaction that exceeds the limits described above.

### **Interest on your funds**

If you have an interest-bearing checking or money market savings account, your funds earn a variable rate

of interest. We set interest rates at our own discretion.

Your interest rate and annual percentage yield may change, and pay no interest. At our discretion, in response to changes in market interest rates and/or other factors we may change your interest rate and annual percentage yield and reserve the right to pay no interest on your account. We normally compound and credit any interest paid, if any, monthly.

If you have an account that combines earnings credit and interest-bearing features, your funds earn a variable rate on balances that are defined as excess balances (balances above the amount required to offset service charges). On these accounts we use the monthly-balance method to calculate interest. For applicable accounts, the monthly rate is  $(\text{days in mo}/365)$  – or in a leap year, we may use  $(\text{days in mo}/366)$  – of the interest rate. Interest is not accrued daily, and payment of the interest occurs in arrears.

For all other accounts, we use the daily-balance method to calculate the interest on your account. For applicable accounts, the daily rate is  $1/365$  – or in a leap year, we may use  $1/366$  – of the interest rate.

For accounts that are eligible to earn daily interest, this method applies a daily rate to the collected balance in the account each day. When you make a deposit, into an account that accrues interest daily, the interest begins to accrue no later than the business day on which we receive credit for cash and non-cash items, such as checks.

For interest-bearing checking accounts, we may deduct from the collected balance an amount that we determine applies for reserves, applicable generally to transaction accounts under the rules of the Federal Reserve.

The rate we pay may depend on the tier into which the balance in your account falls. A tier is a range of account balances. We may change the tiers that apply at any time without notice. Different tiers may apply to different types of accounts. Different rates may apply to different tiers.

## **Statements**

We provide you with a statement when there is activity on your checking or money market savings account. When there is no activity on your account, we may choose not to provide a statement. You must promptly review your statement and any accompanying items and notify us immediately of any dispute, error or other problem.

We mail your statement and accompanying items, if any, to you at the address we have in our records for your account, unless we have agreed to provide statements electronically. If you use a website or other information reporting channel, you may receive a statement electronically, unless you opt out. If you

are not currently receiving statements electronically, we reserve the right to switch you to receipt of electronic statements unless you notify us that you wish to opt out. If you elect to receive your statement electronically, we reserve the right to suppress the mailing of your paper statement and accompanying items. You may opt out of suppression by contacting your bank representative. We may elect to charge you a fee for receiving the statement electronically and through the mail. Refer to the Electronic statement section for additional information on electronic statements.

You agree to notify us if you change your address including Client Email.

We are not responsible for checks or statements lost while not in our possession. We may destroy statements and accompanying items that are sent to you and returned to us as being undeliverable. If one or more statements are returned, we may stop sending statements and accompanying items until a new address is provided to us. Statements that are received at a banking center are deemed to be delivered to you at the time that they are received at the banking center.

We provide a single statement. You may generally obtain an additional copy of your statement, or an interim “snapshot” statement, for a fee.

For all checking accounts and money market savings accounts, we provide you with a monthly statement, unless you and we agree to a different schedule. Statement periods generally vary from 28 to 33 days and may end on different days during the month.

For analyzed business checking and money market savings accounts, we provide an additional monthly account analysis statement. This statement includes balance and float information, an itemization of services used during the period, fees and charges for these services, and the earnings allowance, if any. We may give you or make available a brochure that describes this statement and the method for computing your charges and fees. The time frames and terms set forth in this Agreement under “Examining statements and reporting problems” will also apply to your account analysis statement.

You and we agree that if you use one of our other electronic information reporting channels, and we provide statements through that channel, that information is made available at the time it is posted.

## **Combined statements**

With combined statement service, where available, we provide a single statement that reports activity for all accounts linked for this service, instead of separate statements for each linked account.

Accounts with at least one common owner may be linked and reported on a combined statement, either automatically or at your request. When accounts are

reported on a combined statement, you understand and agree that each owner and each signer of any linked account can review information about all linked accounts. As an example: If you own a checking account jointly with others and you link your individual savings account to this checking account for combined statement service, then each of the other owners and signers of the joint checking account can review information about both the checking account and your individual savings account. You should not link accounts for combined statement service that you do not want others to see.

You must generally request combined statement service and tell us which accounts you want us to link and report on a combined statement. In some cases, however, we may automatically send you a combined statement. As an example: we may automatically link accounts that have the same owners and provide a combined statement for those accounts.

We may restrict what accounts can be linked for a combined statement. Please note that combining accounts on a single statement does not mean they are also linked for pricing. To determine which accounts can be linked, or to link accounts, for combined statements, please contact us.

## **Additional provisions and related services**

This section contains additional provisions that apply to your corporate deposit account and describes other services we offer, where available, for use with your account. You agree to provide us with such information as we may request, including financial information, in connection with your use of a service.

If at any time we believe (i) that our provision of any service to you may create a risk of financial loss for us or result in an unacceptable credit exposure to us, or (ii) that an account associated with any service may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our sole discretion, suspend or modify our provision of any such service until such time that such risk, exposure, or activity is eliminated or otherwise resolved.

You and we agree that if you use one of our other electronic information reporting channels, and we provide statements/reports through that channel, that information is made available at the time it is posted.

## **Account reconciliation service**

This service helps you reconcile and manage the activity in your demand deposit account with us. Detailed information regarding this service is available in the Account Reconciliation user documentation. Your use of this service does not affect any of your obligations, which are described in this Agreement, to

discover and report unauthorized signatures, alterations or endorsements on checks drawn on your account. Your use of this service or our receipt of information associated with this service does not increase our duty with respect to your account and the payment of checks.

To request this service, ask your account representative.

### **Automatic transfer service**

This service may not be available on some accounts. You may have funds transferred automatically from most checking or savings accounts with us to another checking or savings account with us or to pay a loan or credit card account or safe deposit rental fee with us.

Federal regulation and this Agreement place limits on the number of automated transfers you may make from savings accounts each month. Please see “Transaction limits for money market savings accounts”. Certain other restrictions apply.

You must schedule transfers to pay a loan with us for the due date each month. In most other cases, you may schedule transfers periodically on the dates and for the amounts that you specify. Transfers can only be made on a business day. If a scheduled transfer date falls on a weekend or bank holiday, we may make the transfer on the next business day. If we are unable to complete a transfer because you do not have enough available funds in your account, we may cancel this service.

### **Automated Clearing House (ACH) blocks and authorization services**

This section applies only to ACH blocks and authorization services for Entries received in the United States of America.

With the ACH blocks and authorization services, you provide us with the authorization criteria for Entries you desire to receive for debit or credit to your account. We return automatically any Entry which does not meet your criteria.

We may also return an Entry for any reason that an Entry may be returned under the National Automated Clearing House Association (“NACHA”) Rules. The ACH blocks and authorization services will not apply to Entries settled against your account that are originated under our ACH Services that we provide to you. We may also pay any Entries, reversals or adjustments which we are required to accept under the NACHA Rules, operating circulars or any other applicable rule, guideline or regulation.

You provide authorization criteria in a manner and form acceptable to us. In your authorization criteria, you may specify a maximum amount or a fixed amount for the Entries. In either case, you must specify the amount in dollars and cents.



You agree to comply with the NACHA Rules for all Entries. Under the NACHA Rules, credit Entries are provisional and may be revoked prior to final settlement. If the credit Entry is revoked before final settlement and we do not receive final settlement, we may charge your account for any amount credited. The person who sent the credit Entry is considered not to have paid you. If this happens, we do not send a separate notice; we notify you of these credits and charges on your account statement.

When an ACH blocks and authorization service is terminated for any reason, we will no longer be obligated to monitor Entries against your authorization criteria; and we will receive, and accept, or return Entries to your account in accordance with our normal procedures. You still have the right to return Entries in accordance with the NACHA rules.

### **ACH debits and credits**

From time to time, originators that you authorize may send automated clearing house (ACH) credits or debits for your account. For each ACH transaction, you agree that the transaction is subject to the National Automated Clearing House Association (NACHA) Operating Rules, and as applicable, the U.S. Department of the Treasury (Green Book), and any local ACH operating rules then in effect. You agree that we may rely on the representations and warranties contained in these operating rules and either credit or debit your account, as instructed by the originator of the ACH transaction. You acknowledge and agree that if you request Bank of America to transmit an ACH return transaction in connection with any problem, including a claim of erroneous or unauthorized ACH debit posted to your account, the related originating depository financial institution has no obligation to accept that return transaction if the return request is not made within the applicable time frame set forth in the NACHA Rules, and even if such time frames are shorter than the time frame stated in this or other Sections of this Agreement. Bank of America may respond to your reported problem and attempt to pursue it with the originating depository financial institution even if it is submitted to us beyond the NACHA time frames; however, we do not guarantee that we will be able to help you. In some cases, depending on the facts, your claim may not be honored and you could incur a loss.

You should be careful about giving someone your account number to help prevent unauthorized transactions on your account, and utilize blocks and authorizations services if available. You must notify us immediately of unauthorized activity. For information about stopping payment of an ACH transaction, see Stop payment orders in this Agreement.

## **Automated Clearing House (ACH) review service**

See “Information reporting services” in this Agreement.

## **Cash transactions reporting**

Federal law requires us to submit a Currency Transaction Report to the Internal Revenue Service (IRS) for any cash transactions of more than \$10,000 and for multiple cash transactions you perform that total more than \$10,000 on any one day. This information aids federal authorities in controlling the flow of cash generated from illegal activities.

We usually prepare the report when the transaction occurs. We are required to obtain certain information about the individual who performs the transaction and the individual or organization for whom the transaction is being performed. We include the individual's and/or organization's full name; permanent street address; Taxpayer Identification Number (TIN); driver's license or major credit card number; and business, occupation or profession.

Federal law makes it a crime for a person to cause a financial institution to file an incorrect report or for a person to arrange or structure a transaction specifically to avoid this reporting requirement – for example, by breaking a single cash deposit of more than \$10,000 into several smaller cash deposits.

