

## COMMERCIAL DEPOSIT AGREEMENT

### IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account.

What this means for you: When you open an account, we will ask for your name, physical address, date of birth (if applicable), social security and/or tax identification number, and other information that will allow us to identify you. We may also ask to see your driver's license (if applicable) or other identifying documents. We will let you know if additional information is required.

This Agreement applies to each deposit account we open for you (excluding certificates of deposit and individual retirement accounts).

Please read this Agreement and retain a copy for your records.

The words "you" and "your" refer to all persons named on the application for an account, on the account agreement/signature card for an account, on any checks or cards for an account, or who sign or use any checks or cards on an account. The words "we" and "us" refer to First National Bank of Omaha and our divisions that operate under the names First National Bank, First National Bank Southwest, First National Bank Fremont, First National Bank North Platte and Castle Bank.

By making a deposit into or otherwise using your account(s), you agree to the following:

### GENERAL TERMS

**1. Interest and Fees.** If your account is an interest-bearing account and you have maintained the required minimum balance, we will pay interest on the collected balance in the account subject to any required withholding. Depending on the type of account you have with us, the applicable rates of interest, frequency of compounding and crediting of interest, minimum balance requirements, fees and other terms for your account will be established by us from time to time and will be available on request. Additional terms pertaining to your account may also be set forth on separate disclosures or account schedules and such terms are to be considered incorporated herein by this reference. We may deduct these fees and charges from your account as they are assessed from time to time, even if that assessment may result in an overdraft on your account. If any taxes are assessed against us with respect to your account (excluding taxes based on our overall net income), you agree to reimburse us. We may deduct any such required reimbursement from your account. If your account has a balance of zero as of the end of any statement cycle period, we may impose a fee. That fee will equal the amount of any accrued interest remaining due on the account.

**2. Authority to Open Accounts.** This Agreement incorporates the terms of any resolutions or other documentation that you provide us in connection with your accounts. Those documents shall not be deemed to alter or amend the terms hereof unless they do so by explicitly referring to the provision of this Agreement being amended. Inconsistencies between those documents and this Agreement shall be construed in favor of this Agreement wherever possible.

**3. Authorized Representatives.** "Authorized Representatives" are persons with authority to act on your behalf. Unless a restriction that we have acknowledged in writing is specifically stated in your authorizing resolution: (i) an Authorized Representative will have authority to appoint the authorized signers on your accounts, to add or delete authorized signers on your accounts, to open additional accounts, to close accounts, and to give us any other instructions on your behalf with respect to your accounts; and (ii) each Authorized Representative may do these things acting alone, unless we require otherwise. We may, but are not obligated to, accept oral instructions from your Authorized Representatives. As between you and us, all actions of an Authorized Representative shall be deemed within the scope of such person's authority. We are not required to verify or confirm the purpose or propriety of any action by your Authorized Representatives and are not responsible for any misapplication or misappropriation of funds by your Authorized Representatives. Authorized Representatives and the authorized signers they appoint shall have the authority: (i) to make withdrawals and to draw checks, drafts or other orders for the payment of money on your account(s) (collectively, "Checks"); and (ii) to issue or cancel stop payment orders on your account(s). We are authorized to honor Checks when bearing or purporting to bear a facsimile signature that you have previously used or if you have filed a specimen of such signature with us. We are entitled to honor Checks and charge your account even if the facsimile signature on a Check was obtained or used without your actual authority and regardless of by whom or by what means the actual or purported facsimile signature resembles the specimen filed with us. Each authorization that we receive from you or your Authorized Representatives shall remain in effect until we receive written notice of revocation and have a reasonable opportunity to act on such notice.

