

# Deposit Accounts



Deposit Agreement

Funds Availability Policy

Electronic Fund Transfer  
Act Disclosure

ATM Card Agreement



**Commerce Bank®**  
Member FDIC

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**This Agreement contains an agreement to arbitrate, a class action waiver, and a jury trial waiver. Please read the entire Section IV titled “DISPUTE RESOLUTION - ARBITRATION” and Section V titled “DISPUTE RESOLUTION – JURY TRIAL WAIVER.” You have the right to opt out of the agreement to arbitrate by notifying us within the time period specified in Section IV.**

## **I. GENERAL PROVISIONS**

### **A. Legal effect of agreement.**

When you open, use or maintain a deposit account with Commerce Bank (“account”), you are agreeing to the terms of this Deposit Agreement (referred to as “Agreement”). It is a legally binding contract. An “account” means a checking, savings, or money market account or a certificate of deposit. In this Agreement, the words “we,” “us,” and “our” mean Commerce Bank and the words “you,” “your,” “yours,” and “yourself” mean the holder(s) of the account (“accountholder(s)”) identified on the signature card or other account documents and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. For purposes of this Agreement, “business day” or “banking day” means any day except Saturdays, Sundays and federal holidays. Read this information carefully and keep it with your other account records.

By opening, using, or maintaining a deposit account with us, you acknowledge that you have reviewed and understand this Agreement and agree to be governed by these terms. You authorize us to manage, process or otherwise maintain your account as set forth in this Agreement, as amended from time to time.

### **B. Subject of agreement.**

This Agreement includes the terms that apply to your account with us, or any one of our predecessors and replaces and supersedes any previous deposit agreements. It also contains important regulatory disclosures relating to the availability of deposited funds, electronic fund transfers, and substitute checks. Separate schedules of fees, disclosures, and other materials governing the account are also incorporated into this Agreement. This Agreement also contains the agreement governing your ATM card. Certain accounts involve special rules in addition to the rules of this Agreement. For example, an Individual Retirement Account is, in addition to this Agreement, subject to an Individual Retirement Account Custodial Agreement. Online Banking, debit cards, bankcards with ATM access, and other services may be subject to additional agreements. Non-personal account owners may also be subject to our Treasury Services Agreement and related service agreements. If any of the terms or disclosures of this Agreement conflict with the terms of any specific service agreements with us or any other disclosures, the terms of the specific service agreements and other disclosures will govern. The headings in this Agreement are for convenience of reference only and will not govern the interpretation of the provisions.

### **C. Effect of state and federal laws and regulations; severability.**

Our relationship with you is regulated by state and federal laws and regulations, including the laws of the United States, the Uniform Commercial Code, regulations of the Board of Governors of the Federal Reserve System, operating letters of the various Federal Reserve Banks, and regulations, rules and interpretations of regulatory agencies, clearinghouse associations and fund transfers systems (together referred to as “applicable law”). If any term, clause, or provision of this Agreement comes into conflict with applicable law or shall be determined by a court of competent jurisdiction to be void, invalid, or unenforceable as written, such conflict or invalidity shall not affect the validity or operation of any other term, clause, or provision and such conflicting or invalid term, clause, or provision shall be deemed to be severed from

the Agreement and superseded by a consistent, valid, enforceable term, clause, or provision that most closely matches the intent of the original term, clause, or provision and the remainder of the Agreement shall continue in effect.

#### **D. Governing law/jurisdiction.**

This Agreement will be governed by applicable federal law and, to the extent not preempted by applicable federal law, by applicable law of the state in which the account was, or is considered, opened ("account domicile state"). Any account opened by mail, telephone or electronic means will be considered opened in Missouri, unless the first named accountholder resides in a state in which we maintain a branch. In that event, the account will be considered opened in the state in which the first-named accountholder resides.

You agree that, as between you and us, any fund transfer conducted via an ACH entry or through the SWIFT or Fedwire fund transfer system shall be governed by the applicable laws of the state of Missouri, including Missouri's Uniform Commercial Code Article 4A.

#### **E. Limitation on bringing legal action.**

An action or proceeding by you to enforce an obligation, duty or right arising under this Agreement or by law with respect to your account(s) or any account service(s) must be commenced within one (1) year after the cause of action accrues.

#### **F. Liability.**

You agree, for yourself (and the person or entity you represent if you act as a representative or agent of another) to the terms of this Agreement, including without limitation schedules of fees. You authorize us to deduct these fees directly from the account balance as they accrue. You will pay any additional reasonable fees for services you request which are not covered by this Agreement. On joint and certain other accounts, each of you also agrees to be jointly and severally liable for any and all fees and other amounts owed to us in connection with the account, including but not limited to, overdrafts and indemnification liabilities under this Agreement. This is the case whether the fee, obligation, or liability is caused by you or by another with access to your account. Payment of such fees, amounts, and obligations is due immediately, and can be deducted directly from the account balance whenever funds are available. An account debit for part of the amount due is not a waiver of the balance due. You have no right to defer payment of these liabilities, and you are liable regardless of whether you signed the item or benefited from the service or activity which created the liability.

#### **G. Costs and attorneys' fees/indemnification/limitation of liability/waiver of claims.**

You agree to reimburse us for any and all claims, damages, losses, liabilities, expenses and, to the extent permitted by law, costs including reasonable attorneys' fees and collection agencies' fees, we incur with respect to the collection of overdrafts or other amounts due from you under this Agreement, or otherwise in connection with your account. You agree to pay our attorneys' fees and costs, in addition to any obligations described above, in the event that we shall prevail in any legal proceeding arising out of your account or this Agreement, including any legal proceeding that you initiate arising out of your account or this Agreement. You also agree to indemnify, defend, and hold us harmless from any and all claims, damages, losses, liabilities, expenses, and costs including attorneys' fees, arising in connection with services provided under this Agreement, except to the extent arising out of our gross negligence or willful misconduct. We will not be responsible for any loss to you caused by an event that is beyond our control, including, but not limited to, natural disasters, wars, acts of terrorists, riots, strikes, computer failure, or the loss or interruption of power,

communication, or transportation facilities. We will not be responsible for any acts or omissions of a third party not under our direct control, including without limitation, a clearinghouse, service provider, or Federal Reserve Bank. In no event shall we be liable to you for special, punitive, or consequential damages from the performance of services in connection with the account, unless otherwise required by law. There are no third party beneficiaries of this Agreement and we will not be responsible to any third party for services performed in connection with this Agreement.

**WAIVER OF CLAIMS: YOUR FAILURE TO REPORT ANY ACCOUNT DISPUTE OR DIFFERENCE, ERROR, UNAUTHORIZED TRANSACTION, FEE OR OTHER CHARGE ASSESSED TO YOUR ACCOUNT(S) UTILIZING THE ERROR RESOLUTION GUIDELINES AND THE NOTICE DEADLINES SET FORTH IN SECTION III.B OF THIS AGREEMENT, OR IN SECTION VII OF THIS AGREEMENT FOR AN ELECTRONIC FUND TRANSFER ("EFT") TRANSACTION OR SERVICE, SHALL PRECLUDE YOU FROM RECOVERING ANY AMOUNTS FROM US AND YOU HEREBY WAIVE ALL LEGAL CLAIMS RELATED TO ANY SUCH FEES OR SERVICES ASSOCIATED WITH YOUR ACCOUNT THAT WERE REFLECTED ON YOUR STATEMENT, OR THAT ARE ON OUR FEE SCHEDULE. YOU ACKNOWLEDGE THAT THIS IS A MATERIAL TERM TO THE CONTRACT BETWEEN YOU AND US. YOU FURTHER ACKNOWLEDGE THAT IF YOU ARE NOT SATISFIED WITH A FEE OR SERVICE THAT YOU MAY CHANGE BANKS AT ANY TIME. IF YOU HAVE A SEPARATE CONTRACT WITH US ASIDE FROM THIS AGREEMENT, THAT CONTRACT WILL CONTROL AS TO ANY APPLICABLE NOTICE PROVISIONS.**

#### **H. Monitoring and recording telephone calls, online chats, video recording of premises.**

We may monitor and record any telephone conversation or online chat with you at any time without further notice to you, as allowed by law. You consent in advance to any such monitoring or recording. We may record video of our premises including all activity and transactions. The decision to record any conversation or premises shall be solely at our discretion and we shall have no liability for doing so or failing to do so. Any such audio or video recordings, or chat transcripts, are our exclusive property.

#### **I. Waiver of rights by bank.**

We reserve the right to waive or delay the enforcement of any of the terms of this Agreement with respect to any transaction, any series of transactions with you, or any bank product. Any such waiver or delay will not affect our right to enforce any of our rights with respect to other customers or to enforce any of our rights with respect to later transactions with you and is not sufficient to modify the terms and conditions of this Agreement. For example, our payment of overdrafts on your account does not waive our right to return items or other debits for insufficient funds. If a fee is waived because of a certain condition, for example, your participation in a package account product or private banking, the fee may be assessed without notice upon termination of that condition or because the condition no longer qualifies for a fee waiver.

#### **J. Customer's waiver of notice.**

You waive any notice of non-payment, dishonor or protest regarding any item credited to or charged against your account. For example, if a check that you deposited is dishonored and returned to us, we are not required to notify you of the dishonor.

#### **K. Claims and disputes concerning ownership or authority with respect to your account.**

If another person or entity makes a claim against the funds in your account, or if we have reason to believe there is or may be a dispute over matters such as the ownership of the account or the authority to withdraw funds, we may, in our sole discretion, (i)

continue to rely on current signature cards, resolutions, or other account documents, (ii) honor the competing claim upon receipt of evidence we deem satisfactory to justify such action, (iii) place a hold on all or part of the funds until the dispute is resolved to our satisfaction, or (iv) pay the funds into an appropriate court of law for resolution pursuant to an interpleader or other action. It is intended that this provision provide a remedy for us notwithstanding that state law may limit the availability of interpleader. You agree that we may withhold from funds subject to an interpleader or other action our costs, including reasonable document production costs or attorneys' fees. We will not be liable for any items or debits that are dishonored as a consequence of holding or interpleading funds for these reasons.

#### **L. Amendment of agreement.**

We may amend this Agreement by sending you a notice or including a message on or with your account statement. The notice or statement will be sent to the address shown on our deposit records, or, if applicable, you will be notified of its availability electronically, or it will otherwise be made available to you, and will be effective whether or not you receive it. We may change our fee schedules subject to any notice required by law. Although your acceptance of a change may not be required, your continued use of your account after the effective date of any amendment or change, or after a reasonable time, not to exceed ten (10) calendar days, if no such date is stated, will constitute your acceptance of the terms of the amendment or change. We may amend the terms of the fee schedules or other terms applicable to a particular account, based upon the account relationship or other factors.