## **Check cashing**

Check cashing services may not be available at some banking centers. If a payee of a check you have issued wants to cash the check in one of our banking centers, we may require identification satisfactory to us. If the payee does not have a deposit relationship with us, we may also require a fingerprint before we cash the check; and we may charge the payee a fee for cashing the check. From time to time, we may also impose other requirements that we consider appropriate. For example, we may refuse to cash the check at any banking center other than the address displayed on the check. If the payee fails or refuses to satisfy our requirements, we may refuse to cash the check. We have no liability to you for refusing to cash the check or charging a check cashing fee.

## **Check handling**

**Check truncation.** We report on your statement information about canceled checks (check number, amount, and date posted) that posted to your account during the statement cycle. You do not receive your canceled checks or other paper items paid against your account. Checks are deemed to be made available to you at the same time your statement is made available. We store copies (digital image or other media storage channels) and destroy the items. Copies are generally available for seven years from the date paid.

If you usually receive your checks and other paper items with your statement but we are unable to return them because of circumstances beyond our reasonable control, we may convert your account to the check truncation service for the period that the circumstances persist. (See “Circumstances beyond our control” in this Agreement.)

We may also convert your paper statement, to an electronic statement. (See “Electronic Statements” in this Agreement.)

**Requesting copies.** You may request a copy of a canceled check, or other paper items paid against your account, online via one of our information reporting services, by calling us at the telephone number on your statement or by asking your account representative. Generally, we mail or make a copy available within seven business days. We may charge you a fee for providing copies. For some accounts, you receive a monthly allowance of copies. The fees are described in the list of charges we may make available to you.

To produce a copy, we need the following information:

- Your account number
- The check/serial number
- The exact amount of the item
- The date the item was paid

**Unavailable copies.** If we cannot provide a copy of a paid item, and you lose money as a result, we may cover the loss up to the amount of the item. We are not liable to you for any special or consequential loss or damage of any kind.

## **Check legends**

Some customers print or write legends or restrictions on their checks. Sometimes either you, or the payee - the person to whom the check is payable - prints or writes a legend or restriction on a check. Legends and restrictions include conditions, special or restrictive instructions, and other notations. Some examples are: “not valid after 60 days,” “not valid over \$1,000” or “paid in full.” We may disregard legends and restrictions. We may process or pay the item even if the legend or restriction has not been met. We are not liable to you for any claims, costs, losses or damages that result from the placement of these legends restrictions on your checks, or from our failure to abide by them.

## **Check stock and ink**

See “Purchasing or creating checks or deposit slips” in this Agreement.

## **Check transformation services**

**Image cash letter service.** The image cash letter service allows you, or a third party acting as your agent,

to transmit an image cash letter to us. We may create on your behalf a paper substitute check or image replacement document (IRD) from such electronic image transmission or process via image, as described in the applicable user documentation.

**Remote deposit service.** The remote deposit service truncates, on your behalf, an original paper item and transmits the image and Magnetic Ink Character Recognition (MICR) data of that item for clearing via image exchange or ACH as described in the applicable user documentation.

To request the Image cash letter service or Remote deposit service, ask your account representative. Additional service agreements may be required.

## **CHECK 21**

Check 21 (the Check Clearing for the 21st Century Act) is a U.S. federal law, which provides that a properly prepared substitute check that meets the requirements for legal equivalence is the legal equivalent of the original for all purposes.

A substitute check is the legal equivalent of your original check for all purposes, including under any provision of any federal or state law, and for all persons, if the item:

- Accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated.
- Bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check."
- Includes all endorsements.
- Includes the identification of the party creating it.
- Otherwise meets the requirements of Check 21 regulations.

See "Substitute checks, indemnified copies, images and image replacement documents" in this Agreement.

## **Circumstances beyond our control**

We are not liable to you if circumstances beyond our reasonable control cause us to take any action with regard to your account, including acting based on a legal or governmental action, rule, guideline or constraint or emergency situation.

We are not liable to you if circumstances beyond our reasonable control prevent us from, or delay us in, performing our obligations for a service, including acting on a payment order, processing a transaction or crediting a funds transfer or other transaction to your account.

Circumstances beyond our reasonable control include: a natural disaster, such as an earthquake or a flood; emergency conditions, such as a war, riot, fire, theft, or labor dispute; a legal constraint or governmental

action or inaction; the breakdown or failure of our equipment; the breakdown of any private or common carrier communication or transmission facilities, any time sharing supplier or mail or courier service; the potential violation of any guideline, rule or regulation of any government authority; suspension of payments by another bank; or your act, omission, negligence or fault.

## **Client-encoded deposits**

You may want to encode the dollar amount of checks on the MICR (Magnetic Ink Character Recognition) line of items you deposit with us. We permit this under certain circumstances, and we provide you with instructions for preparing and encoding your deposits. We are not liable for any claims, costs, losses, or damages you may incur when you encode your own items.

You must be able to provide us with replacements or copies of the original checks, if the deposit is lost or destroyed. We are not liable to you if you are not able to do so.

If our equipment is unable to read what we consider to be a significant number of your encoded items, we may impose additional charges, as described in the list of charges we give you.

If you make an encoding mistake that results in costs or losses to us, you agree to reimburse us for the costs or losses, including reasonable attorneys' fees we may incur.

## **Collection items**

We may accept certain items – such as securities and checks payable in foreign currencies or at foreign locations – on a collection basis only. We route and process these items separately. We normally credit your account for these items only after we receive payment for them; but if we do credit your account and then do not receive payment, we may debit your account. We may charge fees for processing collection items. The fees apply even if the collection item is returned unpaid. The fees are described in the list of charges we may make available to you.

The financial institution on which the item is drawn may also charge you fees. If the other financial institution requires payment of a fee before that institution will process the collection item, we may pay the fee and charge you. Otherwise, the other financial institution may subtract its fee from the amount of the payment they remit. These fees apply even if the item is returned to us unpaid.

When another financial institution submits an item drawn on your account to us on a collection basis, we charge the other financial institution a fee.

When you do not have enough funds in your deposit account for us to process a collection item drawn on

your account, we may charge you an insufficient funds fee. (See “Overdrafts and insufficient funds” in this Agreement.)

### **Death or incompetence**

You agree to notify us promptly if any owner or authorized signer on your account dies or is declared incompetent by a court. Until we receive such notice of death or incompetency, we may act with respect to any account or services as if all owners, signers or other persons are alive and competent and we will not be liable for any action or inaction taken on that basis. We may place a hold on your account and refuse to accept deposits when an owner dies or is declared incompetent. We may retain any funds in your account until we know the identity of the successor.

### **Deposit error correction**

When we receive your deposits, we may provisionally credit your account for the amount declared on the deposit slip, or other deposit record, subject to later verification by us. You must ensure that the amount declared on the deposit slip or other deposit record is correct, even if you did not prepare the deposit slip or other deposit record.

If we later determine that the amount declared on the deposit slip or other deposit record is incorrect, we may adjust (debit or credit) your account. However, if the error in completing the deposit slip or other deposit record was inadvertent and is less than our standard adjustment amount, we may not adjust your account, unless you notify us of the error within one year of the date of your periodic statement that shows the deposit. After this notice period has passed without your bringing an error to our attention, the deposit amount indicated on the statement will be considered finally settled. That is, if the actual amount deposited was less than the amount declared on the deposit slip or other deposit record, the difference will become your property; and if the actual amount deposited was more than the amount declared on the deposit slip or other deposit record, the difference will become our property. We may change our standard adjustment amount from time to time without notice to you.

### **Electronic statements**

You may elect to receive account statements and other information relating to account activity or services, transactional activity and/or cash management services with the Bank and/or its affiliates (“Statements”) electronically. We may at our option discontinue the delivery of the paper statement if you are receiving or have elected to receive an electronic statement through a Website or other information reporting channels. If you request to receive both paper and electronic statements, we may charge an additional fee. You and

we agree that if we provide statement through a Website or other electronic information reporting channels, that information is made available at the time it is posted on the applicable Website or channel.

## **Endorsing checks**

We may endorse checks for you that we receive for deposit. We may cash or deposit all checks payable to any authorized signer on your account when endorsed by any other authorized signer.

We restrict both how you endorse checks that you ask us to cash or deposit and what you may place or have preprinted on the back of your checks.

You must endorse checks in the area that is 1 1/2 inches from the trailing edge of the back of the check. The trailing edge is the left side of the check when you look at it from the front.

You must also confine information that you place or have preprinted on the back of your checks to the area described above. You may not place or imprint any endorsements of any kind outside the area described above. If any information or endorsement you place or print obscures our bank's endorsement, you are liable for checks that are returned late and unpaid.

## **Examining checks**

We receive checks in great volume. This and compliance with expedited funds availability laws require us to use automated check processing procedures. Although we may visually review a sample of checks and other items from time to time, reasonable commercial standards do not require us to do so.

We select some checks for review based on certain criteria that change from time to time. This means that most checks are processed on the basis of MICR line printed along the bottom edge of the check, and are not individually examined for dates, maker signatures, legends or endorsements. You agree that we will have exercised ordinary care if we examine only those items that we have identified according to the criteria that we may establish in our discretion for inspection.

If we do visually review any check or other item, we may disregard any restrictive instructions or notations. We may return the item unpaid if, in our opinion, it does not bear a signature matching any specimen signature we have on file for your account. You agree, however, that we will not be liable to you for honoring any check or other item bearing a signature that, in our sole opinion, resembles the specimen signature on file with us.

Since we do not individually examine most checks, it is critical for you to take care of your checks, promptly review your account statement, and immediately report any suspicious or unauthorized activity to us. You agree that automated processing of your checks is reasonable and that you accept responsibility for preventing and

reporting forgeries, alterations, and other unauthorized uses of your checks or accounts. You agree that the exercise of ordinary care will not require us to detect forgeries or alterations that could not be detected by a person observing reasonable commercial standards

Since some types of check fraud have become more difficult to detect, we may elect in some cases to make further inquiries about certain checks or other items that are presented for payment against your account. If we are unable to contact you, or take other steps, to determine with reasonable certainty that you authorized these payments, we may either pay the checks or other items or return them unpaid without any liability to you.

### **Examining statements and reporting problems**

This section applies to any problem or unauthorized transaction on your account, except electronic transactions that are subject to Regulation E.