**4. Deposits.** We are not responsible for deposits (such as deposits by mail or at unstaffed locations or night depositories) until they are actually received and verified by us and we issue a receipt. Our counts of money deposited shall be conclusive. All deposits (including checks and electronic deposits) are received and credited by us provisionally and subject to final payment. We reserve, to the extent permitted by law, the right to reverse all credits and to make corrections and adjustments to your account (including corrections and adjustments for errors that are reflected on deposit tickets or receipts). We reserve the right to refuse to accept particular deposits, including the deposit of items on which endorsements are obscured, which we otherwise have reason to question. If you do not endorse a deposited item, we may supply your endorsement, but we are not required to do so and we may require your specific endorsement. You agree to reimburse us for any loss or expense we incur because you fail to endorse an item exactly as drawn. We act only as your agent in receiving and handling items for deposit or collection and are not responsible for the actions of other banks or for the loss or destruction of items in transit. We may select the methods used for collection of items, including the use of other banks and clearinghouses, and we may agree to vary collection policies, procedures and deadlines with such other banks and clearinghouses. We may also convert the checks that you deposit into substitute checks (as defined below) or otherwise collect them electronically. We may charge back to your account the amount of any: (i) item which is returned unpaid or which is not paid within a reasonable time; or (ii) any electronic deposit for which we do not receive settlement within a reasonable period of time. You waive notice of dishonor, nonpayment or protest of any such item or deposit and authorize us to attempt to reclear that item if we wish (but we are not required to do so). You agree to assume responsibility for any loss resulting from endorsing or otherwise marking the back of any deposited item outside of the designated payee endorsement area. You agree that we are not responsible for delayed or inaccurate chargebacks to your account(s) if your endorsement on a deposited item does not enable us to clearly identify the account into which it was deposited. If you are permitted to pre-encode items you agree not to use carrier documents (items placed inside envelopes) in high speed forward or return cash letters. If you do so, you will be responsible all related losses and claims. You may not deposit "substitute checks" (as defined in the federal Check Clearing for the 21st Century Act) unless we have otherwise agreed in writing. If you submit images or data to us, you: (i) shall limit submissions to items which are eligible for such processing (for example, you may not submit savings bonds, foreign checks or checks in carrier documents in this manner); (ii) are responsible to assure that each file you transmit to us accurately reflects the items referenced therein (including all MICR line information), contains the information we need to produce a substitute check in compliance with Regulation CC, and identifies the bank of first deposit in the 26 record, (and you understand that scanned checks are subject to return and adjustment if they do not satisfy applicable image quality acceptance standards); (iii) you further understand that we are not responsible for detecting errors in the files or data that you transmit to us, information which duplicated information you previously provided to us or that contains information with respect to checks that you have previously transferred to, deposited with or attempted to clear through us or a third party to make payment based on, the checks reflected in the files you transmit to us; (iv) shall assure that the images you create accurately represent all of the information on the front and back of your checks, including all endorsements; (v) shall not alter any data you send us so that it does not accurately reflect the checks you received; (vi) shall retain the original scanned checks in a secure setting for no less than 60 days, and make such checks available to us within 5 business days of such request; (vii) shall destroy, by shredding, the original checks within 120 days after scanning (unless doing so would be a violation of law, rule or regulation); (viii) agree that all transaction data you transmit to us reflects the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context. If a check you deposit is returned to us and you request it to be returned to you, we may return it to you in the form of a substitute check (or a paper or electronic representation thereof). If items are lost while in our possession, you agree to use reasonable efforts to obtain replacements. If you deposit an item drawn on a non-U.S. bank or payable in a foreign currency, and we agree to collect it, we may convert the item to U.S. Dollars using our exchange in effect on the date we select and may charge your account for the amount of any third party fees we are required to pay in connection with such item. You understand that we may credit incoming funds transfers based solely on the account number

provided to us, regardless of whether that number matches the other information provided with the transfer. We are authorized, but not obligated, to accept deposits into your account(s) regardless of who we receive such deposits from, regardless of who they are made payable to, and regardless of whether they are endorsed on your behalf.