#### **M. Termination of agreement/closing account.**

We may close any account and return the balance to you at any time, in our sole discretion, with or without prior notice. If your account reaches a zero balance, we reserve the right to consider the account closed. You may close your account at any time upon notice to us. We may require, in our discretion, that such notice be given in writing or in person. If you close your account, you must terminate all banking services related to the account (for example, debit cards or internet banking) and preauthorized debits and credits (for example, bill payments, payroll or social security). A subsequent deposit or credit may re-open the account. Closing the account, by you or by us, will not release you from any fees or other obligations incurred before the termination, those you incur in the process of closing your account or those you incur if the account reopens due to a subsequent deposit, debit, or credit or failure to terminate any banking service related to the account. Closing the account does not release you from liability on outstanding items. This Agreement will continue to govern matters relating to your account which arose before the account is closed or which may arise later, whether or not the account is reopened under the provisions of this Agreement.

#### **N. FDIC insurance.**

Funds in your account(s) with us are insured by the Federal Deposit Insurance Corporation (FDIC). For a more detailed explanation of coverage or additional information about FDIC insurance, you may visit a Commerce branch or contact the FDIC online at [www.fdic.gov](http://www.fdic.gov) or by calling 1-877-ASKFDIC (1-877-275-3342).

#### **O. Credit reports, inquiries, disclosures and reporting agencies.**

We may make inquiries from reporting agencies that we consider appropriate to help us verify your identity and determine if we should open, continue to service, collect, or close your account. Our inquiries may include verification of employment, credit report information, and other information we determine is necessary to protect our interests and comply with industry requirements.



Upon request, we will inform you whether we requested information about you from a reporting agency. If we did request information about you from a reporting agency, we will provide you with the name, address, and telephone number of the reporting agency.

Without notice to you, we may disclose your account information to reporting agencies or other third parties that we have determined have a legitimate purpose to access the information, including, but not limited to, the following parties or under the following circumstances:

- Account information services, such as ChexSystems, Inc.;
- In response to a subpoena, summons, court order, administrative order, or other legal discovery process;
- Those third parties for which account information is necessary to complete transactions;
- In connection with collection of indebtedness or to report losses we have incurred;
- To comply with a professional or regulatory entity; and/or
- A party conducting what we reasonably believe to be a legitimate credit inquiry, including information to verify the existence or condition of an account, for a lender, merchant, or credit reporting bureau.

If your account is closed because of abuse, neglect, negative balance, or dormancy, we may report your account information to services such as ChexSystems, Inc. or other reporting agencies. Account information that might be provided to ChexSystems, Inc. or other reporting agencies may include, but is not limited to, your name, address, tax identification number, driver's license number, and circumstances related to the closing of your account. ChexSystems, Inc. or other reporting agencies may report this information to others. This information may adversely impact your ability to open an account at other financial institutions.

## **P. Communication and permission to contact.**

Any conflict between what you or our employees may say or write will be resolved by reference to this Agreement. All written and oral communication will be in English, unless otherwise required by law. If any non-English documents are presented to you or if any conversations are had with you in a language other than English, it is as a courtesy and does not obligate us to present any future documents or conduct future business with you in any language other than English except as otherwise required by law. You agree that to service your accounts, or should your accounts become delinquent or have a negative balance, the bank or its agents may contact you using any methods as allowed by law including but not limited to: telephone calls to any number that we obtain or you provided; online chat via Online Banking; email, text, SMS, or other forms or methods of communication such as contacting you using an auto-dialer or pre-recorded or artificial voice calls or messages. You also agree that you shall be solely responsible for any fees charged by your internet or cellular provider that you incurred through such contact.

## **II. OWNERSHIP OF ACCOUNTS**

### **A. Important information about procedures for opening a new account.**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents. This information will be entered into our records and may be used to determine ownership of accounts.

## **B. Account ownership and eligibility.**

The sections below identify various forms of account ownership. We reserve the right to refuse some forms of ownership on any or all of our accounts, and to offer additional forms of ownership. When opening an account, you recognize that it is your responsibility to determine the appropriateness, tax consequences and legal effect of the form of ownership of the account, including any beneficiary designations. You must satisfy any eligibility requirements we have for the type of account you choose. We may discontinue offering or change eligibility for any of the account types. In the event the signature card and/or other form of resolution or authorization is unavailable or incomplete, information from our deposit system or other records may be relied upon to determine the form of ownership of the account, or the appropriate signers for the account. If you choose to change the account ownership in any manner, we may require you to close the account, submit identification documents and other appropriate documentation, and open a new account reflecting the new ownership.

## **C. Individual accounts.**

You are the sole owner of the account. You may appoint an attorney-in-fact with respect to the account. Otherwise, you are the only person authorized to use the account. Appointments of agents and attorneys-in-fact are governed by the terms of Section II.H of this Agreement.

## **D. Joint accounts.**

A personal account in the names of two (2) or more persons is held in joint tenancy with right of survivorship and not as tenants in common. Any accounts held by spouses are as tenants by the entirety if this form of ownership is recognized by the account domicile state. If two (2) or more joint account owners survive, the survivors hold the account as joint tenants with right of survivorship. Some of the other rules that govern joint accounts are described in Section III.C of this Agreement.

## **E. Transfers to minors' accounts.**

Accounts established under the Uniform Transfers to Minors Law, Uniform Gift to Minors Act, or other corresponding state law, are governed by the applicable state law. This is an account in the name of a custodian for the benefit of a person who is a minor under such law at the time that the account is opened (the "child"). The child is the owner of the funds in the account although the custodian is the only party permitted to act on the account. We have no duty or agreement whatsoever to monitor or ensure that the acts of the custodian (or successor custodian) are for the child's benefit. The child's Social Security Number/Taxpayer Identification Number (SSN/TIN) is used for the Backup Withholding Certification. Only one (1) custodian and one (1) minor are permitted on each account. Although the custodian has the obligation to turn the funds over to the child upon the child reaching the age of majority under the law, the custodian authorizes us, at our discretion, to satisfy the custodian's duty to transfer funds to the child upon the child's request at such time.

## **F. Death of account owner(s).**

Upon the death of a joint account owner, the surviving joint account owner(s) agree to promptly notify us, and the balance in the account belongs to the surviving account owner(s), subject to our right of setoff and security interest in the account (or right to charge the account for any debt the deceased joint account owner or any surviving joint account owner may have owed us). We may require anyone claiming a deceased owner's account funds to, (i) provide proof of death of the original or joint account owner(s) or listed beneficiaries, (ii) verify the identification of any person claiming funds from the account, and (iii) indemnify us for any losses resulting from our honoring that claim. This Agreement will be binding upon any heirs or legal representatives of any account

owner. We may continue to process all transactions on an account until we are properly notified of an account owner's death and we have had a reasonable opportunity to act. We may also return, as required, deposits such as any government or retirement benefit made after the death of the account owner. Surviving joint account owner(s) are responsible for any overdrawn account balance resulting from transactions initiated by the deceased joint account owner or due to any reclamation of government or retirement benefits. Accrual and payment of interest to an individual account with no joint account owners may cease effective the date of death of the owner, and we may reverse from the account any interest payments made after the date of death of the owner and continue charging any applicable fees and service charges.

### **G. Payable on death accounts.**

An account where the account owner names one (1) or more parties as beneficiaries is considered a Payable on Death Account (a "POD Account"). A POD Account is governed by the applicable law of the account domicile state. Accounts in Missouri are established pursuant to Section 362.471 R.S.Mo. and not under the Nonprobate Transfers Law of Missouri. A POD Account belongs to the owner(s) during their lifetimes and not to the POD Account beneficiary or beneficiaries. If the POD Account has two (2) or more joint account owners living, the account will be treated as a joint account with rights of survivorship. Upon the death of a joint account owner, the balance in the account belongs to any surviving account owner(s). If (i) all account owners are deceased, and (ii) the beneficiary is then living, and (iii) the requirements under Section II.F of this Agreement have been satisfied, a beneficiary shall then have the right to claim the balance of the account funds as of the date of death of the last surviving account owner, minus transactions authorized by the account owner or deposited benefit payments made prior to death, or funds subject to our right of setoff and security interest in the account. If two (2) or more beneficiaries are named and survive the death of all owners, these beneficiaries will own the funds in equal shares, without right of survivorship. If a beneficiary dies before the account owner(s), neither that beneficiary's heirs nor estate have any interest in the funds upon the death of the account owner(s). Upon request for payment by any beneficiary, we will pay to all of the beneficiaries surviving at the death of the last surviving owner, the balance of the account minus transactions authorized by the account owner, deposited benefit payments made prior to death, or funds subject to our right of setoff and security interest in the account, as of the date of the account owner(s) death either by check payable jointly to all these beneficiaries or by separate checks in equal shares. If the account was opened at a branch located in Kansas, the funds may be subject to a claim of the Secretary of Social and Rehabilitation Services pursuant to K.S.A. 39-709(g). Account owners may at any time remove any or all of the beneficiaries or name additional beneficiaries; provided, however, all of the account owners must agree to the change on a form acceptable to us. We may request proof of death of the original owner(s) and any beneficiaries and require identification from any person requesting funds from the account.

### **H. Agency and fiduciary accounts (including powers of attorney).**

Any individual or entity acting as guardian, conservator, personal representative, trustee, custodian, attorney-in-fact or in some other fiduciary capacity ("Agent") must be designated to us as such on the signature card or other account documentation or record. We are authorized to follow the directions of an Agent regarding an account until we receive written notice that the agency or fiduciary relationship has been terminated or revoked and we have a reasonable opportunity to act on such notice, but in no event less than five (5) business days, provided we may recognize such termination earlier. We are not liable for misapplication of funds from your account by your Agent. The Agent or fiduciary shall be solely responsible for acting in accordance

with applicable laws and the terms of any court order, trust or other document establishing and covering the agent or fiduciary relationship. We are not responsible for insuring compliance with such laws, court orders or documents. When an account is held in the name of two (2) or more persons as Agents or in a fiduciary capacity, each authorizes the other to act independently with respect to the account. We are not required to recognize any power of attorney and we may require that any power of attorney form be approved by us. If we do allow the transaction of business by its use, you and all joint account owners will be bound by the actions taken by the Agent. We also reserve the right to restrict the types or sizes of transactions we will permit an Agent to conduct on a case-by-case basis and may require the Agent to present the original documentation establishing their authority before conducting any transaction.

## **I. Business and other non-personal accounts.**

Business accounts are those established by any sole proprietorship, partnership, corporation, fiduciary, limited liability company, limited liability partnership, association or other entity, other than in an individual capacity, operated for profit. Other non-personal accounts include those established by a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for a profit; and accounts established by governmental units including the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam or political subdivision thereof.

We may require a resolution, authorization, agreement or other documents to evidence the authority of individuals to act on behalf of the business or other non-personal account owner. We are not required to recognize any resolution or authorization that is not our form. The business or other legal entity agrees to provide us promptly a new resolution, authorization or other documentation as we may request upon any change in authority. We are authorized to follow the directions of a person designated as having authority to act on the entity's behalf in all matters and transactions with respect to the account until we receive a written resolution or authorization effecting a change in the authorized signers and have a reasonable time to act on such change, but in no event less than five (5) business days, provided we may recognize such change earlier. A change in authorized signers may require that the account be closed and a new account opened, as we may determine in our sole discretion.

