

## **Commerce Bank Health Savings Account Internet Banking and Bill Pay Agreement**

This Agreement governs your use of the Commerce Bank HSA Internet Banking services (collectively, the “Services”). The Services include Commerce Bank HSA Bill Pay Service, Online Account Service, Data Export Service, Electronic Statement Delivery and E-Mail.

1. **Meaning of some words.** In this Agreement, (a) “we”, “us”, “our” “Bank” and “Commerce Bank” mean Commerce Bank, 1000 Walnut, Kansas City MO 64106; (b) “you”, “your” and “yours” means the person who has opened a Health Savings Account with us and any person the HSA owner authorizes to use a Service; and (c) “business day” means Monday through Friday, excluding Federal holidays. Reference to time shall be to Central Time.

2. **Accepting This Agreement.** Your use of any of the Services evidences your acceptance of the terms and conditions of this Agreement and is subject to the terms or instructions appearing on the help screens or on-line at the time you use a Service (the “Online Instructions”).

3. **Commerce Bank HSA Deposit Account and Statements.** The Service only accesses your Commerce Bank HSA Deposit Account. You will get a monthly account statement electronically (see *Section 11*) or on paper if you have requested paper statements and agreed to pay the additional charge.

4. **Available Services.** In addition to the Services described in this Agreement new Services and functions may be added from time to time. Also, we may modify the features or functions of a Service from time to time. Any new modified Services, features or functions will be described on the Commerce Bank HSA website or within your Online Account Service.

5. **Fees.** Currently, we don’t charge any monthly fees or specific usage fees for the Services, but we could in the future. If we do, we will notify you. Any fees we would charge for the Services would be in addition to the fees applicable to your HSA Deposit Account as described in the Commerce Bank Pricing, Fees, and Disclosures you agree to when opening your account. You authorize us to debit the HSA Deposit Account for any fees.

6. **Your Computer & Software.** To access the Services, you must have a personal computer with access to the Internet (“Equipment”), and a software product that is compatible with the Commerce Bank HSA website and allows you to browse the Internet through an Internet Service Provider (the “Software”). It is your responsibility to maintain, at your expense, your Equipment, Software and access to the Internet. We are not responsible: (1) for errors or failures from any malfunction of your Equipment or Software or for any computer virus, worms, Trojan horses or other similar harmful components that may affect or cause damage to your Equipment or Software that may result, directly or indirectly, from your use of the Services or: (2) to provide maintenance or support for any Equipment or Software. We reserve the right to update, terminate, discontinue or change the Equipment or Software necessary to access the Services.

7. **Your Access Codes.** To gain access to the Services, you will need a web access password (“Password”) and user identification (“Access ID”). For certain Services you will also need to supply your personal identification number we have supplied to you in regard to your Commerce Bank HSA Debit Card, and the number associated with that card (collectively, “Card Data”). The Password, Access ID or Card Data may collectively be called the “Access Codes.” The Password will either be selected by you upon enrollment or will be supplied to you by us. You can change your Password on-line at any time. We recommend that you change the Password we provide to you. You agree to keep all Access Codes confidential to prevent unauthorized access to your accounts and use of the Services. For reasons of security, we may cancel your Password or Access ID at any time without notice. All electronic communications and instructions using these Access Codes will be deemed to be valid and authentic and we may act on such communications and instructions. If you permit any other person to use the Service or your Access Codes or other means to access your account, you will have authorized that person to access your Commerce Bank HSA Deposit Account and you are solely responsible for any transactions that person initiates or authorizes from your Commerce Bank HSA Deposit Account. You also agree that all electronic communications will be given the same legal effect as written and signed paper communications.

## 8. Commerce Bank HSA Bill Pay Service.

(a) **Enrollment.** You must separately enroll in the Commerce Bank HSA Bill Pay Service. You may use the Commerce Bank HSA Bill Pay Service to make one-time, future-dated, and recurring payment transactions (scheduled to repeat on a regular frequency for the same amount) from your HSA Deposit Account.