**5. Checks and other Transfers.** If your account has check writing privileges, you agree to use the forms that we have approved. You should not issue checks in a form that obscures endorsements; if you do so you are responsible for any losses that result. We may return any other form, any item that does not include your manual or facsimile signature (even though the item might indicate you have authorized it), any item that appears to us to be irregular, incomplete, forged or altered, or any item or transfer that we otherwise suspect may not be properly payable. If items are presented which appear to be duplicates, we may return either or both duplicates. We may convert your paper checks into substitute checks (as defined above) for purposes of return. Unless the context indicates otherwise, references in this Agreement to a "check" or an "item" include any relevant substitute check and any paper or electronic representation thereof. We may disregard all conditions, restrictions, legends and other extraneous information present on any check (such as a "void after" or "not good in excess of" legend). If any check is presented to us more than six months after its date, we have the option to either pay or dishonor that check. You agree that we may impose conditions on persons who request us to cash a check drawn on your account (for example, by requiring payment of a fee, the presentation of appropriate identification, and/or placement of a fingerprint on the check); we may also refuse to cash the item. You agree that we may dishonor the check if these conditions are not satisfied. To the extent that applicable law allows, we may pay checks, transfers and withdrawals in any order we choose (for example, we may pay the largest items first), even if the order we choose results in there being insufficient funds to pay other checks, transfers and withdrawals that might have otherwise been paid. If your account has been established with restrictions that require two or more signatures on items or limits the maximum amount of an item that a person can sign, you acknowledge and agree that these restrictions have been established solely for your internal control purposes and that non-complying items will nonetheless be considered properly payable if executed by any authorized signer. You acknowledge and agree that we will not be liable for honoring drafts, automated clearinghouse transactions and other transfers from your account that purport to have been authorized by you or that we otherwise receive in the ordinary course of business ("Incoming Items"). These Incoming Items may include, but are not limited to: (i) substitute checks (and you agree that even if a substitute check does not satisfy all technical requirements for that status, such check may be deemed properly payable if the original check would have been properly payable had it been presented) and check images; (ii) transfers that appear to have been authorized by you, such as a preauthorized electronic funds transfer, a transfer initiated over the Internet or the telephone or a point of purchase transaction where the merchant has converted your paper check into an electronic transaction; or (iii) transfers that a third party may be permitted to initiate under applicable rules, such as a transfer that represents a permitted reversal or reclamation of an earlier transfer, a transfer pertaining to a destroyed or insufficient funds check, a transfer where a payee is permitted to convert your check into an electronic check transaction and transfers pursuant to check truncation programs in which we may participate. None of this, however, is intended to excuse us from reimbursing you as required by applicable law for the amount of any such transfers that are in fact unauthorized. Please exercise caution when deciding to give your account number to a third party - if a third party has your account number, we will ordinarily presume that you authorized the third party to use it to initiate a transfer from your account. We are not required to inquire into the circumstances under which: (i) items were issued, endorsed or negotiated; (ii) transfers were authorized; or (iii) proceeds will be disposed of (even if an item is payable to cash, bearer, the order of an authorized signer or a lender of an authorized signer). If any item paid on your account gives rise to a claim against a third party (for example, third party liability for breach of a presentment or transfer warranty), you may request us to take reasonable action to enforce against prior parties whatever rights you or we may have against such prior parties. If we take such action, you agree to reimburse us for our costs and expenses (including reasonable attorneys' fees) in doing so. If we pay an item which has been transferred or negotiated outside the United States, you will be deemed to make all U.S. Uniform Commercial Code presentment and transfer warranties to us with respect to that item.

**6. Limitations on Withdrawals.** We reserve the right, at any time, to require at least seven days' advance written notice prior to any withdrawal from your savings or NOW account. If your account is a savings account or money market deposit account (MMDA), it is subject to additional limitations set forth below. If we authorize a withdrawal or transfer from your account (for example, through the use of a banking or check card) we may, at that time, debit or place a hold on your account for the amount authorized.

**7. Additional Limitations for Savings Accounts and MMDAs.** If your account is a savings account or a money market deposit account (MMDA), you may make no more than six transfers and withdrawals from the account during any calendar month. Transfers do not include (i) loan payments to us; (ii) transfers to another of your accounts with us that you make if made by mail, automated teller machine or in person at a branch; or (iii) withdrawals that you make if made by automated teller machine or in person at a branch. Transfers include, but are not limited to, (i) checks; (ii) preauthorized withdrawals with third parties; or (iii) transfers made by phone or online banking. We will count transfers in the month in which they are paid. If the limitations are exceeded, you will be notified by a letter from the bank. If you receive three notification letters within a rolling calendar year, your account will be closed.

**8. Overdrafts.** You agree to maintain a sufficient balance in your account to cover the checks you write and the other withdrawals and transfers that you make or authorize. If available funds are not on deposit at the time we review your balance after any check or transfer request is presented, we may, without prior notice, refuse payment or we may (but need not) pay the item. We need not review your account more than once in making this determination. In either case, an overdraft fee may be assessed. If we pay an overdraft, you agree to immediately deposit sufficient funds to cover the overdraft and related fee.