Each person whose name appears on the signature card, or any resolution or authorization, represents and agrees that such person is authorized to execute all documents in the capacity stated therein, has furnished all documents necessary to evidence that authority and will furnish any other documents in such form as we may request from time to time. If the account is under a trade name, you certify that you are doing business under that name and that no one else has any right, title or interest in that trade name. You agree to indemnify us against any loss or liability, including court costs and attorneys' fees to the extent permitted by law, arising from our acceptance for payment or credit, checks or other items drawn to the order of that trade name.

Earnings in the form of interest or credits will be paid on the collected balance, which includes deposits of cash and checks drawn on us and non-cash items (for example, checks) for which we have received credit in accordance with schedules adopted from time to time by us. Interest will be charged on the use of uncollected funds.

We are prohibited from processing restricted transactions through your business account under the Unlawful Internet Gambling Act of 2006. We reserve the right to deny authorization requests from online gambling merchants, whether or not online gambling is illegal in the state in which you reside.

### **III. GENERAL RULES GOVERNING DEPOSIT ACCOUNTS**

#### **A. Notices and periodic account statements.**

##### **1. Notices.**

All notices concerning your account are effective when mailed to you at the address shown on our deposit records or, if applicable, you will be notified of its availability electronically, or it will otherwise be made available to you. Notice from us to any one (1) holder of an account constitutes notice to all holders of the account. We may provide notices as a message on your periodic account statement or an insert with your periodic account statement. Unless otherwise provided in this Agreement, any notice you give to us must be in writing and is effective when it is actually received by us and we have a reasonable opportunity to act, but in no event less than five (5) business days. Written notice to us must be sent to ATTN: Branch Manager, Commerce Bank at the address of the branch at which the account was opened. If the branch at which the account was opened has been closed, or if the account was opened by mail, telephone or electronic means, notice must be sent to Commerce Bank, ATTN: Branch Manager, 1001 Main Street, Kansas City, MO 64105. We may, in our discretion, act upon verbal notice from you except as otherwise provided in this Agreement.

##### **2. Account Statements.**

We will make available to you periodic account statements showing all account transaction history for the statement period. At our option, and with no further notice to you, we may choose not to send your account statement when there is no activity on your account for one (1) statement period. If we provide a periodic statement for your account, it will be mailed to you at the address shown on our deposit records or, if applicable, you will be notified of its availability electronically, or it will otherwise be made available to you. You agree that only one (1) statement will be provided for a multiple-party account. If you request that we hold your mail, you agree that we have made your statements and items available to you when the statement is issued.

##### **3. Returned Statements.**

If any periodic statement is returned to us for any reason, you agree that we may, at our discretion, hold subsequent statements until we receive forwarding information from you. At our discretion, we may destroy mail that is returned to us and is determined to be undeliverable.

#### **B. Customer responsibilities.**

##### **1. Prompt Review of Account Statements.**

You must promptly review statements and any accompanying items. Notify us in writing of any dispute or difference of account for any reason, including but not limited to, any improper or unauthorized charges or calculations, unauthorized debit, any unauthorized signature, lack of signature, alteration, errors or other disputed matters including fees or charges that have been assessed to your account(s). You must promptly report to us any encoding error on any item posted to your deposit account. You must report any account dispute or difference promptly, and when not involving an electronic funds transfer as defined in Section VII of this Agreement ("EFT"), no later than 30 days after your statement and items were received or otherwise made available to you. You will be deemed to have received your statement five (5) business days after its date, absent proof of an earlier or later actual delivery date. Failure to report account disputes or differences not involving an EFT within 30 days shall

preclude you from recovering any amounts from us and may impact your right to make a claim against us under Section I.G of this Agreement. For disputes or differences involving EFTs, see Section VII of this Agreement. By law, we may be relieved of any potential liability for multiple unauthorized signatures or alterations by the same wrongdoer if you do not notify us in writing within 30 days after your statement containing the first such unauthorized signatures or alterations was received or otherwise made available to you. In no case shall we be liable if items were counterfeited, forged or altered so that a reasonable person could not detect the fraud, including unauthorized use of a facsimile, electronic or imaged signature mark or symbol. No legal proceeding or action, including arbitration, shall be brought by you against us to recover any amount alleged to have been improperly paid out of the account due to any dispute, difference, unauthorized signature, alteration, error or other defect, including any fees or charges assessed to your account(s) for any reason, unless (i) you have given the written notice provided above, and (ii) such action shall have been commenced within one (1) year after the date the statement giving rise to any claims was received or made available to you.

## **2. Claim of Loss.**

If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction and the circumstances surrounding the loss. You are responsible for notifying law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. Requesting that we delay action or engaging in informal workout arrangements will impair our rights and be considered a waiver of your claim. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. We will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorney's fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

## **3. Check Orders.**

All checks, withdrawal forms and deposit slips must be on forms which are acceptable to us. You are responsible for verifying the accuracy of all information on such forms and on your printed checks. Our liability, if any, for any printing errors on forms obtained through us is limited to the cost of replacement. We are not responsible for errors or losses resulting from improper printing on forms not obtained through us or approved by us in advance.

## **4. Check Safekeeping.**

You waive any right to receive cancelled checks or other items with your statement, which will be considered to have been made available to you when you receive your statement. We will keep a record of the front and back of each check as long as required by law. We may charge a fee for providing copies to you. We may provide copies upon written or verbal request. We have no duty to retain the original of any cancelled items. You continue to be responsible for notifying us promptly in writing of any dispute or difference of account for any reason within the time period specified above.

## **5. Customer Information.**

We provide for your convenience various methods by which you can access information regarding your accounts, including at an ATM, by calling on the telephone, or other electronic means. You acknowledge that our reasonable security measures cannot absolutely ensure against “unauthorized” inquiries. You, therefore, agree that we will not be responsible for the release of information to anyone not authorized by you who has gained possession of your ATM access device or who has learned your identifying characteristics such as personal identification number (PIN) or social security number. You agree that if you give your account number to a third person by telephone or otherwise that act authorizes that third person to initiate debits to the account even if a particular transaction was not authorized.

## **6. Change of Address.**

You agree that you are responsible for notifying us of any change in your address or your name and will do so promptly after any change. We may accept a notice of change from any joint account owner on a joint account, the account owner's agent or fiduciary or any authorized signer on a business or other non-personal account. Change of address or name should be made in writing by at least one (1) of the account owners, however, we may, solely at our option, accept a verbal change of address. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us.

## **C. Joint accounts.**

Each joint account owner authorizes us to deposit in the account, with or without endorsement, all checks, drafts and other instruments for the payment of money made payable to all or any joint account owner(s). Each joint account owner authorizes each other joint account owner to operate the account without the consent or approval of any joint account owner, including but not limited to: (i) withdraw, by any means we make available, any or all of the funds on deposit; (ii) make deposits to the account; (iii) endorse for deposit to the joint account any item payable to any joint account owner(s); (iv) instruct us to stop payment on any item drawn on or debit to the account regardless of which joint account owner drew the item or authorized the debit; (v) draw upon any overdraft or other line of credit which may be established in connection with the account; (vi) pledge the account as security for any debts, whether individual, joint, corporate or otherwise; (vii) close the account at any time; (viii) appoint an agent or attorney-in-fact with respect to the account; and (ix) conduct business concerning the account without the knowledge and consent of the other joint account owners. We may give cash back to any joint account owner.

You agree to be jointly and severally liable to us for any account deficit and service charges or fees regardless of which joint account owner caused the deficit or incurred the service charges or fees, or benefited from the deficit, charges or fees. Each joint account owner authorizes us to exercise setoff and enforce our security interest in the entire joint account, even though only one (1) of the joint account owners is the debtor. Garnishments against any joint account owner(s) are subject to our right of setoff and security interest and may cause the account to be frozen or debited whether or not all joint account owners are named in the garnishment. You agree that any one (1) joint account owner may pledge the account, including certificates of deposit, and that the lien created by the pledge will survive the death of the joint account owner who made the pledge. Notice to any one (1) joint account owner constitutes notice to all joint account owners.



## D. Deposits.

### 1. Items Deposited.

We may refuse, accept for collection only, or return all or part of any deposit even if, and after, the deposit has been credited to your account. We act only as your collection agent for transmitting items through our correspondent banks or directly to the paying bank, in accordance with our customary practices and applicable law.

We assume no responsibility beyond the exercise of due care and shall not be liable for losses caused by any other party's failure to act or willful or negligent action, or for loss in transit. Credit for items deposited is provisional and subject to revocation if the item is not paid for any reason. We reserve our rights under applicable law, including without limitation, the right to accept or reject a check for deposit, to revoke a provisional settlement, to charge back an account, or to claim a refund of a provisional credit. We shall not be deemed to have received items sent by mail or deposited in an ATM, night depository or any other type of depository until after we have received actual delivery of those items sent by mail or removed the contents from such depositories. All deposits received by us after our cutoff time or on a non-banking day, including items received through the mail or removed from depositories after hours, will be deemed deposited on the next banking day. If we elect to return any deposit, notice will be mailed to you at the address shown on our deposit records or, if applicable, you will be notified of its availability electronically, or it will otherwise be made available to you and the deposit shall cease to bear interest, if applicable, after the mailing of notice. You will be responsible for any loss or expense caused by your failure to properly identify the account to which a deposit is made or intended to be made.

**Check 21.** A substitute check is created from an original check and contains an accurate copy of the front and back of the original check. You may not deposit any substitute check with us if we would be the first U.S. financial institution to take the substitute check. This means that you cannot deposit a substitute check you create, or one that is created by another person, without such written agreement with us. If you do deposit such a substitute check, you will be responsible for any losses we sustain and will defend and hold us harmless from any Check 21 Act warranty, indemnity or expedited re-credit claim.

**Deposit of Remotely Created Checks.** A remotely created check is created by the payee and not signed by the account owner. We may refuse to receive or process for deposit or collection remotely created checks without prior notice or cause. You agree to take back any remotely created check deposited into your account that is returned. We may reverse any credit made to your account for the remotely created check, or otherwise collect from you the amount of the remotely created check. You agree that you will not deposit a remotely created check drawn on a person's bank account without that person's express, verifiable authorization, and that you will maintain a record of the express verifiable authorization for 24 months from the date of the authorization. You agree that if the check is returned, you owe us the amount of the check. We may take the funds from your account, regardless of your account balance.

### 2. Authorization to Pay Overdrafts and Deduct Fees from Government Benefit Check and Direct Deposits.

If you make deposits of government benefits to your account, whether by check or direct deposit, including but not limited to, Social Security, SSI or veterans' benefits, you understand and agree that once the funds are deposited they will



be treated the same as any other funds in your account. This means that the funds may be applied to the payment of overdrafts and bank fees, including, but not limited to, insufficient funds (NSF) and overdraft fees, and may be applied by setoff or security agreement to any indebtedness due to us.