(b) **Payment Instruction.** When you initiate a payment instruction through Commerce Bank HSA Bill Pay, you authorize us, or our agent, to withdraw the necessary funds from your HSA Deposit Account on the business day your payment instruction will be processed (“Processing Date”). On the Commerce Bank HSA Bill Pay screen, the Processing Date is referred to as “Date to Send.” Because of the time it takes to process a payment to be sent to a payee, there will be a delay between the Processing Date and the date you schedule the payment to be delivered to the payee (“Delivery Date”). To provide adequate time for payments to be received by a payee, the date you select as the Delivery Date must be at least 5 business days prior to the date your payment is due, excluding any applicable grace periods. If you do not, you will be fully responsible for all finance charges, late fees or actions taken by the payee. When a Payment instruction is initiated after 8:00 p.m. or on weekends or federal holidays, the instruction will be considered received on the next business day. The Commerce Bank HSA Bill Pay Online Instructions will show you the general lead-times (the number of days before your scheduled Delivery Date that the Processing Date will occur) for your payees. We reserve the right to change the lead-time for any payee at any time without notice to you. We recommend that you frequently check the lead-time indicator for your payees in order for you to accurately determine the Processing Date for a payment instruction. These lead-time indicators are for your convenience only and you must schedule your payments as set forth in this section in order to qualify for the recovery described in *Section 14(a)* of this Agreement.

You agree that you will not initiate a payment unless there are, or will be, sufficient funds in your HSA Deposit Account on the Processing Date. If there are insufficient funds available in such account on the Processing Date, the payment will be cancelled. We will send you a payment failure notification at the email address we have on file.

(c) **Limitations on Payments.** You agree that you will not use the Commerce Bank HSA Bill Pay service to make payments: (i) to payees located outside the United States; (ii) to taxing authorities or other governmental entities; or (iii) required under court order (e.g., child support). No single payment may exceed \$9,999 and the daily limit for all payments is \$20,000.

(d) **Incomplete Payments.** Payments will be made either by a check, or by electronic transfer, depending on arrangements with the payee. If a payee fails to cash a check within the time period we establish for cashing checks or if it rejects as an electronic transfer, we will thereafter credit your account where the payment initially came from in the amount of the original payment instruction (without interest).

(e) **Canceling Payments.** You can order us to cancel any payment initiated through the Commerce Bank HSA Bill Pay Service by canceling the instruction to make that payment. Cancellations initiated using the online cancellation feature must be received no later than 8:00 p.m. Central Time on the business day prior to the Processing Date. The Processing Date for a specific payment is listed on the “Pending Payment” screen. Please see the Commerce Bank HSA Bill Pay Online Instructions as to how to cancel the instruction in this way. Once the withdrawal has been made from the specified account on a Processing Date, it will not be possible to stop that payment from being made.

For recurring payments, you can stop the recurring payment within the Bill Payment Service by following the online instructions.

(f) **No Duty to Monitor Payments.** Commerce Bank does not have any duty to monitor the payments that are made through Commerce Bank HSA Bill Pay. Payments made using the Commerce Bank HSA Bill Pay service will be reported to the IRS as normal distributions from your HSA. Payments that are not used to pay for qualified medical expenses may be included in your gross income for tax purposes and may be

subject to an additional penalty tax. We have no duty to review your payments to determine if they are used for qualified medical purposes.

**9. Online Account and Electronic Statements.** You may use this Service to view certain online account statements. Please see Online Instructions for more detailed instructions and limitations on the availability of statements for viewing via this Service.

**10. Data Export Service.** You may export account information for use with your personal financial management software (e.g., Quicken® or Microsoft Money®) (“PFM Software”) or other spreadsheet software (e.g., Microsoft Excel® or Lotus 1.2.3®) for up to 90 days. This service is not compatible with all versions of PFM Software. PFM Software cannot be used to initiate bill payments under the Commerce Bank Bill Payment service.