**9. Stop Payment Orders.** You may order us to stop payment on a check, but we must have a reasonable opportunity to act on the order after receiving it. Because we rely upon computer systems to implement stop payment orders, you understand that your order must provide the exact amount, check number and account number on the item you want stopped. We are not responsible for paying items that don't exactly match your stop payment order. Your stop payment order should also identify the payee of the item so that we may verify we are stopping payment on the correct item. A stop payment order is only effective for six months, unless renewed in writing. If we give you a confirmation of your stop payment order, you agree to notify us immediately if it is inaccurate (and in the absence of such notification, you agree that we will not be responsible for relying on the information in the confirmation). You understand that we may not be able to stop payment on items that you have enabled third parties to create and send to us. If you have authorized a third party to initiate recurring deductions from your account, you should order the third party to stop them, and agree that we are not responsible therefor except to the extent required by law. You may not stop payment on certified checks, teller's checks or cashier's checks or money orders and understand that we may refuse to issue a replacement before the expiration of a period of time specified by applicable law. You understand that a stop payment order on any check will not preclude a holder-in-due course from making a claim against you.

**10. Postdated Checks.** If you issue a postdated check, you should give us notice of the postdating in the same manner specified above for stop payment orders; otherwise we may pay a postdated check when it is presented.

**11. Statements.** We will make statements reflecting the activity on your account available to you, either by sending periodic statements to the address you select (if there is more than one of you, we will send statements to one address that you select) or by making account information available online. Unless you have agreed to receive notices electronically, any other notices that we send you may be sent to the address designated for your statements. You agree to promptly examine your statements and to verify that the Incoming Items (as defined in Section 5) identified thereon were authorized. If you need an image or copy of an Incoming Item to do this, you agree to request one promptly. If unauthorized use of your account occurs (e.g., an improper payment, deduction or transfer from your account), if any items deposited into your account are alleged to be forged or altered, or if there is any other discrepancy in your account, you agree to: (i) promptly provide such information as we may request to investigate the problem; (ii) promptly provide such documentation as we may request concerning the problem (including relevant affidavits); and (iii) if relevant, cooperate with us and appropriate law enforcement authorities in recovering any unauthorized payments, deductions or transfers and in prosecuting the perpetrator. If you do not notify us reasonably promptly, you may be precluded from making a claim against us based on the error; if more than 30 days pass, you will be precluded from making a claim based on losses caused by the same wrongdoer. Unless you give us written notice within 60 days after the date of the statement, the statement shall be deemed correct for all purposes and we shall not be liable for any errors shown thereon. No legal proceeding or action may be brought against us to recover payment in respect of an error unless you: (i) give us written notice as provided above; and (ii) commence the action or

proceeding within one year after the date of the statement on which the error was reflected. You must let us know if you do not receive or cannot access your statement. Nothing in this Agreement: (i) is intended to limit rights you are granted by law, which cannot be waived; and (ii) applies to preclude you from asserting a claim on which a third party is liable (for example, third party liability for breach of a presentation or transfer warranty). To the extent that we are requested or required to be involved in the assertion of such claim, however, you agree to reimburse our costs and expenses (including reasonable attorneys' fees) in connection therewith.

**12. Check Safekeeping.** Checks and/or check replacement items may not be returned with your statement. Your statement will, however, indicate the number, amount and date of payment of each check or item. Even if you were previously provided with an election as to how checks would be returned to you, we will not be considered in default thereof, so long as images of such checks are made available to you on request. Copies of checks will be available on request for seven years after we receive them (unless applicable law requires that they be kept longer). We may dispose of or destroy all checks that are not returned to you.

**13. Change in Terms. IMPORTANT NOTICE:** We may unilaterally change the terms of this Agreement at any time. This includes modifications, deletions and the addition of new provisions, including nonfinancial provisions (for example, we may add provisions relating to our enforcement rights or the resolution of claims and disputes). If we make changes, we will send you a written notice, if required by law. Changes will be automatically effective on the date we specify and without the necessity of any further assent on your part. Unless we specify otherwise, changed terms will apply to the then outstanding balance of your account as well as to future transactions and balances. Each time you use your account, you are confirming your assent to the terms of this Agreement, including all announced changes. Use of your Account is not, however, necessary for a change in terms to be effective. If you disagree with a change, you should close your account. Closed accounts remain subject to this provision.