You agree to promptly and carefully review your statement and any accompanying items and/or images. You must report problems or unauthorized transactions to us immediately, by calling the telephone number on your statement. You agree that 60 days after we send a statement and/or items and/or images (or otherwise make them available) is the maximum reasonable amount of time for you to review your statement and/or items and/or images and report any problem or unauthorized transaction related to a matter shown on the statement and/or items and/or images. In addition, if you do not notify us in writing of suspected problems or unauthorized transactions within 60 days after we send (or otherwise make available) your statement and/or items and/or images, you agree that you cannot make a claim against us relating to the unreported problems or unauthorized transactions, regardless of the care or lack of care we may have exercised in handling your account.

There are exceptions to the 60 day period. For all deposits or transactions made via cash vault processing (which may include Quick Business Deposit, Night Depository, Remote Night Depository and ATM Deposits):

- You must notify us of any problems, errors or unauthorized transactions within 45 days of the statement and/or items and/or images being made available to you.
- If you don't notify us in writing of suspected problems or unauthorized transactions within 45 days after your statement and/or items and/or images are made available to you, you agree that you can't make a claim against us relating to the unreported problems or unauthorized transactions.

For forged, unauthorized or missing endorsements, you must notify us within the period specified by the state law applicable to your account.



In addition, if you fail to report an unauthorized transaction on your account within 30 days (or such lesser period as is specified in the state law applicable to your account) following the closing date of the statement containing information about the first unauthorized transaction, we are not liable to you for subsequent unauthorized transactions on your account by the same person. You may not bring any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account, unless you have given us the notice described above.

If you experience missing, stolen, or unauthorized items and/or images, we recommend that you close your current account and open a new one. If you do not do so, we may not be liable to you for subsequent losses or damages on the account due to forgery, fraud or other unauthorized use. When you open a new account, you are responsible for notifying any third parties that need to know your new account number.

If you report to us that a forgery, alteration or other unauthorized transaction has occurred on your account, you agree to provide us with an affidavit containing the information we require concerning the transaction. Any failure by you to do so may result in a denial of your claim. You also agree to cooperate with us in the investigation of your claim and any attempt to recover funds, including identifying and processing the suspected wrongdoer(s).

If you fail to exercise ordinary care and that failure contributes to an alteration of your check or to the making of a forged signature on your check, you are precluded from asserting the alteration or the forgery against a person including us, who, in good faith, pays the check or takes it for value or for collection. If we fail to exercise ordinary care in paying or taking the instrument and that failure contributes to the loss, the loss is allocated between you and us, to the extent to which the failure of each to exercise ordinary care contributed to the loss.

You agree that we have a reasonable period of time to investigate the facts and circumstances surrounding any claimed loss, and that we have no obligation to provisionally credit your account. Our maximum liability is the lesser of your actual damages proved or the amount of the missing deposit or the forgery, alteration or other unauthorized withdrawal, reduced in all cases by the amount of the loss that could have been avoided by your use of ordinary care. We are not liable to you for special or consequential losses or damages of any kind, including loss of profits and opportunity, or for attorneys' fees incurred by you.

You agree to immediately give us notice of any claim you may have against us. You agree to pursue all rights you may have under any insurance coverage you

maintain, before pursuing such claim against us, in connection with any transaction involving your accounts. You also agree to provide us with all reasonable information about your coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

### **Facsimiles and Other Non-Written Signatures**

You may wish to use a Non-Written Signature for your convenience. If you choose to use a Non-Written Signature, we may require that you provide us in advance with a specimen Non-Written Signature of each authorized person and/or to execute additional documentation. We will not be liable to you if facsimile device, or other device used to affix your Non-Written Signature, was unauthorized. You are responsible for any withdrawal from your account that bears or appears to us to bear your Non-Written Signature, regardless of by whom or by what means the Non-Written Signature was placed on the check. If you choose to use a Non-Written Signature, you are responsible, and we may pay a withdrawal and debit your account for any such withdrawal, even if (i) you have not presented us with a specimen signature; (ii) the size, color or style of the check is different from that of the check you normally use; or (iii) the size, color or style of the Non-Written Signature differs from the Non-Written Signature specimen you provided. You agree to compensate us for all losses, claims, damages or expenses, including reasonable attorneys' fees, that result from our payment of a withdrawal bearing a Non-Written Signature that resembles either the specimen or other Non-Written Signatures provided by you. You are responsible for taking security measures and implementing procedures to prevent the forgery, theft or fraudulent or unauthorized use of your Non-Written Signatures.

### **Foreign currency checks**

You may not write checks or give other withdrawal orders on your account, which order payment in foreign currency. If we receive such a check or order, we may refuse to accept or process it without any liability to you.

### **Foreign exchange transactions**

If we assign a currency exchange rate to your foreign exchange transaction, such exchange rate will be determined by us based upon market conditions. We consider many factors in setting our exchange rates, including and without limitation: exchange rates charged by other parties, desired rates of return, market risk and

credit risk. You acknowledge that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in The Wall Street Journal or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our rates. We do not accept any liability if our rates are different from rates offered or reported by third parties, or offered by us at a different time, at a different location, for a different transaction amount, or involving a different payment media (bank-notes, checks, wire transfers, etc.).

### **Funds availability: When funds are available for withdrawal**

We may negotiate a separate funds availability agreement with you. If we do not do so, then the following funds availability terms will apply to your account.

**Your ability to withdraw funds.** Our policy is to make funds from electronic direct deposits, cash and incoming wire transfers available to you on the day we receive the deposit. Our general policy is to make funds from check deposits available to you no later than the first business day after the day we receive your deposit. Once they are available, you can withdraw the funds in cash; and we will use the funds to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays.

If you make a deposit at a banking center before 2:00 p.m. local time, or such later time as may be posted at that banking center, on a business day that we are open, we consider that day to be the day of your deposit. However, if you make a deposit in a banking center after such time, or on a day when we are not open, we consider that the deposit was made on the next business day we are open.

Other deadlines may apply for deposits made through other channels or not in person.

**Government, official and other special types of checks.** If you make a deposit in person to one of our employees, and meet the other conditions noted below, our policy is to make funds from the following types of deposits available no later than the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- State and local government checks that are payable to you and are deposited to an account in the same Federal Reserve District that issued the check
- Cashier's, certified and teller's checks that are payable to you

**Other delays may apply.** There are other situations that may affect funds availability. Depending on the type of check that you deposit, we may place a hold on certain checks and not make funds available until the fifth business day after the day of your deposit. In such a case, we generally notify you at the time you make your deposit. We 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 mail you the notice by the next business day after we receive your deposit.

If you need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, we may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 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 communications or computer 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 eleventh business day after the day of your deposit.

**Cash withdrawal limitation.** If we delay availability of your deposit, we place certain limitations on withdrawals in cash or by similar means. In general, \$200 of a deposit is available for withdrawal in cash or by similar means no later than the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash or by similar means at or after 5:00 p.m. on that day. Any remaining funds will be available for withdrawal in cash or by similar means on the following business day.

Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as a debit card transaction.

**Holds on other funds.** If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your ability to withdraw a corresponding amount of funds that you have on deposit in another account with

us. In either case, we make these funds available in accordance with our policy described above for the type of check that was cashed or deposited.

**Special rules for new accounts.** If you are a new customer, the following special rules may apply during the first 30 days after the account is open.

Funds from electronic direct deposits to your account are available on the day we receive the deposit.

Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks are available no later than 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 and deposited in person to one of our employees. The excess over \$5,000 is available by 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 \$5,000 will not be available until the second business day after the day of your deposit. Funds from all other check deposits are generally available by the ninth business day after the day of your deposit. However, we may place longer holds on certain items for other reasons, such as large deposits. (See "Other delays may apply" in this section.)

## **Funds transfer services**

A funds transfer is the process of carrying out a payment order that leads to paying a beneficiary. The payment order is the set of instructions you give or we receive regarding a funds transfer. The beneficiary is the person who receives the payment.

The following provisions apply to funds transfers you send or receive through us. If you have a specific agreement with us for these services, these provisions supplement but do not contradict that agreement. The terms "funds transfer," "payment order" and "beneficiary" are used here as they are defined in Article 4A of the Uniform Commercial Code – Funds Transfers, as adopted by the state whose law applies to the account for which the funds transfer service is provided.

We may charge fees for sending or receiving a funds transfer. These fees are described in the list of charges we may make available to you.

A cross-currency funds transfer may be converted by any originating, intermediary or receiving bank, payment system or payment service provider, including Bank of America or an affiliate, as applicable, and we and/or an affiliate may receive compensation in connection with any such currency conversion.

**Fedwire.** Fedwire is the electronic funds transfer system of the U.S. Federal Reserve Banks. When you

send a payment order or receive a funds transfer, we or other banks involved in the funds transfer may use Fedwire. If any part of a funds transfer is carried out by Fedwire, your rights and obligations are governed by Regulation J of the U.S. Federal Reserve Board.

**Sending funds transfers.** You may subscribe to certain services we offer, or you may give us other instructions to pay money or have another bank pay money to a beneficiary.

This “Sending funds transfers” section applies to wire transfers and transfers we make between Bank of America accounts. It does not apply to Automated Clearing House (“ACH”) system funds transfer services. You may only give us payment orders for ACH system funds transfers (where ACH services are available) if you have a separate agreement with us for these services. For blocking or filtering ACH receipts, see “Automated Clearing House (ACH) blocks and filters services” in this Agreement.

You are solely responsible for ensuring that payment instructions that are sent on your behalf are valid instructions authorized by your organization. While we may in some circumstances implement internal controls to monitor customer payments, including mechanisms that may evaluate the risk of possible fraudulent activity, such monitoring is done solely at our discretion and is not a component of the Security Procedures. You hereby acknowledge that we do not guarantee or ensure that such monitoring will be effective in preventing frauds against your accounts and agree that we may process payments verified by the Security Procedure regardless of the results of transaction monitoring. We will be considered to have acted in good faith and in compliance with the Security Procedures, regardless of the results of transaction monitoring.