### **3. Verification of Deposits.**

All deposits and receipts are subject to subsequent verification and correction if necessary. If we determine that a deposit does not contain all items or cash claimed to be deposited, or contains a mathematical error, we may correct the error and adjust the account balance, even if you have already withdrawn all or part of the deposit. You will have the burden of proving that our records are erroneous with respect to any disputed item or dispute over cash claimed to be deposited.

### **4. Endorsements.**

We may accept for deposit any items payable to you or your order, even if they are not endorsed by you. We may supply any missing endorsement(s) for any item we accept for deposit or collection, and you warrant that all endorsements are genuine.

To ensure that your deposited item is processed without delay, you must endorse it (sign it on the back) in a specific area. Your entire endorsement (whether a signature or a stamp) along with any other endorsement information (e.g. additional endorsements, ID information, driver's license number) must fall within 1.5 inches of the check's "trailing edge," which, as you look at the front of a check, is the left edge. When you flip the check over, you must keep all endorsement information within 1.5 inches of the trailing edge. You must confine the endorsement information to this area leaving the remaining blank space to be used for processing the check. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your endorsement, a prior endorsement or information you have printed on the back of the check obscures our endorsement. We may, but are not required to, refuse to accept a check whose back is unreasonably obscured. We reserve the right to refuse to accept a check for deposit with an endorsement or other markings that indicate it has previously been deposited with us or at other financial institutions using mobile deposit, remote deposit capture, or other means.

We may require that certain government checks, insurance company items or other special types of checks be personally endorsed by each of the payees. You agree to reimburse us for any loss or expense we incur because you fail to endorse an item or fail to endorse an item exactly as it is drawn.

### **5. Encoding and Endorsing.**

If you undertake to provide our endorsement or encode the amount on items deposited, you agree to adhere to any standards which are set forth in federal and state law. You are liable for any damages to us caused by such endorsement or encoding.

### **6. Items Returned.**

If a deposited item is returned to us by the bank on which it was drawn, we may accept that return and charge the item back against your account without regard to whether the other bank returned the item before its midnight deadline or otherwise finally paid the item. At our option and without prior notice to you, we have the right to pursue collection of previously dishonored items, including permitting a paying bank to hold an item beyond its midnight deadline in an attempt to recover payment. You waive presentment, notice of dishonor and

protest, and agree that we have no obligation to notify you of any deposited item that is returned to us. Without prior notice to you, we may charge back any item at any time before final payment, whether returned or not. We may process a copy or other evidence of the returned item in lieu of the original. If an item deposited to your account or cashed for you has been paid by the paying bank and that bank later returns the item to us due to an allegedly forged, unauthorized or missing endorsement, claim of alteration, encoding error or other problem which in its judgment justifies reversal of credit, we reserve the right to charge back the item to your account.

**If a deposited or cashed item is returned we may hold or deduct the amount of the deposited or cashed item from your account even if you have withdrawn the funds and the balance in your account is not sufficient to cover the amount we hold or deduct. This may result in your account being overdrawn, and overdraft or other applicable fees may be assessed.**

## **7. Return of Direct Deposit.**

If we are required to reimburse the Federal Government for all or any portion of any benefit payments deposited into your account through a direct deposit plan for any reason, you agree that we may, at any time and without prior notice to you, deduct the amount returned to the Federal Government from your account or from any other account you have with us.

## **8. Foreign Currency.**

We are not required to accept any item payable in foreign currency for deposit or collection. If we take an item payable in foreign currency for deposit or collection, you bear all exchange rate risk. We may not credit the item to your account until we receive the proceeds in U.S. dollars. Actual credit in U.S. dollars for deposits of, or payable in, foreign currency will be at our exchange rate that is in effect at the time of deposit or our receipt of final payment (less any associated fees) of the collection item. If the item is returned unpaid for any reason, we will charge the amount against your account at the applicable exchange rate in effect at the time of the return.

## **E. Withdrawals.**

### **1. Notice of Intended Withdrawal.**

We reserve the right to require you to give us seven (7) days prior notice of your intent to withdraw funds from an interest checking, regular savings or money market account.

### **2. Balance Computations.**

**a. Current Balance.** Your “Current Balance” is the balance in your account as calculated by our deposit system at the conclusion of all nightly processing, and reflects all transactions posted to your account. Your Current Balance is not updated throughout the day.

**b. Available Balance.** Your “Available Balance” is our most current record of the amount of money in your account available for your use or withdrawal and is updated throughout the day. We use your Available Balance to authorize your transactions (e.g., debit card purchases and ATM withdrawals). We also use your Available Balance to pay your transactions. We calculate your Available Balance by starting with your Current Balance and then add or subtract transactions as they are received and processed throughout the day. We subtract any holds placed on a deposit to your account and reduce your Available Balance by the authorization amount requested by the merchant for debit card purchases. For more about holds on your account, see Sections

III.F—Authorizations for Card Transactions and Section VI – Funds Availability Policy and Section III.J—Legal actions affecting your account.

**c. Transactions not Reflected in Available Balance.** Your Available Balance does not reflect every transaction you have initiated or that we previously authorized. For example, your Available Balance may not include:

- Outstanding checks and authorized withdrawals (such as recurring debit card transactions and Automated Clearing House (“ACH”) transactions that we have not received for payment)
- The final amount of a debit card purchase, if different than the amount authorized. For example, we may authorize a purchase amount prior to a tip that you add.
- Debit card transactions that have been previously authorized but not sent to us for final payment within three (3) days.

**d. Determination of Available Balance for Pay or Return Decision.**

- We may use your Available Balance for the purpose of deciding whether to pay or return an item for insufficient funds at any time between the presentment of the item, or notice in lieu of presentment, and the time we return the item, or send notice in lieu of return. We only need to make one (1) such determination.

### **3. Transaction Processing and Posting.**

We determine, and you agree we may determine, the order in which we process and post deposits and other credits and checks and other debits to your account. We may pay or authorize some items, and decline or return others, in any order we deem appropriate, except to the extent limited by law, regulation or judicial authority. When you do not have enough available funds to cover all of the items presented in a day, some processing and posting orders can result in more items that result in insufficient funds and more overdraft and returned items fees. We may choose our processing and posting orders regardless of whether additional fees result.

Without limiting the foregoing, we will generally post transactions to your account throughout the day as transactions are received and processed. When an item is processed, it will immediately increase or decrease your Available Balance. Please refer to the chart below for transaction processing times.

We will determine your Available Balance for insufficient funds or overdraft purposes during our nightly processing following our cutoff time for transaction posting. At this time, items may be returned which have posted earlier in the day and fees may be assessed against the accounts which are overdrawn or have insufficient funds.

The following are examples of processing times.<sup>1</sup>

Type of Transaction	Processing Times
<ul style="list-style-type: none"> <li>• ATM Withdrawal or Deposit</li> <li>• Branch Withdrawal or Deposit</li> <li>• Wire Transfer to or from your account<sup>2</sup></li> <li>• Debit card purchase using your PIN</li> </ul>	Processed immediately. <i>Deposits subject to funds availability policy.</i>
<ul style="list-style-type: none"> <li>• Non-PIN transactions with your debit card (for example, a purchase using your signature)</li> </ul>	Processed immediately and subject to receipt of final transaction (subject to section III.F below)
<ul style="list-style-type: none"> <li>• Checks drawn on your account</li> <li>• ACH transaction (debits and credits, for example, a payroll direct deposit)</li> <li>• Scheduled bill payment (for example, an automatic mortgage payment)</li> <li>• Mobile Deposit</li> </ul>	Processed throughout the business day as transactions are received.
<ul style="list-style-type: none"> <li>• Posting of interest, if applicable</li> <li>• Determination of overdrafts and any insufficient funds fees</li> <li>• Bank fees <ul style="list-style-type: none"> <li>◦ Monthly Service Charges for additional services</li> <li>◦ Returned Deposited Item fees</li> </ul> </li> </ul>	After cutoff time during nightly processing.

**1** Deposits received after our cutoff time, or on a non-banking day, will be treated as if deposited on the next banking day.

**2** Wire Transfers are processed immediately with final posting occurring during nightly processing.

#### **4. Telephone Transfers.**

A telephone transfer of funds from your account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing.

#### **5. Insufficient Funds/Overdrafts.**

We are not obligated to pay an item presented if your account does not contain a sufficient Available Balance. Customers must provide consent before we may, at our discretion, authorize ATM withdrawals and debit card purchases that would overdraw an account. The presentment of an item for which there are NSF in the account may result in an NSF charge or an overdraft charge, regardless of whether we, at our option, pay or dishonor the item. After an item is returned due to NSF, the payee or its agent may present additional requests for payment related to the same transaction. We have no control over how many times a payee or its agent may submit additional requests for payment after we have returned an item due to insufficient funds. Each request for payment is a separate presentment for purposes of assessing NSF and overdraft fees. This means you may be assessed more than one service charge if a payee or its agent submits multiple requests for payment related to the same transaction. In addition, if payment is not received for any deposited item, the amount of the item will be charged back to your account and may create an overdraft for which you may be charged a fee. We are not required to give you prior notice of an NSF item posting to your account.

You agree to deposit, or pay on demand, sufficient funds to cover the amount of any overdraft together with any overdraft fees and to reimburse us for any costs we incur in collecting the overdraft from you including, without limitation, attorneys' fees and the costs of litigation. Our payment of any item or other debit that causes an overdraft on one (1) or more occasions does not obligate us to allow such overdrafts on any future occasion. You should not rely on us to honor an overdraft. Furthermore, we encourage you to keep careful records and practice good account management; this practice will help you avoid (i) writing checks or authorizing debits, such as online bill payments or recurring preauthorized debits, without sufficient available funds, and (ii) incurring the resulting fees.

#### **6. Fraud Detection; Return of Items or Debits.**

You agree that we may utilize fraud detection systems, as we deem necessary or desirable, to review items or other debits presented for payment either in person or through the bank collection system. We may return or refuse to pay items or debits that reasonably appear to be forged, counterfeit, altered, improperly endorsed, missing endorsement, improperly encoded or otherwise irregular or that are outside criteria set by us to detect fraud – such as check numbers or dollar amounts outside the range for the account. You agree that our refusal to pay or the return of such items or debits, when based upon fraud detection criteria, will not be considered wrongful. We will not be liable for refusing to honor your checks or other signed instructions if we believe in good faith that the signature appearing on such checks or instructions is not genuine.

#### **7. Automated Processing of Items.**

Because of the automated nature of processing a high volume of items, most checks and other items are processed automatically, i.e., without our individual review of each item. While we examine items pursuant to a random sampling of items drawn on all accounts or a procedure that meets certain minimum criteria that we may establish for inspection, you agree that we are exercising ordinary care and common and reasonable banking practices by automatically processing checks, and other items.