**14. Dormant Accounts.** If three consecutive statements are returned to us, and there is no activity by you on your account, we may consider your account dormant. If your account becomes dormant, we may cease sending statements. To the extent permitted by law, we may also assess our then-current service charge. Depending on the type of account you have with us, current charges are set forth either on separate disclosures or account schedules, the relevant portions of which are incorporated by this reference (you may request a copy of such disclosures and schedules at any time).

**15. Closing Accounts.** You may close your account at any time and for any reason after we have received final settlement on all items deposited by you. We may close your account at any time and for any reason. We also reserve the right, in our discretion, to refuse additional deposits and/or to discontinue or limit the practice of allowing checks, transfers or withdrawals. If we elect to take one of the preceding actions, we will notify you, if required by law. We will not be liable for dishonoring items after notifying you that we have taken one of these actions. If your account is closed, we may issue a check for the balance in the account. You must pay unpaid fees and charges when your account is closed. In addition to the foregoing, although we are not obligated to do so, if we determine that an unauthorized transaction has occurred or been attempted with respect to your account, we may close the account, reopen a new account on the same terms, and so note the same on our records. After your account is closed, you remain obligated to comply with all terms of this Agreement relevant to anything that relates to or arises out of an occurrence prior to account closure. You specifically agree to reimburse us for the amount of all subsequent claims concerning items deposited prior to account closure (including subsequent warranty claims and returns of those items).

**16. Setoff.** To the fullest extent permitted by law, we shall have a lien and right of setoff against any funds you have in this account or in any other account which you may have with us for purposes of satisfying any liability, indebtedness or obligation you owe to us (including overdrafts and fees), and you grant us a security interest in such funds and in any items in the process of collection to secure payment and performance of, all liabilities, indebtedness and obligations that you may now or hereafter owe to us (whether sole, several, joint, joint and several, absolute or contingent, due or to become due, liquidated or unliquidated, secured or unsecured). We are authorized to exercise against the entire amount of the account whatever setoff or other rights we may have with respect to any one of you, regardless of which of you is in default and irrespective of your contributions to the account.

**17. Claims concerning Deposits.** You understand that we are required to make certain warranties and have certain indemnity and other responsibilities to third parties with respect to deposits made to your account (for example, we may have responsibility to third parties for items that you deposit with forged, unauthorized or missing endorsements, and items that have been altered or improperly encoded) and that other claims may be made against us by third parties arising out of handling your deposits (all such claims referenced in this sentence are referred to collectively as "Warranty Claims"). Warranty Claims include claims: (i) that are made after the drawee's midnight deadline; and (ii) asserted by electronic, paper or other means. If we receive notice of a Warranty Claim, we may place a hold on your account for the amount of the claim. If you request us to, or if we are otherwise required to, dispute or defend against any Warranty Claim (for example, by asserting that the paying bank is required to assert its defenses against its customer), and if we agree to do so, you are responsible for reimbursing our costs and expenses (including reasonable attorneys' fees). We may deduct from your account the amount of any Warranty Claim that we pay in good faith. We may exercise the rights set forth in this paragraph, even if doing so may create an overdraft in your account. If sufficient funds are not available in your account, you agree to reimburse us for the amount of such claim. Our rights of deduction and reimbursement are absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment or right of recoupment. We are not required to give you notice prior to exercising our rights under this section. These rights apply to, among other things, direct deposits of government benefits, wire transfers into your account, other direct deposits coming from third parties, deposits made after dissolution (including deposits of checks made payable to you), and deposits that are claimed to have been altered, improperly endorsed, miscoded or otherwise in violation of applicable warranties under the Uniform Commercial Code, and items you created (or instructed us to create) that were not properly authorized.