### **Security Procedure**

You agree to use the applicable security procedure as described in the Materials in connection with your use of a Service for your data delivery type or Service for the purpose of verifying the authenticity of any (i) electronic funds transfers or payments instructions, including, without limitation, cancellations, amendments or reversals thereto; and (ii) any instructions, data, transactions or other information sent between you and us (collectively, for this section of the agreement, “transactions”). The purpose of the security procedure is to verify the authenticity of any such transactions between you and us or our third party processor and not to detect any errors in the transmission or content of any such transactions. Each time you use a Service, you represent and warrant that, in view of your requirements, the security procedure is a satisfactory method of verifying the authenticity of any such transactions. You agree that we or our third party

processor may act on any transactions, the authenticity of which we or our third party processor, as applicable, have verified through use of the security procedure.

You agree that we may act on transactions, including, without limitation, electronic funds transfers and payments requests, even if they are unauthorized, if we act in good faith and comply with the applicable security procedure and any written agreement with you restricting our action on such transactions. In such cases, we may enforce or retain your payment to us for such transactions; provided, however, we may not enforce or retain payment if you prove that the unauthorized transactions were not caused by a person (i) entrusted at any time to act for you with respect to any such transactions or the applicable security procedure, (ii) who obtained access to your premises, computer equipment or transmitting facilities or (iii) who obtained, from a source controlled by you, information (such as keys and passwords) which facilitated breach of the applicable security procedure.

You have sole responsibility for the custody, control and use of all Materials. You agree that no individual will be allowed to initiate a Request or other instruction contemplated in this Agreement or to have access to any Materials without proper supervision and strict security controls. We will be fully protected in relying on the correct user identification codes and passwords, as described in the relevant User Documentation.

**Cutoff times for payment orders.** We have cutoff times for processing payment orders. Cutoff times vary depending on the particular office of our bank and the type of payment order. We may treat payment orders we receive after a cutoff time as if received the next banking day. We tell you our cutoff times upon request.

**Amending or canceling payment orders.** You may not amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request, if your request is timely and if we verify the request using the applicable security procedure. However, we are not liable to you if, for any reason, a payment order isn't amended or canceled. You agree to reimburse us for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

**Identifying beneficiaries and banks.** The beneficiary's bank may make payment to the beneficiary based solely on the account or other identifying number, even if the name on the payment order differs from the name on the account. We or an intermediary bank may send a payment order to an intermediary bank or beneficiary's bank based solely on the bank identifying number, even if the payment order indicates a different bank name.

**Sending payment orders.** We may select any intermediary bank, funds transfer system or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

**Notice of rejection.** We may reject payment orders. We notify you of any rejection orally, electronically or in writing. If we send written notices by mail, we do so by the end of the next banking day.

We are not liable to you for the rejection or obligated to pay you interest for the period before you receive the notice of rejection.

**Errors or questions about your payment orders.** We notify you about funds transfers by listing them on your account statement. In some cases, we also may notify you electronically, in writing or by a report produced through one of our information reporting services.

You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 14 days after the date you receive the first notice or statement on which the problem or error appears.

If you fail to notify us within this 14-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit, or because your statement or notice is incorrect. We are not required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

**Compensation.** If we are obligated to pay for loss of interest that results from our error or delay regarding your payment order, we calculate compensation as follows:

- For an analyzed account, we credit the account to reflect the applicable value date or otherwise adjust the account under our account analysis procedure, to recalculate earnings credits for the period involved.
- For a non-analyzed, non-interest-bearing account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York, less a reserve factor.
- For an interest-bearing account, we use the rate(s) applicable to the account.

If we have a separate agreement with you specifying a different calculation method, we use that method instead.

**Conditional Requests.** Do not send conditional requests to us. If we receive from you a conditional funds transfer request (i.e., a request which purports to impose one or more conditions, such as the occurrence of a specified event or act, as a condition to the making of the payment), we will, at our sole discretion, either (1) not act upon it, or (2) handle it as if your request



were unconditional. In no event will we bear any liability or responsibility for any claim or liability you or any other person may assert or incur in connection with a conditional request. You agree to indemnify us and hold us harmless against any and all liabilities, claims, costs, expenses and damages of any nature (including, but not limited to, reasonable attorney's fees incurred in enforcing this provision) in any way arising from or relating to your sending us a conditional request.

**Receiving funds transfers.** We may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system such as an Automated Clearing House (ACH) system, or through some other communications system. This includes wire transfers, ACH transfers (including those processed directly to an account with us) and transfers between Bank of America accounts.

**ACH provisional payment rules.** Under NACHA Rules, funds transfers sent through an ACH are provisional and may be revoked prior to final settlement. You agree to these rules.

If the funds transfer is revoked before final settlement and we do not receive final settlement, we may charge your account for any amount credited. The person who sent the payment order is considered not to have paid you. If this happens, we do not send a separate notice; we notify you of these credits and charges on your account statement.

**Notice of funds transfer.** We notify you that we have received funds transfers by listing them on your account statement. We send statements by mail and/or electronically. If you use one of our information reporting services, you may receive notice through that service.

Generally, we do not send you a separate notice of funds transfers. However, we may send a separate notice for wire transfers. If we send the wire transfer notice, we do so within two banking days after the day we credit the wire transfer to your account.

If you are expecting a funds transfer and want to find out if it has been credited to your account, call us at the telephone number on your statement or ask your account representative.

We are not obligated to pay you interest for the period before you receive notice.

**Posting your customers' payments.** We credit to your account any electronic payments (such as bill payments) that we receive from your customers. If you do not apply a payment to an account of your customer, you must promptly return the payment to us.

## **Image cash letter services**

See "Check transformation services" in this Agreement.

## Image statement

With the service you do not receive your cancelled checks or other items paid against your account. We generally destroy the items, and instead we provide you with images of the items on your paper/electronic statement or other statement. We offer a Front Only Image Statement and a Front and Back Image statement. We reserve the right to change the number of images that appear on your statement without notice to you. When you use this service, checks are deemed to be made available to you at the same time your statement is made available.

## Information reporting services

Our Information Reporting Services make certain account, transaction and related information available to help you control and manage your accounts. This may include information generated from other services you use. You may have information reported directly to you or, with certain of our Information Reporting Services, reported at your direction to another financial institution or other entity. Information reported on a current day basis is subject to updating and, therefore, at any point in time may not reflect the information on our records at such time. In addition, such information may be subject to adjustment upon final posting. Detailed information regarding an Information Reporting Service is available in the applicable user documentation.

To request Information Reporting Services, ask your account representative.

**Accounts of other companies.** You may elect to have accounts of another company/organization reported to you with any of our Information Reporting Services. You agree that, for each such account, the company/organization will provide us with its written authorization, in a form acceptable to us, for us to make its account information available to you. However, you do not need to provide us such written authorization if the other company/organization is a U.S. Subsidiary and its accounts are domiciled in the United States of America. In that case, you represent and warrant that such other company/organization is a U.S. Subsidiary and that it has authorized us to make its account information available to you. "Subsidiary" means any entity in which more than 50% of the ownership interest is owned directly or indirectly by you.

**Accounts at other banks.** You may also elect to have your accounts, or accounts of another company/organization, that are maintained at another financial institution reported through certain of our Information Reporting Services. If you do so, you agree that you and the other company/organization will authorize such other financial institution to make the reporting

information available to us and to take all other actions necessary for us to provide Information Reporting Services to you.

We shall not be responsible for the accuracy or timeliness of any information provided to us by any such financial institution.

**Third Party Information.** If you gain, through your use of one or more Services, access to any information relating to any person other than us, you or any of your Subsidiaries which have authorized your receipt of such information, you agree that you will treat such third-party information as strictly confidential and you shall not disclose it to any person outside your company or to any persons within your company except those who have a need to know. Further, you shall ensure that adequate measures have been taken to prevent the unauthorized use of any such third-party information. You agree that you will not use any such third-party information for your own purposes other than in a communication to us relating to the Service.

**Confidential Information.** When you subscribe to our information reporting services, we provide you with user identification codes, passwords and the applicable user documentation. This information is confidential. You must safeguard the information and adopt security controls to prevent disclosure of the passwords and codes and unauthorized use of the user documentation.

You may not make any copies of the user documentation without our prior consent. Notify us promptly by telephone, confirmed in writing, if any information is lost or its confidentiality is compromised.

## **Legal process**

We may accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person; by mail; by facsimile transmission; at locations other than the banking center or office at which the account, property or records are held; or in one state for property or records held in another state. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order relating to your account.

Our cutoff time for receipt of a restraining order, writ of attachment or execution, levy, garnishment or similar order relating to your account is 10:00 a.m. local time each banking day. The cutoff time relates to our obligation to pay or return checks and other items.

If we receive an order before this cutoff time, we may review checks and other items presented for payment against your account on the previous banking day, to determine whether we need to return any of them to

comply with the order. If we receive the order after the cutoff time, we may not review checks and other items presented on the previous banking day. For example, if we receive a levy before the cutoff time and you do not have enough funds in your account to cover the levy, we may return checks or other items presented against your account the previous banking day and apply the funds to the levy.

If an order directs us to turn over funds or other property, then, depending on the type of order, we either immediately deliver the funds or property or hold them for a legally permitted period – usually no longer than 21 days. We do not pay interest on the funds during the period we hold them. If we use funds from a time deposit account, we may impose an early withdrawal penalty.

We may charge your account a legal process fee for each order. You agree to pay our fees and expenses for research and copying of documents and all other expenses, including administrative expenses, we incur in responding to any legal process related to your account. These may include attorneys' fees. We may deduct these fees and expenses from any of your accounts, without prior notice to you. Any garnishment, attachment or other levy against your account is subject to our right of setoff and any security interest we have in the account.

We may produce documents held at, or provide access to property that is located in, any of our facilities or any facility operated by third party on our behalf, even if the facility is not designated as the place to be searched in the legal process.

We are not liable to you for not paying items because we have withdrawn funds from your account, or in any way restricted your access to funds, because of a legal process.

### **Lost, destroyed or delayed checks**

When we cash a check for you or accept a check or other item for deposit or other item to your account, we are acting as your agent in collecting the check or other item.