#### **8. Facsimile Signatures.**

If you have authorized the use of a facsimile, electronic or imaged signature, mark, symbol or other non-handwritten authorization ("facsimile"), we may honor any item or other signed instruction that bears or appears to bear your facsimile or any facsimile previously affixed to any item drawn on your account, which was accepted and paid without timely objection, even if it was made by an unauthorized person or with a counterfeit facsimile device.

You must notify us at once if you suspect that your facsimile is being or has been misused. You accept sole responsibility for maintaining control over your facsimile equipment.

#### **9. Multiple Signers.**

If we establish an account that purports to require two (2) or more signatures on any items drawn on the account, you acknowledge that such provision is solely for your personal or internal control purposes and shall not be binding on us. Checks or other debits purporting to require more than one (1) signature shall not be binding on us. When an account is held in the name of two (2) or more persons as agents, trustees, personal representatives or other fiduciary capacity, each authorizes the other to draw items, make withdrawals and otherwise act on the account independently.

## **10. Stale-Dated Items.**

We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment more than six (6) months after its date without notice to you. You agree that we are acting in good faith so long as there is no stop payment order in effect at the time the item is paid. If you do not want us to pay a stale-dated item, you must place a stop payment order on the item in the manner we have described in Section III.E.13.

## **11. Postdated Items.**

Unless otherwise required by law, we reserve the right to honor or dishonor postdated items. An item is postdated if it is dated after the date it is presented for payment. We will not be liable for any damages resulting from payment or dishonor of a postdated item presented for payment before the date of the item.

## **12. Restrictive Legends.**

The automated processing of the large volume of items we receive prevents us from inspecting or looking for special instructions or "restrictive legends." Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00." You agree that we may pay or refuse to pay such items, in our sole discretion, even though the restriction or condition has not been met. We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

## **13. Stop Payment Orders.**

The telephone number and address for placing, renewing, or cancelling a stop payment order are: 1-800-453-2265; Commerce Bank, P.O. Box 411635, Creve Coeur, MO 63141.

We may honor a stop payment order on an item from any account owner or authorized signer, regardless of who signed or authorized the item. We are not responsible for determining whether the item was paid before the stop payment order became effective. We may refuse a request to cancel a stop payment order unless given by the account owner or authorized signer who placed the stop payment order.

You must provide us with all information necessary for our automated systems to process the stop payment. To be effective, your stop payment order must precisely identify the item number, date, amount, and the payee. Any missing or incorrect information may result in payment of the item or debit. We shall not incur any liability arising out of payment of an item or debit due to missing or incorrect information supplied by you, including the return of other items or debits due to insufficient funds.

**a. Checks, Drafts and Negotiable Orders of Withdrawal.** If your account is one on which checks, drafts or negotiable orders of withdrawal may be drawn, you may ask us to stop payment on any such items which have not been cashed or certified. You may not place a stop payment order on a cashier's check. Commerce will provide a written confirmation of your request. You should review this confirmation as soon as possible and notify us immediately if any information regarding your stop payment order is inaccurate. Oral and written stop payment orders for checks, drafts or negotiable orders of withdrawal will remain in effect for a minimum of 185 days from the effective date. At our option, we may keep the stop payment order effective for a longer period, unless you cancel it. Business accounts and other non-personal accounts may be charged a fee, pursuant to the terms of other agreements with us, in order to extend the effective period of the stop payment order

beyond 185 days. You must contact us at the telephone number or address given above if you wish to correct, renew or cancel a stop payment order. We must receive an order to place, renew or cancel a stop payment in time to give us a reasonable opportunity to act on it, before our stop payment cutoff time.

**b. Electronic Fund Transfers.** See Section VII of this Agreement to stop payment on an electronic fund transfer, including preauthorized deposits or withdrawals or transactions via ACH.

**c. ACH Debits Affecting Non-Consumer Accounts.** You may stop payment on an ACH debit by calling or writing us at the phone number or address given above in time to give us a reasonable opportunity to act. Oral or written stop payment orders will be in effect for a minimum of 185 days from the effective date. A stop payment on an ACH debit on a non-consumer account is only effective with respect to one (1) transaction.

If you stop payment on an item or other debit and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. If we pay an item or debit over a valid and timely stop order, you agree to sign a statement describing the dispute with the payee or originator and, if we recredit your account, to transfer to us all of your rights against the payee (or other holder of the item) or originator, and to assist us in legal action taken against that person. Our liability for paying an item or non-recurring ACH subject to a proper and timely stop payment order is limited to the lesser of the amount of the item or debit or the actual loss suffered, which you must prove to our satisfaction.

If we pay a preauthorized EFT over a valid stop payment order, we are liable for your losses or damages. We are not liable for paying an item or debit if a previous stop payment order has not been renewed.

#### **14. Check Cashing Requirements.**

We may impose additional requirements we deem necessary on a payee or other holder who presents for cash an item drawn on your account, which is otherwise properly payable. If that person fails or refuses to satisfy such requirements, our refusal to cash the item will not be considered wrongful. Such requirements may include, but are not limited to, physical and/or documentary identification requirements (for example, viewing an identification document such as a driver's license, obtaining personal identifying information such as name, SSN/TIN, and address, and collecting a thumbprint), check cashing fees and requirements that such items may only be cashed at specified locations.

#### **F. Authorizations for card transactions.**

##### **1. PIN Transactions.**

PIN-based purchases of goods or services using your Commerce Visa® Debit Card, Commerce credit card or ATM card reduce the Available Balance in your account for the authorization amount requested by the merchant and generally post to your account the same or next business day.

##### **2. Non-PIN Transactions With Your Debit Card.**

When we authorize a non-PIN debit card transaction (which may or may not require your signature), we may immediately reduce the Available Balance in your account by the authorization amount requested by the merchant until that transaction is presented to us by the merchant for payment, or no more than three (3) business days after the date of authorization, whichever first occurs. This authorization amount reduces your Available Balance and those funds will not be available to you for withdrawal or to pay other debits on your account

during that time. If your Available Balance is not sufficient for checks or other debits, you may be subject to overdraft or NSF fees. The final transaction amount presented by the merchant for payment may differ from the amount the merchant originally requested for authorization. If your Available Balance is no longer sufficient to pay authorized debit transactions when presented for payment, you also may be subject to overdraft fees on those debit transactions. This means you may be subject to overdraft fees when your Available Balance was sufficient at the time of authorization, but intervening events caused the Available Balance to be insufficient at the time the item was presented for payment. Even if the amount authorized is made available to you for any reason, you still remain liable for the amount of the transaction if it is presented to us for payment. Please see your debit card agreement for more details regarding debit card authorizations.

## **G. Check 21.**

You may not use any checks that contain a background image, latent security feature, paper stock, ink or other characteristic that interferes with our or any other bank's ability to produce a digital image of your check. If you do, you will be responsible for any losses you or another person suffers because of the inability to produce a readable digital image of your check. You will defend and hold us harmless from any Check 21 Act warranty, indemnity or expedited re-credit claim. See Section III.D.1 of this Agreement for more information about Check 21 and how it applies to your Account.

## **H. Wire transfers and ACH transactions.**

For more information about ACH transactions to or from consumer accounts, see Section VII of this Agreement.

### **1. Governing Laws and Rules.**

Fund transfers to or from your account, or transfers otherwise funded by you, may utilize one or more wire or ACH funds transfer systems, and are subject to the rules and regulations then in effect that are applicable or are made applicable to the use of any system through which the funds may be transmitted, including but not limited to: the Clearing House Interbank Payments System; the Society for Worldwide Interbank Financial Telecommunications; the National Automated Clearing House Association Operating Rules (or any other local ACH network operating rules); the Uniform Commercial Code (see Section I.D); Regulation J; and/or Regulation E.

If you have signed a Treasury Services Agreement with us, or any other agreement governing wire or ACH fund transfer services, the payment order and fund transfer will be subject to the terms of those agreements and, except as explicitly stated otherwise, those documents will supersede this Agreement to the extent of an inconsistent provision. To the extent that any provision herein is inconsistent with the oral or written disclosures provided to you in relation to a remittance transfer, as defined under Regulation E, the terms of those disclosures shall supersede any inconsistent provisions contained herein.

### **2. Security Procedures.**

Unless we agree to another process or security procedure, by submitting any payment order by the means described herein, you hereby agree to these security procedures. If these authentication processes are not appropriate for your circumstances, contact a bank representative prior to submitting any payment order request. You agree that we may confirm the authenticity of a payment order request, including its contents, delivered to us via phone, email, fax, or mail, by calling you at a phone number that you previously provided



to us prior to requesting the payment order. If the payment order and/or its details cannot be confirmed to our satisfaction by this call-back procedure, we may refuse to execute the order. You agree that these calls may be recorded and retained for an appropriate amount of time. Furthermore, you agree that we may confirm the authenticity of any in-person payment order request by (i) comparing the requestor's signature to the account owner or authorized signer's signature as separately provided on the applicable signature card or account opening documentation and (ii) requiring the requestor to produce a government-issued ID as a means to confirm their identity. If we have provided you with a personal identification number (PIN) for purposes of calling payment orders directly into our wire transfer areas, you agree that we will confirm the authenticity of any such payment order by requiring confirmation of the previously-established PIN.

You agree that we may employ other additional security procedures to verify the authenticity of a payment order as we deem appropriate in our sole discretion and you hereby agree that such additional measures will be deemed part of the agreed-upon security procedures. If, after complying with any agreed-upon security procedure, we process any payment order request that we believe is transmitted or authorized by you, then such payment order will be deemed effective as if made by you, and you will be obligated to pay us the amount of such orders, even though they are not transmitted or authorized by you. Any payment actually authorized by you will be binding upon you even if we did not follow the agreed-upon security procedures.

### **3. Refusal/Fees/Notice.**

We reserve the right to refuse to accept or execute any payment order that you provide to us for any reason or no reason and shall have no liability for refusing to do so. We may deduct our fee for handling incoming and outgoing wire transfers from the amount of the transfer. We will notify you of the receipt of any ACH entry or wire transfer in your periodic account statement but will not provide next-day notice or any other notice. If you believe we have failed to properly credit a transfer to you, you must promptly notify us of all relevant facts.

### **4. Final Payment/Reversal of Erroneous Credit Entries/Revocation.**

Any credit given you by us resulting from an ACH credit entry is provisional until we receive final payment. If we do not receive final payment, you agree that we may reverse the credit to your account or that you will otherwise reimburse us if funds in your account are not sufficient. If we receive satisfactory documentation that a credit entry was made in error, or for an erroneous amount, we may debit your account for the amount erroneously credited, or you agree to otherwise reimburse us if funds are insufficient. In the event the payment does not become final, the originator will not be deemed to have paid you the amount of the credit. Even if an ACH credit entry becomes final or if a wire transfer is credited to your account, we may, without liability to you, decline to provide you credit for all or part of the funds if we have information, or believe in good faith, that the funds may be subject to the claim of another party or are part of fraudulent activity, whether or not you are not involved in such activity. We may revoke any such credit made to your account without liability to you.