**18. Claims concerning Items Paid.** Unless applicable law gives you the right to raise the issue with us, if you have a dispute with a third party, you agree to resolve that dispute directly with the third party even though we handled the check or other transfer by which the third party was paid. If a claim is made that any item drawn on your account was forged or altered, bore a forged or unauthorized endorsement or was otherwise not properly payable, we may deduct and/or withhold the amount from your account until final determination of the claim. You agree that we will not be liable for paying items unless we could have detected that they were not properly payable through the exercise of ordinary care. You acknowledge and agree that we will not be considered to have failed to exercise ordinary care because we rely upon automated processing of items, because we do not conduct sight examination of items below a certain threshold amount, because we rely upon encoded information on checks or because we do not review endorsements on items drawn on your account.

**19. Deposit Account Control Agreements.** We are not obligated to enter into deposit account control agreements with respect to your account. If we agree to do so, you are responsible for allowing sufficient time for us to review and negotiate that agreement and you agree to reimburse us for our costs and expenses (including reasonable attorneys' fees) in reviewing, negotiating and carrying out our obligations under that agreement. We are not liable to you for any action that we take in a good faith effort to comply with such an agreement.

**20. Garnishment, Legal Process, Disputes.** You agree that we will not be responsible for complying or refusing to comply with any garnishment, levy, subpoena or other judicial, administrative or legal process we receive regarding your account, any funds in your account, or any item deposited thereto. We may impose a reasonable processing charge in such circumstances. In addition, if the foregoing should occur or if there is any dispute regarding your account (such as a dispute regarding ownership of the account or the authority of any person to take action on the account), or your instructions to us regarding the account (such as stop payment orders), you agree that we may place a hold on your account (i.e., not allow further payments, transfers, or withdrawals) until the situation is resolved to our satisfaction. We are not required to determine the merits of any such disputes. In any of the preceding situations, we may interplead or take similar action with respect to the funds in dispute and you agree to reimburse our costs and expenses (including reasonable attorneys' fees) in doing so and agree that we may charge the same to your account.

**21. Our Obligations.** We have certain obligations to you under applicable law, including the obligation to exercise ordinary care. That obligation shall be measured by the reasonableness of banking procedures established for the transaction involved and general banking usage in the local area served by us; clerical error, inadvertence or oversight, or an honest mistake of judgment shall not constitute a failure to exercise ordinary care. You agree that we shall have no liability to you other than liability imposed by statute which cannot be waived and liability for direct damages resulting from our gross negligence or willful misconduct. THE ACCOUNT AND ANY RELATED PRODUCTS OR SERVICES THAT WE PROVIDE ARE PROVIDED "AS IS." WE DISCLAIM, TO THE EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR

NONINFRINGEMENT. We are not liable for losses due to interruption of communications, computer facilities, failure of equipment, emergency conditions or other circumstances beyond our control. IN NO EVENT SHALL WE BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS), REGARDLESS OF WHETHER THEY ARE FORESEEABLE. The preceding limitations apply to all claims, regardless of whether asserted in contract, tort, or otherwise. In the event of a security breach with respect to your customers' information, our sole and exclusive obligation will be to inform you of the breach and to provide reasonable assistance in mitigating the effects thereof. We are not responsible for information contained on the back of checks that you issue or deposit. If your account is an individual account (e.g., a sole proprietorship), your death or legal incompetence does not revoke our authority with regard to items drawn on or deposited to your account until we have actual knowledge thereof and a reasonable opportunity to act (and we may, even with knowledge of your death, pay checks drawn before death for up to ten days after the date of death). You also agree that we will not be liable for and you will hold us harmless from claims arising out of third party inquiries about the existence and status of your account or whether any checks drawn on your account will clear. We may, but have no obligation to, respond to such third party inquiries. We may refuse to take any action which we believe violates applicable laws, rules or regulations.