We are not responsible if the check or other item is lost or delayed in the collection process. If a check or other item we cashed for you is lost during the collection process, we may charge your account for the amount of the check or other item. If a check or other item we accepted from you for deposit is lost during the collection process, we may deduct from your account the credit we gave you for the check or other item.

You must be able to provide us with replacement checks or copies of the original checks or other item, if a deposit is lost or destroyed. We are not liable to you if you are not able to do so.

A lost, destroyed or delayed check or other item may not be returned to us for some time. Despite any delay, we may charge your account when we receive the check or other item, or an image.

If a check you wrote or deposited or we cashed for you is lost, destroyed or delayed, but we receive a photocopy of the check or an image replacement document, an image, an ACH entry, or a debit slip representing the check or other item, we may charge your account for the amount of the check or other item.

## **Monitoring and recording telephone calls and electronic communication**

We may record or monitor telephone calls between you and us. You authorize us to monitor, and to record, telephone conversations and other electronic communications you have with us and with our representatives for reasonable business purposes, including security and quality assurance. We need not remind you of our recording or monitoring before each call, unless required to do so by law.

## **Notice of withdrawal**

Federal regulations require us to retain the right to require all Savings and all NOW account depositors to give us seven days prior written notice before making a withdrawal. It is unlikely, however, that we would require this notice.

## **Notification Service**

Our Notification Services, where available, allow you to receive certain types of Notices. The types of Notices relating to a particular Service are further described in the applicable User Documentation.

Notices are in addition to and not a replacement of or substitution for the Services received by you under the Agreement or any other applicable agreement between you and us. As set forth in the User Documentation, your system administrator(s) shall instruct us with respect to your use of Notification Services.

You acknowledge and agree that Notices are provided as a convenience as such you (a) acknowledge and agree that you may not rely on the receipt or expected receipt of a Notice, or the contents (or lack thereof) or any Notice, to relieve you of any of your obligations or duties under the terms of this Agreement or such other agreement between you and us. Notwithstanding any terms to the contrary, you agree that we shall not be liable in any case: (i) for any failure to provide, or any delay in providing, any Notice, (ii) if any Notice is intercepted or received by an unauthorized person or entity, and (iii) if any Notice is inaccurate or incorrect in any way.

## **Overdrafts and insufficient funds**

You can avoid fees for insufficient funds and the possibility of returned items by ensuring that your account contains sufficient available funds for all of your transactions.

When you do not have enough available funds in your account to cover a check or other item, we consider the check or debit an insufficient funds item. Whether we return or pay the item depends on a number of factors, including the amount of the item and the past activity in your account. In either case, we charge you insufficient funds fee(s). The insufficient funds fee(s) that apply to your account are described in the list of charges we may make available to you. Funds in your account are not available if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal.

We may without notice to you and in our sole discretion, either return, decline or reject any insufficient funds item unpaid or pay it and overdraw your account. In any case, we overdraw your account to pay an item; you agree to immediately repay us, without notice or demand from us. We may use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us. You also agree to pay all collection costs and reasonable attorneys' fees. If we pay items by overdrawing your account on one or more occasions, we are not obligated to continue paying any future insufficient funds items. We may stop paying your insufficient funds items without notifying you.

When you do not have enough available funds to pay all items on a given day, we may pay one or more items, and return other items, in any order we deem appropriate. We may change our processing order at any time without notice to you. Some processing orders may result in more insufficient funds fees than others.

In any case, we may charge you a fee for each insufficient funds item whether we pay, permit, return, decline or reject the item. We may also charge you an overdraft fee for overdrafts created by fees or by deposited items that are returned to us unpaid.

For some business accounts, if your account is overdrawn, we may also charge you interest on the overdraft amount up to the highest rate permitted by law.

## **Overpayments and Reversals**

If funds to which you are not entitled are deposited or credited to your account by mistake or otherwise, we may deduct these funds from your account, even if this causes your account to become overdrawn. If the funds were transferred from your account, we may reverse the transfer. We can do this without giving you any prior notice or demand.

## **Paying checks and other items**

We may debit your account for a check or other item drawn on your account either on the day it is presented to us for payment, by electronic or other means, or on the day we receive notice that the check or item has been deposited or cashed at another financial institution – whichever is earlier. Items include all orders and instructions for the payment, transfer, or withdrawal of funds from your account. As examples, item includes a check, draft, image, substitute check, ACH transaction, pre authorized payment, automatic transfer, telephone-initiated transfer, withdrawal slip, and in-person payment, transfer or withdrawal instruction. If you have insufficient funds to cover the check or item, we decide whether to return it or to pay it and overdraw your account. (See “Overdrafts and insufficient funds” in this Agreement.)

We may determine your balance and make our decision on an insufficient funds item at any time between our receipt of the check, item or notice and the time we must return the item. We are required to determine your account balance only once during this time period. When you deposit checks or other items that are drawn on another account with us, we may treat such items as presented to us for payment on the banking day that they are received by our office that processes checks drawn on the other account.

## **Postdating orders**

If you write and postdate a check – that is, date the check for presentment on a future date – we may pay it and charge it to your account, even if it is presented for payment before its date. You may ask us not to pay a postdated check before its date, if the check has not already been paid. If you do not want us to pay a postdated check, you must place a stop payment order on it. (See “Stop payment orders” in this Agreement.)

## **Processing and collecting foreign items**

We may refuse to accept a foreign item for deposit or collection. If we accept a foreign item for deposit or collection, you assume all the risks relating to or arising from: the collection process, a late return and changes in currency exchange rates.

If we accept a foreign item for deposit or collection, we may decide not to credit the value of the foreign item to your account until we receive the proceeds in cleared funds from the paying bank. However, if we do credit your account, the credit is provisional and we may reverse the credit at any time.

If we accept an item for deposit which we later determine to be a foreign item, we may decide that the item needs to be sent for collection. If so, we may reverse any credit given for the item and mail the foreign item to

you at the address we have for your account statement. You may ask us to send the item for collection.

When we send a foreign item for collection, you understand that the foreign item is sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control. As examples, we are not liable for a default by any bank or agent involved in the collection process or for the loss of the foreign item in transit. We may send the foreign item through a correspondent bank or directly to the paying bank. We may deduct our fees and the fees and charges assessed by the paying bank and any agents involved in the collection process from any amount collected or from your account.

If you request, we will try to determine the status of a collection. You agree to pay all fees and charges related to such a request. We may refuse your request if less than 30 business days have passed since we first processed the collection.

If a foreign item is returned to us unpaid for any reason at any time or is initially paid but then subsequently returned unpaid, we may charge your account for the foreign item and mail the foreign item to you at the address we have for your account statement. Even though the item is returned unpaid, we may charge you for our collection fees and for fees and charges assessed by the paying bank and any agents involved in the collection process.

When we credit your account for a foreign item, we use our applicable currency exchange rate on the day we credit the item to determine the amount of the credit. When we reverse a credit for a foreign item, we use our applicable currency exchange rate on the day we reverse the credit to determine the amount of the debit. Currency exchange rates are highly volatile and our rate on the day of the credit is likely to be different (sometimes very different) than our rate on the day of the debit. You understand and agree that this may result in a currency exchange loss to you.

## **Processing Transactions and Posting Orders**

**Processing and Posting Orders.** Posting transactions to your account impacts your account balance. Posting a credit increases your balance. Posting a debit or hold reduces your balance.

We use automated systems to process transactions and then to post transactions to accounts. When we process multiple transactions for your account on the same day, you agree that we may in our discretion determine our posting orders for the transactions and that we may credit, authorize, accept, pay, decline or return credits, debits and holds in any order at our option.

We may accept, pay, or charge checks and other items to your account in any order we choose, at our discretion. We may establish different priorities or



categories for checks and other items, and process checks and other items, according to the priorities we establish. As examples, we may process checks in the order we receive them at the processing center, in check number order or in dollar amount order (either from highest to lowest dollar amount or from lowest to highest dollar amount). We may use different methods in different states. We may also use some combination of these methods. We may change the order that we use to process checks and other items at any time without notice to you. Even if we provisionally post checks or other items to your account during the day, we may treat them as if we received all of them at the end of the day and process them in any order we choose.

In many states, we use the dollar amount order and process checks starting with the highest dollar amount first. When you do not have enough available funds in your account to cover all the items presented that day, this method may allow some of your more important items to be paid; however, it may also result in more insufficient funds fees than other methods. We may choose our processing method at our sole discretion, regardless of whether additional fees may result.

**Changing Posting Orders.** You agree that we may determine in our discretion the orders in which we post transactions to your account.

You agree that we may determine in our discretion the categories, the transactions within a category, the order among categories, and the posting orders within a category. We sometimes add or delete categories, change posting orders within categories and move transaction types among categories. You agree that we may in our discretion make these changes at any time without notice to you.

**Debit Categories.** We may establish different categories for different types of debits, move debits types among categories, and determine posting orders within each category and among categories. A category may include more than one type of debit. Some categories may have different posting orders than other categories. We may change categories and orders within categories at any time without notice.

**Transactions Made After Business Day Ends.** Some transactions that you make late in the day, after our business has ended, are still included in the balance for your account that we use to process your transactions for that day.

We show these transactions as posting to your account on our next business day, even though we included them in the balance we use to process your transactions on our prior business.

## **Provisional Credit**

In connection with any dispute regarding an account, we may choose to credit the account pending completion of our investigation of the matter. If we determine the account is not entitled to such credit, then we may reverse the provisional credit to the account, even if that reversal results in an overdraft.

## **Purchasing or creating checks or deposits slips**

When you write checks on your checking or money market account, you should use checks that we provide. We offer checks in a number of styles and at various prices. We may subtract from your account any fees for checks you purchase from us.

If you create or someone else creates your checks, the checks must meet our check printing specifications.

If you create or someone else creates demand drafts or remotely-created checks that are drawn on your account, the demand drafts or remotely-created checks must meet our check printing specifications.

You should always use your personalized deposit slips with your preprinted name and account number. If you use a blank deposit slip from our banking center, rather than your personalized deposit slip, we are not liable to you for any encoding errors.