### **5. Use of Account Numbers.**

You agree that payment orders may be executed or posted solely by reference to the account number provided to us. We are not obligated to determine whether

a discrepancy exists between the name and the account number shown on the transfer information, and we may rely on the account number provided as positive identification.

## **6. Cancellation or Amendment of Wire Transfer Orders.**

The originator of a wire transfer payment order may cancel or amend any payment order only if the cancellation or amendment is received by our Wire Transfer Department in a time and manner in which it has a reasonable opportunity to act, which is not less than two (2) hours before we execute the payment order.

## **7. Cutoff Times.**

Our cutoff times for executing same-day payment orders are available upon request. Any payment order received after our cutoff times shall be considered as if received by us on the next business day.

## **8. Limitation of Liability for Wire and Non-Consumer ACH Transactions.**

If you are entitled to compensation for delay or improper completion of an ACH entry or wire transfer, our liability will be limited to the payment of interest for a period of time not exceeding the lesser of 60 days or the period between the date of the error and the date of the correction. Any such compensation will be paid at our discretion by either (i) adjusting your account balance to reflect the average balances you would have had but for the error, or (ii) direct payment in an amount equal to interest at the average Federal Funds Rate at the Federal Reserve Bank of New York for that period. We shall not be liable for attorney fees or consequential damages of any kind and you shall indemnify us for reasonable attorney fees incurred by us in relation to any claim that we executed an unauthorized payment order or fund transfer related to your account.

## **I. Setoff and security interest.**

You hereby grant us a security interest in your deposit accounts. If you ever owe us money as borrower, guarantor or otherwise ("Obligations"), and it becomes due, we have the right under the law (called "setoff") and under the security agreement granted us by this Agreement to use the funds in your account(s) to pay the Obligations. In the case of a partnership or joint account, each partner or joint account owner agrees that we may use the money in the account to satisfy any one of their individual Obligations. Similarly, each partner or joint account owner agrees that we may use the money in their individual accounts to satisfy Obligations in the joint account or partnership account. The Obligations, whether now existing or contracted in the future, which you owe to us, either individually or jointly, may be charged against any deposit account, including certificates of deposit before or after maturity, in your name whether in sole ownership or as a joint tenant or as tenants by the entirety. We may use the funds in your account(s) to pay the Obligations even if withdrawal results in an interest penalty or dishonor of checks. We will not be liable for dishonoring items where our exercise of the right of setoff and enforcement of our security interest results in insufficient funds in the account. The security interest you have granted us by this Agreement is consensual and is in addition to our right to setoff. This right of setoff and security interest may not apply if (i) the account is an Individual Retirement Account or other tax-deferred retirement account, (ii) the debt is created by a consumer credit transaction under a credit card plan, or (iii) you are an account owner in a representative capacity.

## **J. Legal actions affecting your account.**

An account may be subject to legal process such as a subpoena, restraining order, search warrant, writ of attachment or execution, levy, garnishment or similar court or

administrative order (termed “legal actions” in this section). You agree that we have the option to honor legal actions without making a determination as to whether the court or administrative agency issuing a legal action has jurisdiction to do so or the legal action is otherwise subject to challenge. You agree that we will not be liable to you for the response we make to a legal action.

When your account is subject to a legal action, we shall not be liable to you for withdrawing funds or restricting the account even if such action leaves insufficient funds to pay checks or other debits. Such legal actions may cause the account to be frozen or debited whether or not all joint account owners are named on the legal action. Any legal action against your account is subject to our right of setoff and enforcement of our security interest. Our standard fees to research and copy documents and other expenses, including our administrative and attorney’s fees, incurred in complying with legal actions may be charged to your account without prior notice to you. We may release account information and documentation in response to legal actions without notice to you unless prohibited or limited by law.

#### **K. Inactive accounts/unclaimed property.**

Accounts (other than certificates of deposits) that have been inactive for 12 months (18 months if regular savings) are deemed dormant and shall, at our option, cease to earn any further interest. We reserve the right to define what characteristics constitute activity, inactivity, or a dormant account, but generally, a dormant account is one where no customer-initiated withdrawal or deposit has been made for 12 months (18 months if regular savings). See the applicable fee schedule for your respective account for more details on both inactive and dormant account fees. We may charge inactive and dormant account fees in addition to regular maintenance and other applicable fees, even if other fees had previously been waived. You will not be entitled to recover any such fees or unpaid interest in the event that you reactivate or attempt to reactivate or reestablish contact with us. Funds in dormant accounts may be turned over to the state as unclaimed property. If your funds are surrendered to the state, you may be able to reclaim them from the state, but your claim must be presented to the state. Once your funds are surrendered to the state, we no longer have any liability or responsibility with respect to the funds.

#### **L. Assignments.**

No assignment or pledge of an account shall be binding on us unless a pledge or control agreement indicating the name and address of the assignee, and in form satisfactory to us, is signed by you and executed by our authorized officer. We reserve the right, in our sole discretion, to decline to agree to or permit an assignment or pledge of an account. Unless we agree otherwise in writing, any rights of an assignee will be subject to our right of setoff and prior security interest. We have no obligation to notify you or any other person before disbursing any funds from your account in accordance with what we in good faith believe to be the terms of the pledge or control agreement.

#### **M. Personal interest checking and personal and business non-interest checking/accounting procedures.**

For regulatory accounting purposes, your account may be divided into two (2) sub-accounts: a checking sub-account and a money market sub-account. These sub-accounts are treated as a single account – the interest or non-interest checking account – for purposes of interest payments (if applicable), minimum balance requirements, fees and charges and your account access. Your account statement and other records of your account activity (e.g. ATM receipts) will reflect this account as a single account and will not reflect the sub-accounts or transfers between sub-accounts in any way. If you have interest checking, both sub-accounts pay an identical interest rate and annual

percentage yield on account balances. If you have non-interest checking, neither sub-account will pay interest on account balances. You may access the money market sub-account only indirectly through transactions on your checking sub-account.

At various times during each statement cycle, if your checking sub-account balance exceeds a threshold amount, we may transfer all funds in excess of that amount into the money market sub-account. As your transactions against the account reduce the checking sub-account balance below the threshold, we will transfer funds back into the checking sub-account. We may make up to six (6) transfers from the money market sub-account into the checking sub-account per statement cycle. Upon the sixth such transfer in a statement cycle, we will transfer the entire balance of the money market sub-account to the checking sub-account. We may repeat this process each statement cycle. We set the balance threshold and may change it at any time at our discretion.

#### **IV. DISPUTE RESOLUTION - ARBITRATION**

**PLEASE READ THIS SECTION CAREFULLY. IT PROVIDES THAT, WITH LIMITED EXCEPTIONS, YOU AND WE MAY ELECT TO RESOLVE ANY DISPUTES BETWEEN YOU AND US BY BINDING ARBITRATION. IF ARBITRATION IS ELECTED, YOU AND WE WAIVE THE RIGHT TO A JURY TRIAL OR TRIAL BEFORE A JUDGE IN A PUBLIC COURT, AND YOU AND WE WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING.**

**YOU HAVE THE RIGHT TO OPT OUT OF THIS AGREEMENT TO ARBITRATE AS SET FORTH BELOW.**

##### **Agreement to Arbitrate**

You and we agree that either of us may elect to resolve any Claims (as defined below) through binding arbitration unless you opt out of the agreement to arbitrate as set forth below. If you or we elect to resolve a Claim through arbitration, neither you nor we will have the right to pursue such claim in court or have a jury decide the claim, nor will you or we have the right to bring or participate in any class or other representative action in court or in arbitration.

**What Claims are Subject to Arbitration?** As used in this section, the term "Claim" has the broadest possible meaning and includes, but is not limited to, any unresolved disagreement, controversy, dispute, or cause of action between you and us, whether preexisting, present or future, arising out of, related to or concerning this Agreement, your account(s), the services provided pursuant to this Agreement, any relationship between you and us, or any advertisement or solicitation, whether such Claim is asserted or brought in a direct, derivative, assignee, survivor, successor, beneficiary or personal capacity. Without limiting the foregoing, the term "Claim" also includes any unresolved disagreement, controversy, dispute, or cause of action between you and us arising out of, related to or concerning any fees or charges relating to any deposit account(s), and any services relating to any deposit account(s), including but not limited to, safe deposit box services, identity restoration services, on-line or telephone banking services, communication methods and practices we may use to service your account, and automated teller machine services. The term "Claim" includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. For purposes of this section, "we," "us," and "our" includes Commerce Bank, any corporate parent, subsidiaries, affiliates, employees, officers, directors, agents, controlling persons and representatives, as well as any person or entity who provides any services in connection with this Agreement or who is named as a co-defendant with us in a Claim asserted by you.

**What Disputes are Not Subject to Arbitration?** Notwithstanding any other language herein, the term “Claim” shall not include any dispute or controversy regarding the validity, enforceability, coverage or scope of this agreement to arbitrate or any part thereof, including, without limitation, the “Waiver of Jury Trial and Class or Representative Action” provision set forth below, subsections A and B of the “Survival and Severance” provision set forth below and this sentence; all such disputes are for a court and not the arbitrator to decide. In addition, claims filed by you or us individually in small claims court, so long as any such claim remains in that court and advances only an individual claim for relief, are not subject to arbitration. However, if a claim is transferred, removed or appealed to a different court, you or we will then have the right to demand arbitration of such claim. This agreement to arbitrate shall not apply to any Claims or other disputes relating to business accounts or other non-personal accounts as such accounts are defined in Section II.I of this Agreement. Other claims, disputes, controversies or issues not subject to arbitration are set forth in the section titled “Rights Preserved.”

**How Does Arbitration Work?** The arbitration shall be administered by the American Arbitration Association (“AAA”), pursuant to its Consumer Arbitration Rules (collectively, “Rules”) in effect at the time a demand for arbitration is filed. The Rules are available online at [www.adr.org](http://www.adr.org), or you may contact the AAA at 120 Broadway, Floor 21, New York, N.Y 10271. If the AAA is unable to serve and you and we cannot agree on a replacement, a court with jurisdiction will select the arbitrator. If there is a conflict between the Rules and this agreement to arbitrate, or between this agreement to arbitrate and the Agreement, this agreement to arbitrate shall control. Pursuant to the Rules, the AAA will select a single arbitrator who shall have expertise in the substantive laws applicable to the Claim’s subject matter. If the value of relief sought is \$10,000 or less, you or we may elect to have the arbitration conducted by telephone or based solely on the submission of written documents, unless the Rules or arbitrator requires an in-person proceeding. If the value of the relief sought is more than \$10,000, or an in-person proceeding is required, the arbitration proceeding shall be conducted in the same city as the U.S. District Court closest to your home address, unless the parties mutually agree upon a different location in writing. Either party may, at its sole cost and discretion, choose to be represented by an attorney at any arbitration proceeding.