**22 Your Obligations.** You agree to use reasonable care in handling your account, in safekeeping your blank checks, in writing checks (including checks issued in replacement of previously issued items) and authorizing transfers from your account, and in reviewing your statements. You agree to notify us immediately if any of your checks (whether blank or completed) are lost or stolen. You acknowledge and agree that services, such as positive pay services, are available that can assist in protecting your account. We recommend that you consider using such services. If a loss occurs which could have been prevented through the use of such services, you will be deemed to have assumed such risk of loss and your failure to use the service shall be deemed negligence contributing to the loss. You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, contractors, and third party service providers, including persons granted signature authority on your accounts and personnel who are permitted to initiate and/or give us instructions in respect of your entries (collectively, "Your Personnel"). We are entitled, without further inquiry or investigation, to assume that the actions of Your Personnel are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls (including separation of duties for statement review and other activities) that will prevent and/or allow the prompt detection of fraud or other unauthorized activity by Your Personnel. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of Your Personnel. You: (i) are responsible for complying with applicable laws, rules and regulations in using your account and in making deposits thereto and transfers therefrom, this includes your agreement not to initiate transactions that violate the laws of the United States (**IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800)540-OFAC**); (ii) agree not to use your account in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us to investigation, prosecution or legal action; and (iii) agree to be bound by the rules of the National Automated Clearinghouse Association and other relevant clearinghouse associations as in effect from time to time, to the extent that we process transactions for you that are subject to those rules. If we provide you with our "Compliance Update for ACH Originators" you agree to comply with it, as revised and provided to you from time to time. If you receive funds from us based on our error or mistake you agree to immediately notify us and return those funds. If you choose to communicate with us via e-mail, we strongly suggest that you encrypt those communications using a protocol we can accommodate. You assume all risks of using unencrypted communications.

**23 Electronic Security.** You are solely responsible for maintaining adequate security and control over your User IDs, passwords and computer systems. You agree to keep and to require Your Personnel keep your User IDs and passwords secret and you agree to prevent unauthorized access to your computer systems. You agree to notify us immediately if your User IDs or passwords are lost or stolen or if you believe someone else has discovered your User IDs or passwords or if you suspect there has been a breach of your computer system. You should change your User IDs and passwords whenever any person with access to them transfers to a new assignment, leaves your employ or is no longer authorized to use them or if you believe that security of your User IDs or passwords has been compromised. We also recommend that you regularly change your User IDs and passwords. We are authorized to act on, to release your account information to, and to accept as your authentic instructions any instructions given to us by, any person who has entered a User ID and password assigned to you. If a security breach occurs, unless our internal security is proved to have been breached, there shall be a presumption that your security has been breached.

**24. Indemnity.** You agree, to the fullest extent permitted by law, to indemnify, defend and hold us harmless from and against all third party claims asserted against us that arise out of or are related to: (i) our receipt, handling, presentment, payment or return of any item drawn on or deposited in your account (including our status as a "reconverting bank" in respect of substitute checks and our retention of items past our midnight deadline); (ii) our maintenance of your account; (iii) us following your requests or instructions (including stop payment orders); (iv) your breach of this Agreement or any other agreement; or (v) your acts or omissions. We have no right to be indemnified for our own gross negligence or willful misconduct.

**25. Miscellaneous.** This Agreement, your account and the deposits you make will be governed by federal laws and regulations, applicable clearinghouse rules, and such additional rules, regulations and policies (including banking days and cutoff times) as we may establish from time to time. To the extent, if any, that state law is applicable to this Agreement, Nebraska state law (excluding conflict-of-law principles) shall apply. Any actions arising out of or related to this Agreement shall be commenced and maintained solely and exclusively in the federal or state courts located in the county and state where your local branch is located. This Agreement shall be construed to vary, by agreement, applicable law to the maximum extent permitted by law. If a provision of law cannot be varied by agreement, that provision of law shall supersede the conflicting variation to the minimum extent required by such law. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other term hereof. If any term is held to be unreasonable in time, scope, or otherwise, it shall be construed by limiting it to a minimum extent so as to be enforceable. No waiver of the terms of this Agreement by us will be effective unless signed by one of our authorized officers. We reserve the right to waive the enforcement of any of the terms of this Agreement with you with respect to any transaction or series of transactions. Any such waiver will not affect our right to enforce any of our rights with respect to our 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 on a going forward basis. You agree to promptly and directly notify us of any change in address. If three consecutive statements are returned to us and there is still activity by you on your account, we may stop sending statements to that address. You agree that we may accept requests to make changes to your account (e.g., change of address, change in the type of account, etc.) without requiring your signature or a written confirmation. Your account is not transferable. As used in this Agreement, the term "including" means "including, but not limited to". We are entitled to use such agents, contractors, service providers, networks and other third parties as we may deem appropriate in maintaining your account and processing transactions in connection therewith. You agree not to pledge or grant a security interest in your account without our consent. If we consent (which we are not obligated to do), our setoff and security interest rights will have priority over the rights of any third party unless we expressly agree otherwise in a writing executed by an authorized officer. You agree that we may contact any source necessary and may obtain credit reports in connection with opening, maintaining and servicing your account. We may monitor or record any telephone calls or other communications between you and us. You agree that we may maintain a copy of this Agreement and any and all other documentation related to your account in electronic form and that we may destroy the originals. You agree that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original and you waive any objection to our use of such copies. This Agreement supersedes any previous terms and conditions applicable to your account (but does not supersede agreements for services for which the parties have executed written agreements, provided, however, that the provisions of this Agreement shall not be deemed superseded by other agreements, even if those agreements contain general contract integration clauses, to the extent that this Agreement contains additional protections for the parties). Notices to us shall not be considered effective until they are actually received by an employee with responsibility to act thereon. We shall be afforded a reasonable opportunity to act on all notices. This Agreement is solely for the benefit of you and us; there are no third party beneficiaries of this Agreement.