**11. Electronic Statement Delivery.**

(a) **Enrollment.** When you have enrolled in your Commerce Bank HSA, you will receive Electronic Statement Delivery. When you enroll, you confirm that: (i) You have Equipment and Software necessary to allow you to receive electronically, view and print periodic statements for your HSA Deposit Account and communications normally provided with periodic statement for deposit accounts, including, but not limited to, change of terms notices, annual privacy notices and other notices required by applicable law or any agreement between you and us (each a “Legal Communication”).

(b) **E-mail Notice.** Whenever any periodic statement for your HSA Deposit Account or any Legal Communication is made available to you at our website, we will send to the most recent e-mail address you have provided to us for use with Electronic Statement Delivery, a notice that the periodic statement or Legal Communication is available to you at our website. The periodic statement or Legal Communication will be available to you at the website for 13 months. Except when applicable law requires otherwise, this notice will be the only notice we send to you about the availability of the periodic statement or Legal Communication at the website. You acknowledge that the notice will constitute delivery of the periodic statement or Legal Communication, whether or not you view or print such statement or Legal Communication. In the event your email address changes and you no longer receive the email notice, you must call 1-877-472-1070 to update your new email address with us. You cannot request information, services or paper copies of periodic statements, Legal Communications or any other items or terminate enrollment in Electronic Statement Delivery by responding to the notice by e-mail (including using the reply function), and we will not be responsible for responding to any such request you make by responding to the notice by e-mail.

(c) **Acknowledgment of Risk.** You acknowledge that there are risks associated with sending a notice to an e-mail address, including, but not limited to, disruption of service and, because e-mail is not private or secure, unauthorized access to the notice and information it contains.

(d) **E-mail Address.** It is your responsibility to notify us of any change in the e-mail address to be used by you with Electronic Statement Delivery.

(e) **Paper Copies.** For as long as we are required by applicable law to keep a copy of any periodic statement for your HSA Deposit Account or any Legal Communication, you may request a paper copy of the periodic statement or Legal Communication by contacting us at 1-877-472-1070. You must pay us any applicable charge for the paper copy. Your request for the paper copy will not constitute a request to cancel Electronic Statement Delivery or discontinue receipt of electronic statements. We may start sending paper statements at any time for any reason, including, but not limited to, because we believe that you are not receiving notices that a periodic statement for an HSA Deposit Account or a Legal Communication is available to you at our website or because we believe that a change in Equipment or Software required for Electronic Statement Delivery creates a risk that you may not be able to receive electronically, view and print periodic statements for HSA Deposit Accounts and Legal Communications.

(f) **Termination of Electronic Statement Delivery.** We may terminate your enrollment in Commerce Bank's HSA Electronic Statement Delivery by notifying you. The termination will take effect when we specify.

12. **Electronic Mail.** External e-mail sent over the Internet is not a secure method to send messages to us. We will not respond nor are obligated reply to an email or email reply from you to us.

13. **Privacy.** Disclosure of information about you and your accounts and transactions are governed by Commerce Bank's Privacy Policy, as it may be amended from time to time.

14. **Liability.**

(a) If we do not properly complete a Commerce Bank HSA Bill Payment on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. There are, however, exceptions. We will not be liable, for example, if:

- On the Processing Date: (i) you did not have sufficient funds in the account, (ii) the account is closed, or (iii) the money in the account is subject to hold or a court order restricting its removal or is the subject of a dispute.
- Your account with the payee was not in good standing when you sent a Commerce Bank HSA Bill Pay instruction.
- You failed to properly follow the instructions for the use of the Services or you did not comply with the terms of this Agreement.
- If any payment would exceed the available balance of your account.
- We, in good faith, believe that the instruction was given without your authorization, has not been properly authenticated or is fraudulent or we have other reasonable cause not to honor an instruction for your or for our protection.
- The information you provide to us about the intended payee was incorrect, the payee fails to properly credit any payment that we make, or the payee fails to cash a payment check within the time period we establish for cashing checks or if it rejects an electronic transfer.
- Your Equipment or Software is not properly functioning or we are prevented from properly completing the transfer or payment by a technical malfunction and when the instruction was given, you knew that the Services were not functioning properly.
- The failure to make the transfer or payment is justified by any provision of this Agreement, any provision of any other agreement between you and us concerning any of your accounts or by applicable law.
- If circumstances or persons beyond our control prevent or delay the making of the payment or transfer, despite reasonable precautions that we have taken. Such circumstances include but are not limited to computer failure, failure of any funds transfer system, denial of service attack telecommunication outages, acts of war, terrorism, postal delays, postal strikes and other labor unrest, delays caused by payees, fires, floods, and other natural disasters.

(b) Commerce Bank is only responsible for performing the Services as expressly stated in this Agreement. There is no guarantee that access to the Services will be available at all times and we shall not be liable if you are unable to access the Services. **The Services are provided "as is" and, except as prohibited by law, we and our service providers disclaim any express or implied warranties concerning the Services, Equipment or Software, including, but not limited to any warranties of merchantability, fitness for a particular purpose or non-infringement of any parties' proprietary rights.**

(c) In no case shall Commerce Bank or any of our service providers be liable for any loss of data, profit, goodwill, or special, punitive, indirect, exemplary or consequential damages of any kind or nature suffered by you arising out of or related to this Agreement, the Software, the Equipment or the Services whether or not such claim for damages is based on tort or contract or whether we had been advised of the possibility of such damages or should have known of the likelihood of such damages, except as may be required by applicable law. In states that do not allow the exclusion or limitation of liability for indirect special or incidental or consequential damages, Commerce Bank and our services providers' liability is limited to the extent permitted by applicable law.

(d) Except to the extent that we are liable under the terms of this Agreement or an agreement that otherwise governs your HSA Deposit Account, you agree to indemnify and hold us, our directors, officers, employees and agents harmless from all loss, liability, claims demands, judgments and expenses arising out of or in any way connected with this Agreement or the performance of a Service. This indemnification is provided without regard to whether the claim for indemnification is due to the use of the Services by you or your authorized representative.

**15. Notice of Lost or Stolen Access Codes or Unauthorized Use.** If you believe that any of your Access Codes have been lost or stolen or compromised or that any transaction involving your HSA Deposit Account may have been made without your authorization, you should contact us immediately. We strongly recommend that you do so by telephoning us at the Customer Service Center number 1-877-472-1070 since that is the best way of limiting your losses. In addition to notifying us, we also strongly recommend that you immediately change your Passcode.

**16. Liability for Unauthorized Use.** You may have to bear the loss of money taken from your HSA Deposit Account in any transaction or series of transactions initiated by using the Access Codes. You could lose all the money in your account. How much of the loss you will have to bear will depend on when we are given a notice that your Access Code has been lost or stolen or are given a notice, or become aware of circumstances, indicating that a transaction through the Services involving your HSA Deposit Account has been or may be initiated by using your Access Codes without your authorization (see *Section 7*). Tell us AT ONCE if you believe your Access Code or Card Data have been lost or stolen. Call us at 1-877-472-1070 to provide such notice. Telephoning is the best way of keeping your possible losses down. To the extent a transaction is an electronic funds transfer, under the Federal Reserve Board's Regulation E, if we are given the notice or become aware of those circumstances within 2 business days after the date you learn of the loss, theft or possible unauthorized transaction, you will have to bear (subject to limitations under Federal law) as much as \$50 of the loss. If we are NOT given the notice or do NOT become aware of those circumstances within those 2 business days and we can show that we could have stopped the taking of the money had we been given the notice during those 2 business days, you will have to bear (subject to limitations under Federal law) as much as \$500 of the loss. If you do not report the unauthorized transaction to us within 60 days after the date we send or deliver the statement to you, you will have to bear (subject to limitations under Federal law) as much as \$500 of the loss occurring before the end of those 60 days and, if we can show that we could have stopped the taking of the money had the unauthorized transaction been reported to us during those 60 days, all of the loss occurring after the end of those 60 days. For a good reason (such as a long trip or hospital stay by you), we will extend the time periods. You agree to assist us in our efforts to recover any funds that were paid without your permission or consent. You may also have other rights and responsibilities related to your Commerce Bank HSA Deposit Account as described in the Deposit Account Agreement provided to you at account opening.