The arbitrator may award any damages or other relief provided for under applicable law as if an individual action were brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts) and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim). If we made a written offer to you to settle your Claim prior to an arbitrator being selected, and the arbitrator awards you an amount greater than our last offer, if any, we will (i) pay you the arbitrator’s award or \$5,000, whichever is greater, and (ii) pay your reasonable attorney, witness and expert fees and costs, if any. Judgment on the arbitrator’s award is final and binding and may be entered in any court of competent jurisdiction.

The arbitrator, you and we will not disclose the existence, content or outcome of any arbitration proceeding; provided, however, that disclosures required by applicable law or regulation shall not be subject to such restriction. The forgoing sentence does not prohibit any party from, in good faith, investigating a claim or defense, including interviewing witnesses or otherwise engaging in discovery as permitted by the Rules.

No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this agreement to arbitrate.

**How is Arbitration Initiated?** If you or we elect to arbitrate a Claim, the party electing arbitration must notify the other party in writing. This notice can be given after the beginning of a lawsuit and can be given in papers filed in the lawsuit (for example, a motion by the defendant to compel arbitration of claims asserted by the plaintiff in a lawsuit filed in court). Otherwise, your notice must be sent to Commerce Bank, Attn: ADR Notice, P.O. Box 413037, Kansas City, MO 64141-3037, and our notice will be sent to the most recent address for you in our files. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party asserting the Claim(s) to start the arbitration proceeding in accordance with the Rules.

**Who Pays for Arbitration?** Except as otherwise provided herein, we will pay the filing, administration and arbitrator fees charged by the AAA for any arbitration initiated in accordance with this Section IV. If you pay any initial filing fee, we will reimburse you. If you cannot afford to pay any initial filing fees, we will pay them for you. We will pay any fees or expenses that we are required to pay by law or the Rules or that we are required to pay for this agreement to arbitrate to be enforced.

The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the extent permitted by the Rules, this agreement to arbitrate, the Agreement, or applicable law. We will not seek to recover from you any fees or expenses we pay on your behalf, or any attorney, witness or expert fees or other costs or expenses we incur in defending an individual arbitration commenced by you. Notwithstanding the foregoing, if the arbitrator finds that a Claim is frivolous or brought in bad faith or for an improper purpose, then the payment of all fees, costs and expenses shall be determined by the Rules.

**What Law is Applicable?** You and we agree that our relationship includes transactions involving interstate commerce and that this agreement to arbitrate and any arbitration rule, proceeding and award pursuant to the terms hereof, are governed by and enforceable pursuant to the provisions of the Federal Arbitration Act ("FAA") (9 U.S.C. § 1, et seq.). Notwithstanding anything to the contrary in the Agreement, to the extent that state law is applicable, including with respect to the interpretation and enforcement of this agreement to arbitrate, Missouri law shall apply to the extent consistent with the FAA. The arbitrator shall decide the claim in accordance with applicable substantive law and the terms of this Agreement and shall apply all statutes of limitation and honor attorney-client and other privileges.

**How do I Opt Out of the Agreement to Arbitrate?** If you do not accept this agreement to arbitrate, you may reject it ("opt out"). If you opt out, neither you, nor we, will be subject to the requirement to resolve any claim by arbitration or any other provision of this Section IV.

To opt out, you must send us written notice of your decision to reject this agreement to arbitrate to the address set forth below. We must receive your written notice within thirty (30) days after we first sent you this Agreement via US Mail, through electronic disclosure, provided it to you in person, or by other reasonable delivery method. Your written opt out notice must: (a) include a signed statement that you reject the agreement to arbitrate set forth in this Section IV of the Agreement; (b) include your name, address and the account number(s) you wish to opt out; and (c) be sent to us at the following address: Commerce Bank, Attn: ADR Deposit Account Opt Out, P.O. Box 414220, Kansas City, MO 64141-4220.

This is the only way you can reject this agreement to arbitrate. If you opt out, it will not affect any other terms of this Agreement, and it will not adversely affect your account. If you have more than one deposit account with us your rejection of arbitration applies

only to the account(s) you list on your opt out notice as described above, and will not apply to any other non-deposit accounts you may have with us, such as a credit card account, or any other products or services that we provide to you that are governed by a separate agreement between us and you. In the case of joint ownership of an account, one owner's rejection of this agreement to arbitrate will be deemed to be a rejection of this agreement to arbitrate by all joint owners. In all other circumstances, your rejection of this agreement to arbitrate shall not be imputed to any other person or entity or be deemed to be a rejection of this agreement to arbitrate by any person or entity other than you. Nor shall your rejection of this agreement to arbitrate eliminate the obligation of other persons or entities who wish to reject this agreement to arbitrate to personally comply with the notice and time requirements of this opt-out provision.

**Waiver of Jury Trial and Class or Representative Action.** UNLESS YOU REJECT THIS AGREEMENT TO ARBITRATE IN ACCORDANCE WITH THE TERMS OF THIS SECTION IV, YOU AND WE AGREE THAT IF A CLAIM IS ARBITRATED, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO (i) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR CLASS MEMBER, (ii) ACT AS A PRIVATE ATTORNEY GENERAL OR IN ANY OTHER REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED IN COURT OR IN ARBITRATION OR (iii) HAVE A COURT OR A JURY RESOLVE THE CLAIM. MOREOVER, UNLESS MUTUALLY AGREED UPON IN WRITING BY ALL PARTIES, CLAIMS MAY NOT BE JOINED, CONSOLIDATED, OR OTHERWISE COMBINED WHETHER OR NOT ANY SUCH COMBINATION OCCURRED AS A RESULT OF AN ASSIGNMENT.

**Rights Preserved.** In addition to subjects excluded from arbitration in accordance with the provision titled "Which Disputes are Not Subject to Arbitration?" this agreement to arbitrate does not prohibit you or us, at any time, from (a) exercising any lawful rights to preserve or obtain possession of property or self-help remedies, including but not limited to, the right to set-off, the right to restrain funds in an account, recoupment, repossession, replevin or trustee's sales; (b) obtaining provisional or ancillary remedies or injunctive relief (other than a stay of arbitration), including but not limited to attachment, garnishment, interpleader or the appointment of a receiver by a court of appropriate jurisdiction; or (c) bringing an individual action in court that is limited to preventing the other party from using a self-help or non-judicial remedy and that does not involve a request for damages or monetary relief of any kind.

**Conflict, Survival and Severance.** In the event of any conflict or inconsistency between this agreement to arbitrate and other provisions of this Agreement or the Rules, this agreement to arbitrate will govern. This agreement to arbitrate shall survive any termination of or changes to any of your account(s) subject to this Agreement; the transfer or assignment of any of the foregoing; and the bankruptcy of any party to the extent permitted by law. If any term or provision of this agreement to arbitrate is held to be unenforceable, prohibited or invalid, the remaining provisions shall be enforced without regard to such illegal or unenforceable term or provision, except that:

(A) if any provision of this agreement to arbitrate regarding class action, class arbitration, private attorney general action, other representative action, joinder, or consolidation is determined by an authority of competent jurisdiction to be unenforceable or illegal, such provision shall not be severable and this agreement to arbitrate between you and us (except for this sentence) shall be null and void, provided that such determination of unenforceability or illegality shall be subject to appeal. The parties acknowledge and agree that under no circumstances will a class action, private attorney general action or other representative action be arbitrated; and

(B) if a Claim is brought seeking public injunctive relief and a court determines that the restrictions in the "Waiver of Jury Trial and Class or Representative Action" provision



or elsewhere in this agreement to arbitrate prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such Claim (and that determination becomes final after all appeals have been exhausted), the Claim for public injunctive relief will be determined in court and any individual Claims seeking monetary relief will be arbitrated. In such a case the parties will request that the court stay the Claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a Claim for public injunctive relief be arbitrated.

## V. DISPUTE RESOLUTION - JURY TRIAL WAIVER

You and we agree that in the event that any Claim or dispute between us is not arbitrated but instead is resolved in court, you and we knowingly and voluntarily waive the right to a jury trial to the full extent permitted by applicable law.

## VI. FUNDS AVAILABILITY POLICY

Our policy is to make funds from your deposits to checking and interest checking accounts available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you may withdraw the funds in cash, or we may use the funds to pay checks that you have written, or to pay other debits and fees. For the purpose of determining the availability of your deposits, every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before the cutoff time on a business day that we are open, we will consider that day to be the day of your deposit. The cutoff time for a branch is at branch closing or 7:00 p.m. Central Time, whichever is earlier. The cutoff time for ATMs that we own and operate is 7:00 p.m. Central Time. However, if you make a deposit (i) after the cutoff time on a business day; (ii) on a Saturday, Sunday or federal holiday; or (iii) on a business day that we are not open, we will consider that the deposit was made on the next business day we are open.

***Longer Delays May Apply.*** Funds you deposit by check may be delayed for a longer period under the following circumstances:

- You are a new customer (see special rules below).
- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,525 on any one (1) day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six (6) months.
- There is an emergency, such as failure of communications or computer equipment.

If your ability to withdraw funds is delayed beyond the next business day, we will notify you and tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

***Special Rules for New Accounts.*** If you are a new customer, the following special rules will apply during the first 30 days your account is open:

- Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfer, and the first \$5,525 of a day's total deposits of cashier's, certified, tellers, traveler's; and federal, state and local government checks will be available on the first business day after the day of your deposit if the checks are payable to you. The excess over \$5,525 may be delayed until generally no later than the seventh business day after the day of your deposit.
- Funds from all other check deposits will generally be available on the next business day after the day of your deposits unless we invoke a delay because



you are a new customer or for the other reasons set forth in the section entitled “Longer Delays May Apply” above.

**Other Provisions.** If a check or item is accepted on a collection basis, the proceeds usually will not be credited to your account until final collection. Checks with documents attached or accompanied by special instructions are not subject to the availability schedule set forth in this disclosure and will be accepted on a collection basis only. Checks drawn on or payable through depository institutions located outside the United States, or payable in foreign currency, are also excluded from the stated availability schedule.

Although your deposit may or may not be available for withdrawal, there are different rules as to when interest begins to accrue on your interest-bearing account. These rules are described in a separate brochure. Also, there may be different rules as to how and when deposits are considered in assessing fees and charges on your account.

## **VII. ELECTRONIC FUND TRANSFERS & ATM CARD AGREEMENT**

This Agreement covers your and our rights and responsibilities concerning electronic funds transfers services offered to you by us. Electronic funds transfers are electronically initiated transfers of money from your account(s) through the EFT services described below, or as otherwise provided in 15 U.S.C. 1693 et al. and its implementing regulations (as each may be amended from time-to-time).