If you create, use or deposit checks, substitute checks, demand drafts (drawn on your account or another account), or remotely-created checks that do not meet our specifications, we may refuse to accept them. If you have deposited them, we may return them. If they contain features that do not allow for accurate imaging, we have no liability to you and we may return them to you.

You are liable for any costs or losses that may result from the use or creation or deposit of nonstandard checks, substitute checks, demand drafts, or remotely-created checks – for example, if our equipment is unable to read or process them.

You may obtain a copy of our check printing specifications by calling the telephone number on your statement or by asking your account representative.

Checks you write or deposit may be converted into electronic images during the check collection and return process. If you elect to have your checks printed by a vendor that has not been approved by us, or you use check stock or features (such as security features) that cause critical data to disappear or be obscured upon imaging, or you complete your check in a way (such as using a lightly colored ink), that causes critical data to disappear upon imaging, or you deposit an item with any of these features you agree to bear the risk of loss. You also agree to bear the risk of loss if you use or deposit items with check stock that contains defects, such as printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

## **Reclear service**

With this optional service, if a check you deposit or we cash is returned to us unpaid for certain reasons, we submit the check for payment a second time to the financial institution on which it is drawn. This is known as reclearing the check. We reclear checks that are returned to us for the following reasons: “nonsufficient funds” and “uncollected funds.” Generally, we do not notify you that an item has been returned unpaid before we reclear it.

If a recleared check is returned to us unpaid again, we charge your account for the amount of the check. We generally total these checks each day, debit your account for the total amount and send the checks to you. The checks serve as a notice of nonpayment.

We charge a fee for each recleared check. This fee is described in the list of charges we give you.

To request this service, call us at the telephone number on your statement or ask your account representative.

For more information, see “Returned items” in this Agreement.

## **Registered Warrants**

**Issuance of Registered Warrants.** Certain statutes may allow public agencies or other entities to convert checks to interest bearing warrants, or to issue interest bearing warrants payable at a future date, generally referred to as “Registered Warrants.” You may not issue Registered Warrants drawn on your account with us, prior to receipt of our agreement, which may contain additional terms, on a case by case basis. If you issue Registered Warrants, we reserve the right to require that you open and use a separate account. We also reserve the right to accept or reject, deposit or negotiate Registered Warrants, with or without paying interest, as set forth below, and we will have no liability to you for doing so.

**Depositing or Cashing Registered Warrants.** Registered warrants are subject to special rules. Registered warrants are essentially a state or other entity’s “promise to pay” or “IOU,” and may accrue interest. Registered warrants may not be immediately payable and may bear a maturity date stating when they become redeemable.

We have no obligation to accept registered warrants from you, whether for deposit, encashment, or otherwise even if that warrant is redeemable.

We generally will not cash registered warrants. If we inadvertently or otherwise cash a registered warrant for you, as consideration for our providing cash to you for the registered warrant, you agree that we may keep any and all interest paid to us for such registered warrant upon redemption. We may also debit your account if a Registered Warrant is returned unpaid or we receive

notice that the Registered Warrant will be returned unpaid. If we accept a Registered Warrant for deposit, you represent that the registered warrant is payable to you, valid, that you are eligible to receive interest on the registered warrant, and that it is free of liens and claims by others.

We may, at our discretion, accept registered warrants for deposit from you subject to the certain terms and conditions, including but not limited to the following examples.

- We may require that you be an existing customer, and we reserve the right to decide which customers may be eligible on a case by case basis.
- We may require that such deposits are made in certain ways or channels, such as in person and over the counter by the payee. We may reject or not accept Registered Warrants payable to a third party. We may restrict certain channels, such as not accepting Registered Warrants for deposit through ATMs or remote capture.
- We may place a hold on a Registered Warrant that may be longer than our standard hold or funds availability policies.
- We may refuse to accept any registered warrant you attempt to deposit, with or without cause or prior notice to you, even if we have accepted registered warrants from you in the past for deposit.

Regardless of the period of time you may have held the registered warrant prior to its transfer to us, as consideration for our agreeing to accept a registered warrant for deposit from you, you agree that we may either keep any and all interest paid to us or we may credit interest to your account. At our option, should we determine to pay to you the amount of interest due, we will credit the amount due to the account into which you deposited the registered warrant, generally within 30 days of the date of deposit, provided that we have first received the interest, and provided such account is then open. If you have not provided certified taxpayer identification number to us, this interest payment, if any, may be subject to backup withholding.

As a condition to accepting a Registered Warrant from you, you agree to execute and deliver to us any document we request to evidence the assignment and to ensure payment of the registered warrant, and all related accrued interest to us, if the interest is kept by us in accordance with this Agreement.

### **Remote deposit service**

See “Check transformation services” in this Agreement.

### **Returned items**

This section applies to items that are deposited to your account or that we cash for you, and to items

drawn on us as well as items drawn on other financial institutions.

If a cashed or deposited item is returned to us at any time for any reason, including for any breach of warranty claim, or according to any law, regulation or rule (including a clearing house rule) by the bank on which it is drawn or any collecting bank, we may accept that return and charge the item back to your account, without regard to whether the other bank finally paid the item or returned the item in accordance with any applicable midnight deadline or clearing house rule (i.e., the check has “cleared”). We may also debit your account for any interest you may have provisionally earned on the item.

We charge you a fee for each returned item. Different fees may apply to domestic and foreign items. These fees are described in the list of charges we may make available to you. We may debit your account for a returned item, including an indemnified copy of the original item, or an image replacement document (“IRD”), and/or image at any time on or after the day it is returned to us by electronic, automated clearing house (“ACH”) or other means, or on the day we receive notice that the item is being returned to us – whichever is earlier. We are not liable for any action or inaction to recover payment of a returned deposited item. If one of your cashed or deposited items has been paid by the financial institution on which it is drawn and is later returned to us with a claim that there is a breach of warranty (for example, it bears a forged or missing endorsement or is altered in any way), that the item is counterfeit or a duplicate, bears an unauthorized signature, contains an encoding error or should not have been paid for any other reason, we may debit your account for the amount of the item (plus any associated fees) and pay the amount to the claiming party. We are not obligated to question the truth of the facts that are asserted, to assess the timeliness of the claim or to assert any defense. We do not need to notify you in advance of our actions related to the claim.

If you have insufficient funds to cover a returned item, we may overdraw your account. (See “Overdrafts and insufficient funds” in this Agreement.) We are not liable to you if there are insufficient available funds to pay your items because we withdraw funds from your account, or in any way restrict your access to funds due to a hold or debit to your account, in connection with a returned item. You agree to immediately repay an overdraft caused by the return of a cashed or deposited item.

For each returned item drawn in a foreign currency, we charge your account the U.S. dollar equivalent of the item. We calculate the U.S. dollar equivalent by using our applicable exchange rate that’s in effect when we process the returned item.

We charge your account for the amount of the returned items, either individually or for the total amount of such checks each day, and send any returned checks to you. The checks serve as a notice of nonpayment.

In some cases, the financial institution on which the original item is drawn may send us an electronic notice of return, an indemnified copy of the original item, an image of the original item, or an image replacement document (“IRD”), instead of returning the original item. We may act on, and you agree to be bound by and to accept, such electronic notice of return, indemnified copy, image or IRD, just as if the original item had been returned.

If we receive advance notice from another financial institution that it is returning to us unpaid a check of \$5,000 or more, we generally send you a notice. We do not send a notice about returned checks of less than \$5,000.

Unless we are reclearing your items, we may charge your account for a returned item at any time on or after the day it is returned to us by electronic or other means, or the day we receive notice that the item is being returned to us – whichever is earlier. (See “Reclear service” in this Agreement.)

## **Right of setoff**

We may exercise the right of setoff – that is, the right, under certain circumstances, to use funds in your account to pay any debts you owe us, either before or after any default. We may recover funds you owe us from any of your accounts with us or our affiliates. If your business is a sole proprietorship, we may also charge any of your personal deposit accounts. If your business is a partnership, we may also charge the personal deposit accounts of any general partner.

For accounts with more than one owner, we may treat any name on the account as the sole owner and agent of that account; and we may exercise this right to pay individual debts of any owner. If we use funds from a time deposit account, the funds withdrawn are subject to the early withdrawal penalty. After we exercise this right, we mail a notice to the address you gave us for your account.

We may take or setoff funds from your account before we pay checks and other items drawn on the account. We are not liable to you for dishonoring items where our action results in insufficient funds in your account to pay your checks and other items.

This section does not limit or reduce our rights under applicable law to charge or setoff funds in your accounts with us for direct, indirect and acquired obligations you owe us.

## **Sample signatures**

To determine the authenticity of your signature, we may refer to the signature card for any signature specimen, you give us, or refer to a check or other documents upon which your signature appears. We may use an automated process to reproduce and retain your signature from a check upon which your signature appears. If you create your own checks or obtain them from someone else, and we cannot accurately verify your signature on a check by comparing it with a check that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature.

## **Signature requirements**

We may transfer funds between your accounts, transfer your account to another banking center, and take other action on the oral or written instructions of any signer. We may require hand-written authorization for some actions. We may require the signatures of all signers, if we are aware that there are conflicts among you. We do not offer accounts on which two or more signatures are required for a withdrawal or to take other actions. If you indicate on your signature card, on any other account opening documents, or on the physical check that more than one signature is required for a withdrawal or to take other actions, this indication is for your own internal procedures and is not binding on us. We may pay out funds from your account if the check, item, or other withdrawal instruction is signed by any one of the persons authorized to sign on the account. We have no liability to you if we do this.

## **Stale-dated checks**

If a stale-dated check – that is, a check dated more than six months in the past – is presented for payment against your account, we may pay the check and charge it to your account. If you do not want us to pay a stale-dated check, you must place a stop payment order on it. (See “Stop payment orders” in this Agreement.)

## **Stop payment orders**

You may ask us to stop payment on individual checks, or on two or more checks with consecutive numbers, if the item or items have not already been paid. If you give us oral instructions, we may require you to confirm them in writing.

We charge a fee for a stop payment order based on the length of time you select and regardless of the reason for the stop payment. This means that if you report a check as lost or stolen, we may charge a fee for the stop payment we place on the check. Fees for the various stop payment periods are described in the list of charges we may make available to you.