**17. Cancellation.** You can only cancel the Services if you close your account with us. To close your account, please contact us by phone at our Customer Service Center. In the case of the death of an account holder, we require written documentation and a death certificate mailed to us at the address provided. The cancellation will not take effect until we receive the notice and have a reasonable time to act on it. We may cancel all or any one of the Services immediately without notice for security reasons. Once the cancellation by you or us takes effect, we will not complete any transaction initiated through the Services (for example, any order to transfer funds or any pending or recurring Commerce Bank HSA Bill Pay transaction). The cancellation by you or us will not affect any of your obligations under this Agreement.

**18. Notices and Change of Address.** Any notice we send you concerning this Agreement or the Services may be sent: (i) to the most recent external e-mail address you provided to us in connection with the Services; or (ii) to your current mailing address shown in our records. If your mailing or external e-mail address changes, you must promptly notify us by calling our Customer Service Center at 1-877-472-1070. It is your responsibility to keep our records up to date with your current mailing address and current email address.

**19. Amendment.** Except as otherwise required by law, rule, or regulation, Commerce Bank may change the terms of this Agreement (including Services fees) from time to time and at any time. When changes are made, we may notify you by mail, through e-mail and/or by posting the amendment at the Commerce Bank HSA Website. We will update the Agreement on the Commerce Bank HSA Website on or before the effective date of the change, unless the change must be made before we can update the Agreement in order to maintain the security of the system or unless a law, rule or regulation requires that the change be made at an earlier time. If such a change is made, and it cannot be disclosed without jeopardizing the security of our system, this Agreement will be updated within 30 days after the change. You may choose to accept or decline changes by continuing or discontinuing the use of the Services. Your continued use of the Services shall constitute your acceptance of the amended Agreement.

**20. Waiver.** We may waive, or delay exercising, any of our rights under this Agreement without notifying you. Such waiver or delay will not affect any other rights we may have. The waiving of any of our rights on any occasion shall not be deemed to be a waiver of such right in the future. This Agreement may not be amended by course of dealing.

**21. Assignment.** We may assign our rights and delegate our duties under this Agreement to any of our affiliates or any other party.

**22. What Law Applies.** This Agreement shall be governed by the laws of Missouri without regard to its conflict of law provisions and, to the extent required, under Federal law.

**23. Entire Agreement.** This Agreement is the final and complete agreement between you and us concerning the Services and supersedes, prior agreements, oral or written, or other communication between you and us related to the Services including any marketing or other similar materials. Captions are for reference purposes only. If any part of this Agreement is determined by a court to be invalid, the rest will remain in effect

**24. Errors or Questions.** In case of errors or questions about the Services, please contact us as soon as possible, as follows:

Telephone us at: 1-877-472-1070

If you think that your statement is wrong or if you need more information about a transfer listed on the statement. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

Tell us your name and account number. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information. Tell us the dollar amount of the suspected error. If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

**25. Authorization.** You authorize us or our agents and service providers to take on your behalf any action necessary to complete any transaction initiated through the Services. This authority includes, without limitation, the withdrawal of funds from your HSA Deposit Account effective as though you had signed a check or withdrawal form to make the withdrawal.