### **A. EFT services.**

#### **1. Account Access.**

At our discretion, your account may allow for various EFT services; however, some of these services may not be available for all accounts. If approved, you may use the following EFT services to access your account(s):

- a. Phone Banking via the 24-Hour Account Information Line.** A confidential access code is required to access your account(s) via the 24-Hour Account Information Line. You may use the Information Line to transfer funds between your checking and savings accounts whenever you request, or check loan balances and make payments from any Commerce account.
- b. Preauthorized EFTs.** We will accept, as instructed, direct deposits of your paycheck, recurring government benefit payments, such as Social Security, or other reoccurring deposits to your account(s) from your employer, a government agency or department, or other financial institutions. Additionally, upon your instruction, we will pay certain preauthorized recurring debit transactions from your account(s).
- c. Electronic Check Conversion/Electronic Returned Checks.** If you pay for something with a check, you may authorize your check to be converted to an EFT. You may also authorize merchants to electronically debit your account for returned check fees. You are considered to have authorized these EFTs if you complete the transaction after being told (orally or by a notice posted or sent to you) that the transfer may be processed electronically or if you sign a written authorization.
- d. Transactions at an Automated Teller Machine (“ATM”).** Using your PIN and your Commerce ATM, debit, or credit card, you can withdraw, deposit, or transfer funds into or out of your account(s), or to make payments on your Commerce credit cards, lines of credit or loans at ATMs. See your Cardholder Agreement for more information regarding EFT services available by using these types of access cards. If your Cardholder Agreement(s) and this Agreement conflict regarding EFTs,

this Agreement shall prevail. See Section VII.E below for more information regarding EFT services available by using your Commerce ATM card.

- e. **Purchases from Merchants Using a Card.** Your Commerce ATM, debit, or credit card can be used to make purchases from merchants with funds from your account(s). See your Cardholder Agreement for more information regarding EFT services available by using these types of access cards. If your Cardholder Agreement(s) and this Agreement conflict regarding EFTs, this Agreement shall prevail. Additional network rules may also apply.
- f. **Online Banking, Mobile Banking, and Online Bill Pay.** You can transfer funds or pay bills using Online Banking, Mobile Banking or Online Bill Pay. You need a password to access your accounts using these Services. See your Online Banking Terms and Conditions for more information regarding EFT services in Online Banking, Mobile Banking and Online Bill Pay. If the Online Banking Terms and Conditions and this Agreement conflict regarding EFTs, this Agreement shall prevail.
- g. **Other EFTs.** Any other deposit, withdrawal or transfer from your account(s) that is initiated or processed electronically, such as an ACH transaction. For more information about ACH transactions, see Section III.H of this Agreement.

## 2. Transfer Limits:

- a. **Limitation on Frequency of Transfers.** There are no limitations on the number of transfers that can be made during any time period to or from any account.
- b. **Limitation on Dollar Amount of Transfers.** The balance available for authorizing purchases and cash withdrawals is the lesser of (i) your available account balance, plus any credit available through an overdraft protection line of credit or through any overdraft authorized by us in our sole discretion, or (ii) daily dollar limitations established by your specific account type, Cardholder Agreement(s) or the Online Banking Terms and Conditions. Dollar limitations may differ at ATMs not owned and operated by us.

## 3. Business Days.

Our business days are Monday through Friday. Federal holidays are not included.

## 4. Fees:

- a. **Fees Charged by Commerce.** There are certain fees and charges for some EFTs. For a listing of all applicable fees, see our current Fee Schedule, or consult your Cardholder Agreement(s) or Online Banking Terms and Conditions for EFT disclosures and fees that pertain to use of those EFT services. You may request a copy of your applicable Cardholder Agreement or the Fee Schedule by calling 1-800-453-2265 or visiting a branch.
- b. **Fees Charged by Others.** When you use an ATM not owned and operated by us, you may be charged a fee by the ATM operator or any network used, and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer.

## 5. Disclosure of Account Information to Third Parties.

We will disclose information to third parties about your account or the transfers you make:

- a. Where it is necessary for completing transfers;
- b. In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant;

- c. In order to comply with government agency or court orders, subpoenas, or investigations or examinations by our regulators;
- d. If you give us your written permission;
- e. As you may have otherwise authorized in this Agreement or other agreements with us.

## **6. Right to Receive Documentation.**

You can get a receipt at the time you perform a transaction with your card. Otherwise:

- a. Periodic Account Statements.** Transfers and withdrawals made through any ATM or POS terminal, Debit Card transactions, automated phone banking, preauthorized EFTs, electronic/PC transactions or bill payments you make will be recorded on your periodic account statement. You will receive a monthly statement unless there is no transaction in a particular month. In any case, you will receive a statement at least quarterly.
- b. Preauthorized Transactions.** If you have arranged to have a direct deposit made to your account at least once every 60 days from the same source and you do not receive a receipt (such as a pay stub), you can find out whether or not the deposit has been made by logging into Online Banking or calling the 24-Hour Account Information Line at 1-800-453-2265. This does not apply to transactions occurring outside the United States.

## **7. Stop Payment & Termination of EFT Services.**

### **a. Stop Payment of EFTs.**

- i. Preauthorized Payments.** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Call us at 1-800-453-2265 or write us at Commerce Bank, P.O. Box 411635, Creve Coeur, MO 63141, or log into Online Banking in time for us to receive your request three (3) business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after your call.
- ii. Notice of Varying Amounts.** If these regular preauthorized payments may vary in amount, the person you are going to pay will tell you ten (10) days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.
- iii. Liability for Failure to Stop Payment of Preauthorized Transfer.** If you order us to stop one (1) of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.
- iv. Non-Preauthorized Payments.** If you have initiated one (1) or more non-recurring electronic payments from your account, such as an ACH, you may be able to stop these payment(s) if you contact us prior to payment of the EFT, and in time to give us a reasonable opportunity to act on your request. To stop payment, call us at 1-800-453-2265 or write us at Commerce Bank, P.O. Box 411635, Creve Coeur, MO 63141, or log into Online Banking. If you wish to stop all future payments to a specific originator, we may also require you to put your request in writing and provide us with a copy of your written revocation

of authorization with that specific originator and provide it to us within 14 days after your call. Oral and written stop payment orders for non-recurring EFTs will remain in effect (i) until return of the debit is complete or where the stop payment applies to all future payments to a specific originator, the return of all such debits; or (ii) until cancelled by you.

**b. Termination of EFT Services.** You may terminate any EFT service under this Agreement at any time by notifying us in writing and stopping your use of any

card, access code, password or PIN. You must return all cards to us. You also

agree to notify any participating merchants that their authority to make transfers to or from your account(s) has been revoked. We may also terminate

any EFT service at any time by notifying you in writing. If we terminate any EFT services, we may notify any participating merchants making preauthorized debits or credits to your account(s) that this service has been terminated and that we will not accept any further preauthorized EFT instructions. We may also program our computer system not to accept your card, access code, password or PIN for any EFT service. Whether you or Commerce terminates an EFT service, the termination shall not affect your obligations under this Agreement for any EFTs made prior to termination.

## **B. Consumer liability.**

Tell us AT ONCE if you believe your card, access code, password, or PIN has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within two (2) business days after you learn of the loss or theft of your card, access code, or PIN, you can lose no more than \$50 if someone used your card, access code, password, or PIN without your permission.

If you do NOT tell us within two (2) business days after you learn of the loss or theft of your card, access code, password, or PIN, and we can prove we could have stopped someone from using your card, access code, password, or PIN without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

If you believe your card, access code, password, or PIN has been lost or stolen, call us at: 1-800-453-2265 or write us at: Commerce Bank, P.O. Box 411635, Creve Coeur, MO 63141. You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

### **C. Commerce's liability.**

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If any funds in your account necessary to complete the transaction are held as uncollected funds pursuant to our Funds Availability Policy, if funds in your account are pledged as collateral subject to our lien or frozen because of a delinquent loan, if funds in your account are subject to legal process or other claim, or if the transaction involves a loan request exceeding your credit limit.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the ATM, telephone or computer systems you use to conduct the transfer was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- If you used your Card or access code in an incorrect manner.
- Any other exceptions established in our cardholder, Online Banking, or Online Bill Pay agreement with you.

### **D. Error resolution.**

**In Case of Errors or Questions About Your Electronic Transfers.** Telephone us at 1-800-453-2265, or write us at Commerce Bank, P.O. Box 411635, Creve Coeur, MO 63141, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number.
- (2) 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.
- (3) 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 ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts, POS, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

## **E. ATM card agreement.**

### **1. Terms and Conditions.**

Each cardholder agrees to the following terms and conditions, which is the contract governing the issuance and use of your Commerce ATM card ("ATM card"). The agreements that apply to your checking, interest checking, regular savings, and savings with check writing privileges (money market type) accounts apply to all ATM transactions made on these accounts. You agree that all accounts accessed by the ATM card must have the same common ownership or liability as the card. The ATM card is our property and we may revoke the ATM card at any time without cause or notice. You must surrender a revoked card and you may not use an expired or revoked card. You will notify us if the ATM card is lost or stolen. We may change the terms of this agreement without notice, unless required by law. For a listing of all applicable fees for ATM card transactions, see our current Fee Schedule.

### **2. ATM Transactions.**

At the ATM, insert your ATM card and enter the PIN that you established for the Card to (i) withdraw cash from, deposit money in, transfer funds between, or learn the balances in your accounts, or (ii) use funds from your accounts to make payments on your Commerce credit cards, lines of credit or loans. Some or all of these features may not be available at all non-Commerce ATMs and some ATMs may allow you to perform other functions not mentioned here, including the ability to make purchases (e.g. stamps). If at any time you use a non-Commerce ATM to request to take money from an account that you do not have or if the non-Commerce ATM does not prompt you to select a specific account from which to take the money, then you agree that Commerce will attempt to comply with your request by providing you with money from one of your open accounts. Cash withdrawals may be taken from any open deposit account owned by you.

### **3. Point-of-Sale Transactions.**

At merchants that have agreed to accept the ATM card on networks utilized by us, you can use the ATM card to pay for your purchases. When prompted, select "DEBIT" at the POS and enter the PIN that you established for the Card. The purchase amount will be deducted from your account. The use of your Card in this manner constitutes a simultaneous withdrawal from, and/or demand upon your account, even though the transaction may not actually be posted to your account until a later date.

### **4. Foreign Transactions.**

Card transactions including cash withdrawals and POS purchases occurring outside of the United States may be converted to U.S. dollars and subject to currency conversion fees established by the networks used to complete the transaction. Conversion to U.S. dollars may occur on a date other than the date of the transaction. Therefore, the conversion rate may be different from the rate in effect at the time of the transaction. You agree to pay the converted amount plus the applicable foreign transaction fee. A foreign transaction is a transaction where the country of the merchant is outside of the United States.

## **VIII. Substitute Check Policy Disclosure (Check 21 Disclosure)**

### **Substitute Checks and Your Rights**

#### ***What is a substitute check?***

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 the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

### ***What are my rights regarding substitute checks?***

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within ten (10) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### ***How do I make a claim for a refund?***

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

Commerce Bank  
Attn: Expedited Recrediting  
P.O. Box 419248  
Kansas City, MO 64141

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and/or the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check, and the amount of the check.



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