You may cancel the order at any time. If you give us oral instructions, we may require you to confirm them in writing. We cancel the order automatically when the account on which the check is drawn is closed or transferred. The stop payment order expires after the stop payment period ends, unless you reissue or renew the stop payment order. If the check is presented for payment after the stop payment order expires or is canceled, we may pay the check.

You agree to review your account statements prior to requesting any stop payment order. You also agree to not request any stop payment order relating to a check that is shown as paid on such statements.

In some cases, we may pay a check even if a stop payment order is in effect. For example, if an office of this bank, or another person or entity, becomes a "holder in due course" of a check that you ask us to stop, we may still pay the check.

Our cutoff time for receipt at a banking center of a stop payment or postdating order relating to your account is 10:00 a.m. local time or, if later, one hour after the banking center opens each business day. The cutoff time relates to our obligation to pay or return checks and other items. If we receive an order before this cutoff time, we may review items presented for payment against your account on the previous business day, to determine whether we need to return any of them to comply with the order. If we receive the order after the cutoff time, we may not review items presented on the previous business day. For example, if you give us a stop payment order after our cutoff time and the item you want to stop was presented for payment the previous business day, your order comes too late to stop payment on the item.

**For a stop payment order, we need the following:**

- Your name
- Your telephone number
- Your account number
- The check/serial number (as shown in the Magnetic Ink Character Recognition [MICR] line)
- For two or more checks with consecutive numbers, we will need the beginning and ending numbers.
- The exact amount of the check, if known. If you give us the amount of the check, we need the exact amount in dollar and cents. If you give us the wrong amount, we may pay the check.

We may also need the date of the check and the name of the party to whom the check was made payable.

**Manual stop payment orders.** You may request a stop payment order in writing, by telephone or by facsimile transmission. If you give us oral instructions, we may require you to confirm them in writing.

The stop payment takes effect after we verify that



the check is unpaid and has had a reasonable opportunity to act upon your request. We examine our records for your account for only the last 90 calendar days.

You may choose to have the stop payment order last for specific periods, up to 36 months.

To obtain cutoff times for manual stop payment orders call us at the telephone number on your statement or ask your account representative.

**Online stop payment orders.** Our Online Stop Payment Service allows you to electronically place or cancel stop payment requests. The specific procedures for using these services, the applicable stop payment periods, and the bank operating hours and cutoff times are described in the applicable user documentation. To request more information, call your account representative.

An online stop payment request will not be effective until we review our records for the time period specified in the applicable user documentation, determine that we have not paid the check during that period, and respond to you with an acceptance.

For a stop payment order placed electronically, we need the MICR serial number, the exact amount (dollars and cents) of the check for which payment is being stopped, and the account number on which the check is drawn. You understand and agree that we can only stop the payment of a check that shows exactly the same MICR serial number and amount as that included in the related stop payment order, since our computer system identifies a check on the basis of the MICR serial number and the exact amount of the check.

**Confidential information.** With the Online Stop Payment Service, we provide you with user identification codes, passwords and user documentation. This information is confidential. You must safeguard the information and adopt security procedures to prevent disclosure of the passwords and codes and unauthorized use of the user documentation. You may not make any copies of the user documentation without our prior consent. Notify us promptly by telephone, confirmed in writing, if any information is lost or its confidentiality is compromised.

**Automated Clearing House (ACH) stop payment orders.** From time to time, you may receive ACH debits to your account from senders you previously authorized to debit your account. You may ask us to stop payment on a future ACH debit to your account, if the item has not already been paid. You are responsible for notifying your sender that you have revoked your previous authorization for ACH debits.

You may request an ACH stop payment order in writing or by telephone. If you give us oral instructions, we may require you to confirm them in writing. If you do not, we may remove the stop payment after 14 days. Otherwise, your order will be effective for six months.

**For an ACH stop payment order, we need the following information:**

- Your name
- Your telephone number
- Your account number
- The type of account (checking/savings)
- The exact amount of the ACH debit (if known)

We may also ask for the date that the prior ACH debit from this sender posted to your account, so that we can obtain the company name and company identification number used by your sender and printed on your statement. Otherwise, you must provide us with the company name and the company identification number.

If you give us the amount of the ACH debit item, we need the exact amount in dollars and cents. If you give us the wrong amount, we may pay the item. If you do not know the amount, we can place the stop payment based on the company name and company identification number of the sender; but this may stop all ACH items from this sender. If you give us the wrong company identification number, or if the sender changes the company identification number, we may pay the item. The ACH stop payment takes effect within three banking days. A banking day is Monday through Friday, excluding holidays.

We charge a fee for the ACH stop payment order. Fees for the stop payment are described in the list of charges we may make available to you.

You may cancel the ACH stop payment order at any time by notifying us in writing. We cancel the order automatically when the account on which the item is drawn is closed or transferred. The ACH stop payment order expires after the stop payment period ends, unless you reissue the stop payment order. If the ACH item is received after the stop payment order expires, we may pay the item.

For more information about this type of stop payment, ask your account representative.

## **Sub-accounts**

For regulatory accounting purposes, we may classify checking accounts as two sub-accounts: a checking sub-account and a savings sub-account. For interest-bearing checking accounts, we calculate and pay interest at the same rate and in the same way on both sub-accounts. For non-interest-bearing checking accounts, we do not pay interest on either sub-

account. We may transfer funds between these sub-accounts. We record the sub-accounts and any transfers between them on our internal accounting records only. Otherwise, the sub-accounts are subject to the same terms as the checking and savings accounts described in this Agreement.

### **Substitute checks, indemnified copies, images and image replacement documents**

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

You agree that you will not deposit “substitute checks,” as defined by federal law, or image replacement documents (“IRD”) that purport to be substitute checks and have not been previously endorsed by a bank, unless we have agreed in advance with you to accept them. If you deposit such an item, you give us the same warranties and indemnities that we, as a reconverting bank, would give under CHECK 21 or applicable law or regulation; and you agree to reimburse us for losses, claims, costs and expenses we may incur. If you provide us with an electronic representation of the original check (for example, via an image cash letter) or a substitute check or image, for deposit into your account instead of an original check, you agree to reimburse us for all losses, claims, costs and expenses we incur because the substitute check or image resulting from the electronic representation does not meet applicable substitute check standards or image standards or causes duplicate payments.

In some cases, we may be sent an indemnified copy of your original check, an IRD, a substitute check, or an image, instead of the original item.

We may act upon presentment of an IRD, indemnified copy or substitute check or image, and pay these items against your account, just as if the original item had been presented.

### **Third-party endorsements**

Checks and other items you want to deposit or cash must be endorsed by all parties to whom the items are payable. We may require that any third parties have their bank verify or guarantee their endorsements.

## **Transferring ownership**

You may not transfer ownership of an interest-bearing deposit account or any other account to another party, unless we close the account and open a new account in the name of the new account holder.

## **Unclaimed property**

Unclaimed property laws require us to turn over abandoned accounts to the applicable state. The applicable state is generally the state listed in the address for your account statement. Your account is usually considered abandoned if you have not performed at least one of the following activities for the period of time specified in the applicable state's unclaimed property law:

- Made a deposit or withdrawal
- Written to us about the account
- Otherwise shown an interest in the account, such as asking us to keep the account active

You usually need to perform such activity. Therefore, bank charges and interest payments, and automatic deposits and withdrawals, are not considered activity.

Before we turn over an abandoned account, we may send a notice to the address we currently show for the account statement. If mail we previously sent to this address was returned, we may not send this notice.

If you have not performed at least one of the activities described in this section for a period of time that we consider substantial, then (unless prohibited by the law of the state where we maintain your account) we may charge dormant account fees on the account, in addition to regular monthly maintenance and other fees; and, if the account received interest, we may stop paying interest on the account. We may also refuse to pay items drawn on or payable out of the account. If you re-establish contact with us, we do not have to reimburse you for these fees; and we are not liable to you for any interest that would otherwise have accrued on your account.

## **Unpaid items**

If we decide not to pay a check or other item drawn on your account, we may return the original or image or remote deposit or substitute check or a copy of the item; or we may send an electronic notice of return and keep either the original or copy of the item in our records. If we send an electronic notice or image of return you agree that any person who receives the electronic notice or image may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

## **Value-dating**

If you or we suspend, incorrectly post, or incorrectly route a transaction, we may value-date the transaction – that is, we may assign to the transaction the correct dollar value for the date it should have taken place, had it not been incorrectly handled.

## **Zero balance accounts service**

Our Zero Balance Account (ZBA) Service (“ZBA Service”) allows you to have funds transferred, on an automated basis, between accounts with us, as described below. This Service may be restricted to certain account types.

With this Service, you may have funds transferred to an account when the balance falls below a certain amount, or from an account, when the balance rises above a certain amount, or both. We transfer the amount required to meet the account balance you specify, provided there are sufficient funds and no account restrictions on the account.

Unless you and we have otherwise agreed in writing, you may elect to have funds transferred to or from accounts of a U.S. Subsidiary, provided that (i) the U.S. Subsidiary’s accounts are domiciled in the United States of America, (ii) you represent and warrant that such U.S. Subsidiary has authorized us to transfer funds between its accounts and your accounts and between its accounts and other accounts in the Service relationship via transfers through your account, and (iii) you provide us with such documentation as we may request in connection with such transfers.

In addition to any other representations and warranties set forth in this Agreement, on and as of each day we provide this Service to you, you represent and warrant to us that:

- The debiting of your ZBA account is not inconsistent with any legal, contractual or other restriction on use of the account.
- Each entity linked to your ZBA account is a Subsidiary, unless expressly agreed to in writing by us. Each entity linked to your ZBA account is located and organized in the United States.
- You maintain your books and records separately from each of the other ZBA account owners, conduct your business solely in your own corporate name and in such a manner so as not to mislead creditors or other third parties with whom you are dealing, or otherwise observe all requisite corporate formalities as a separate and distinct entity;
- You will not permit any lien, encumbrance, security interest or any interest, right or claim of

any third party (other than ours or as may arise by operation of law) to exist with respect to any ZBA account, unless expressly agreed to in writing by us.