**26. Checking Account Subaccounts.** For regulatory accounting purposes, all checking accounts will consist of two subaccounts: a "transaction account" and a "nontransaction account." All deposits and withdrawals are presented against the transaction account for payment. We aggregate the two subaccount balances for purposes of balance requirements, interest (if any) and service charges (if any) applicable to your account. We may transfer from time to time all or a portion of the balance in the transaction account to the nontransaction account. We also may transfer up to six times each monthly statement cycle all or a portion of the balance in the nontransaction account to the transaction account. The terms and conditions of this Agreement apply to your checking account as a whole, without reference to the subaccounts.

## FUNDS AVAILABILITY POLICY\*

Our current policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Funds from deposits of cash made in person to one of our employees, electronic direct deposits and wire transfer deposits will be available on the day we receive the deposit. Funds from the first \$100 of deposits of checks made in person to one of our employees will be available on the day we receive the deposit (cash back that you receive from a deposit will not count against this \$100). Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

For determining the availability of your deposit, every day is a business day, except Saturdays, Sundays and federal holidays. If a wire transfer is received by 5:00 p.m. CST on a business day that we are open, we will consider that day to be the day of your deposit. However, if a deposit is received on a day we're not open or we receive a wire transfer after the applicable time mentioned above, we will consider those next business day transactions.

\*For customers on account analysis, we make your funds available in accordance with Federal regulatory requirements and our check clearing schedule. Please contact your account representative for a copy of the check clearing schedule.

### LONGER DELAYS MAY APPLY

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. However, the first \$200 of your deposit will be available on the first business day after the day we receive your deposit.

If we are not going to make all of the funds that you deposit by check available on the first business day after the day of your deposit, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

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

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.

- You deposit checks totaling more than \$5,000 on any one day.

- You redeposit a check that has been returned unpaid.

- You have overdrawn your account repeatedly in the last six months.

- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the 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 deposits of cash made in person to one of our employees, electronic direct deposits and wire transfer deposits to your account will be available on the day we receive the deposit. Funds from the first \$5,000 of a day's total deposits of cashier's, certified, teller's, travelers and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you. The excess over \$5,000 may not be available until the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 may not be available until the second business day after the day of your deposit. Funds from all other check deposits will generally be available on the ninth business day after the day of your deposit.

### SPANISH LANGUAGE TRANSLATIONS

Use of your account indicates you agree to the following: Spanish translations of disclosures and materials, if provided, are provided as a courtesy. In the event of any discrepancy between the English version and the Spanish version of any disclosure or material that has been provided, the English version will control and supersede any Spanish version. Subsequent disclosures and materials may be provided in English only. If any disclosures or materials are provided in English only, and if you do not understand the English version that has been provided, it is your responsibility to obtain a translation.

### NOTICE WITH RESPECT TO ACH CREDIT TRANSACTIONS AND UCC ARTICLE 4A

(1) Credit given by us with respect to an Automated Clearing House (ACH) credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment via such entry (i.e. the originator of the entry) shall not be deemed to have paid the amount of such entry. (2) Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice of receipt of an ACH item and we will not do so. However, we will notify you of the receipt of payments in the periodic statements we provide to you.

(3) We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the State of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and us, Nebraska law shall govern.