- Each ZBA funds transfer using the ZBA Services and fees paid to us in connection with these Services will be made strictly on an arms-length basis for valid business purposes as inter-company transactions between you and your affiliates. Each such transfer is not made for the purpose of concealing assets, hindering, delaying or defrauding any other ZBA account owner or any third party, and is for consideration at least equivalent in value to the amount of each such fund transfer.
- You are solvent on the date that any funds transfer is made and such transfer would not render you insolvent.
- No case, proceeding or other action under any law in any jurisdiction has been filed or initiated (i) relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered against you, or seeking to adjudicate you as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to you or your debts or (ii) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for you or for all or any substantial part of your assets.
- You have not made a general assignment for the benefit of creditors.

You agree that you will notify us in writing upon becoming aware that the representations and warranties in any of the last three bullet points above have become untrue in any respect or that there is a reasonable prospect that any of the conditions described in such bullet points will exist in the future.

**Designated Balances Excesses.** You acknowledge and agree that funds in any ZBA account in excess of any Designated Balance will be swept into the concentration account at the end of each business day and commingled with the funds of other ZBA account owners. Some or all of such funds will be used to pay the obligations and liabilities of other ZBA account owners and/or to repay overdrafts occurring in the concentration account or any other ZBA account. Such funds will not be reimbursed to a ZBA account through the ZBA Services, nor are we responsible for ensuring any such reimbursements. You assume the risk of any loss of funds from your ZBA account by reason of the above transfers.

**We have no duty to investigate or monitor.** You are responsible for, and we shall not be responsible for, the (i) making appropriate accounting entries in your books and records as shall be necessary to give proper effect to the ZBA funds transfers, (ii) tracking or tracing the flow of funds among ZBA accounts pursuant to the ZBA Services, (iii) reviewing or monitoring the use of funds that are transferred out of any ZBA account, (iv) repaying any transfers that are deemed loans, and (v) paying any interest due on funds held in the ZBA accounts. Furthermore, we are not responsible for, nor be required to inquire into, your accounting treatment of the ZBA funds transfers or of the bona fides of the representations and warranties set forth in the Agreement and (a) through (e) above. We are not a party to or aware of agreements between affiliates, transactions, corporate structure, authorizations or relationships as you have represented herein, and are providing the ZBA Services based on the premise that each account owner is dealing with one another, ourselves and other third parties on an arms' length, good faith basis, and that the representations and warranties herein remain true and correct for the duration of the ZBA Services.

**Setoff.** We may set off any amount owed to us by you in connection with these ZBA Services, including any transfers or payments invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, in connection with any bankruptcy, administration, receivership, liquidation, reorganization, insolvency, receivership, moratorium or other such action affecting creditors generally or otherwise, against any balance standing to the credit of your ZBA account or any other account you hold with us or our affiliates at any of our branches or banking centers, whether or not such account is part of the ZBA Services, and may do so whether or not the deposit is in the same currency as your liability to us.

**Resolving Disputes or Controversies.** Without regard to the "Resolving Disputes or Controversies" sections of this Agreement, any dispute or controversy that arises from an ZBA Services will be decided by a judge without a jury in a United States of America federal or state court (except as you and we expressly agree otherwise in writing). **This means that in these instances you waive any right to a trial by jury in any action or proceeding and agree that such action or proceeding will be tried before a judge without a jury.**

## **Taxpayer information**

We are required to report annually to you, to the Internal Revenue Service (IRS) and to the appropriate state revenue authority, interest payments that total \$10 or more during the year on each of your checking or money market savings account with us. Accordingly, when you open an account, we are required to obtain – and each U.S. citizen or resident must give us – a certified U.S. Taxpayer Identification Number (TIN) and correct information regarding your backup withholding status. (See below.)

You are required to provide a TIN for all accounts that you open. Typically, we require that you provide your TIN before we will open an account. If a valid TIN is not provided after a reasonable amount of time, your account will be closed. When you sign the agreement for an account, you sign under penalty of perjury that you have provided the correct name, TIN and backup withholding status.

For sole proprietors, the TIN is usually your Social Security Number (SSN). For all other entities, the TIN is the entity's Employer Identification Number (EIN).

If you fail to furnish us with a certified TIN, if the IRS notifies us that the TIN you gave us is incorrect, or if the IRS notifies us that you failed to report all your interest and dividends on your tax return, we are required to withhold at the prescribed statutory percentage on the interest credited to your account and pay it to the IRS. This percentage – known as backup withholding – is not an additional tax. You may claim amounts withheld and paid to the IRS as a credit on your federal income tax return.

Accounts held by U.S. corporations and non-profit organization qualified under section 501(a) of the Internal Revenue Code are generally exempt from backup withholding. Accounts held by exempt foreign persons or entities may also be exempt from information reporting, as discussed below.

We comply with Foreign Account Tax Compliance Act (FATCA) as mandated by U.S. federal tax law. We will withhold on certain payments when required by such law.

### **Exempt foreign person or entity**

Accounts held by a foreign person are exempt from taxpayer information reporting, with the following exceptions:

- If you are a foreign individual and you reside in a country in which we are required to report deposit interest of \$10 or more paid on your account, interest income will be reported to you and the IRS on IRS Form 1042-S.
- If you certify on a Form W-8ECI that your deposit



account is effectively connected with the conduct of a trade or business within the United States, interest of \$10 or more paid on your account will be reported to you and the IRS on IRS Form 1042-S.

For accounts with joint or multiple owners, all owners must qualify and certify their status as foreign persons.

For U.S. tax purposes, you generally qualify as a foreign person exempt from backup withholding, if you are the beneficial owner of the account and you meet all of the following conditions:

- You are not a citizen or resident of the United States;
- You do not have a U.S. Immigration Card; and
- You are not present in the United States for at least 31 days during the current year; or if you are present for this period of time, the total number of days you were present in the United States during the current and two preceding years does not equal or exceed 183 days, when multiplied as follows: for days in the current year, multiply by one; for days in the first preceding year, multiply by 1/3; and for days in the second preceding year, multiply by 1/6.

The definition of an exempt foreign person or entity also generally includes foreign corporations, partnerships, estates and trusts – provided that the entity is formed under the laws of a foreign country. Some additional limited exemptions exist. For more information, consult your tax advisor.

If you are married to a U.S. citizen or resident and have made an election under section 6013(g) or (h) of the Internal Revenue Code, you may not claim to be an exempt foreign person.

As an exempt foreign person or entity, you must provide the address of your permanent foreign residence or the entity's principal foreign office on the Form W-8 that you give us.

You must also renew your status as an exempt foreign person or entity prior to the end of the third calendar year following the year in which you last certified your status. During that year, we send you the necessary forms. If you fail to renew your status by the last day of the fourth calendar year, your interest payments are subject to backup withholding. Some limited exemptions from this renewal process exist. For more information, consult your tax advisor.

If you become a U.S. citizen or resident after opening your account, you must notify us within 30 days and provide us with your certified name and TIN.

**Penalties**

If you fail to furnish a correct TIN, you may be subject to a \$50 IRS fine. If you make a false statement that has no reasonable basis and that results in no backup withholding, you may be subject to a \$500 IRS penalty. If you deliberately give false information, you may be subject to criminal penalties.

## Glossary

The following are some important terms that appear in this publication.

**Average Daily Ledger Balance** – Sum of your daily ledger balances for the month, divided by the number of calendar days in the month.

**Bank of America** – Bank of America, N.A.

**Banking Centers** – Our banking centers also include financial centers.

**Banking days** – Monday through Friday, excluding bank holidays. Sometimes referred to in this Agreement as business days.

**Check 21** – The Check Clearing Act for the 21st Century Act, 12 CFR 229 or any successor legislation. Any IRD created and deposited to your account must comply with all the requirements mandated by Check 21.

**Client Email** – Any electronic email address designated by you through any means acceptable to the Bank

**Communications** – All notices, periodic statements, disclosures, agreements, Internal Revenue Service forms, and all other documents and communications related to any products, Services or accounts offered, or made accessible, by us.

**Electronic Image** – An image conforming to the applicable industry standard for images.

**Designated Balances** – Such dollar amount as may be designated in writing from time to time by the concentration account owner on behalf of each zero balance account (ZBA) holder in connection with the ZBA account such holder owns, subject to our prior written agreement. Unless otherwise agreed, the Designated Balance for each ZBA account shall be zero. The concentration account owner shall provide us with at least five Business Days' prior written notice of any change in the Designated Balance.

**Image – An Electronic or a Paper Image.** With regard to an Image of an original paper check, the check Image that is deposited with us pursuant to any account Agreement between you and us shall be a “check” and/or an “item” relating to the collection of checks generally, the Uniform Commercial Code, the Expedited Funds Availability Act, Regulation CC, any other federal or state check law, and federal and clearing house rules, to the same extent as that original is a “check” or an “item,” as applicable.

**Ledger Balance** – Preceding day's balance, plus current day credits, minus current day debits.

**Materials** – The Software, user identification codes, passwords, codes, keys, test keys, security devices,

embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation we provide to you.

**Non Written Signature** – A facsimile, stamp, digital, electronic or other type of non-written signature.

**Paper Image** – An Image that is paper reproduction of the related physical check (the original paper item or substitute check created from an image of the original paper item) created with image technology.

**Request** – A request by means permitted under the relevant Wire Transfer Service or International Electronic Funds Transfer Service to transfer funds to or from a specified account or beneficiary (including standing instructions) or to amend or cancel a prior request to transfer funds.

**Website** – Any internet website, digital or online access channel (including access through an application on any type of device, including but not limited to, mobile devices for use in accessing your accounts or any services)

**Service** – A treasury management service provided in a specific Bank location and/or covered by another agreement with the Bank.

**Shell Bank** – A financial institution that does not have a physical presence in any country.

**Subsidiary** – Any entity in which more than 50% of the ownership interest is owned, directly or indirectly, by you.

**User Documentation** – Any written information we provide you, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service. User Documentation may vary from one jurisdiction to another. Current applicable User Documentation is available upon your request.

