

# First Merchants Bank

## Business Online and Mobile Banking

### SERVICE AGREEMENT

#### I. GENERAL DESCRIPTION OF BUSINESS ONLINE AND MOBILE BANKING.

##### A. Welcome to Business Online and Mobile Banking.

The Service is offered by First Merchants Bank and is described in this Agreement. You should read this Agreement carefully and keep it with your other account records. It includes legally required disclosures including but not limited to electronic funds transfers. The following terms and definitions apply when used in this Agreement:

**"Service(s)"** means the individual and all collective business online and mobile banking services and fund transfer service available in connection with the Financial Software.

**"Access Device"** means a personal computer, mobile phone or other device that meets the requirements for use of the Service and by which the Service is accessed by you.

**"Account(s)"** means (i) deposit or savings account(s) selected by you that will be used to perform online and mobile banking services, (ii) all other eligible accounts that are linked to your Service (iii), lines of credit from which funds may be transferred to an Account (iv), investment accounts, such as IRAs which may be funded from an Account, and (v) any other account or financial product accessed using the Service. You will designate which accounts for deposits, transfers, sweeps, loan payments, bill payments, payment of applicable fees, and any other functions.

**"Administrator"** means the person designated by the Account Owner who has full rights over all aspects of the Service without limitations, including but not limited to adding Authorized Users, roles, and designating activity limitations.

**"Agreement"** means this agreement setting forth the terms and conditions of using the Service.

**"Bill Pay Service"** means an optional service where Payees can present bills through the Service, to be paid directly from eligible deposit

accounts.

**"Business Day"** means Monday through Friday, except Federal Reserve holidays.

**"Collected Funds"** means your current account balance minus the amount of any checks or other transactions that are in the process of being collected.

**"Company"** means the business, non-profit or government entity using the Service.

**"Due Date"** means the date when a payment is due as reflected on a statement provided by Payee. IMPORTANT NOTE: It is **not** the late date or grace period.

**"Expedited Bill Payment Service"** means a feature of the Service whereby you may expedite payments as described herein.

**"Financial Software"** means the software or mobile application provided to allow you to access and to use the Service.

**"Transmit Date"** means, (i) with respect to bill payments, the date on which the payment is to be initiated for remittance to the Payee, (ii) with respect to fund transfers, the date on which the transfer is to be initiated to us for processing.

**"Future Dated Transfer"** means a funds transfer that will be initiated on a future day depending on your selection of the Transmit Date.

**"Future Payment"** means a payment, other than a Recurring Payment, that will be initiated on a future business day depending on your selection of the Transmit Date.

**"Business Mobile Banking"** means downloading the Bank's Mobile Banking Application and using it to access your bank accounts, make financial transactions, and using the Service on your access device.

**"Business Mobile Deposits"** means using your Mobile Banking Application to take a photograph of a check and deposit it to your account(s).

**"User ID"** means an identification code or username needed to access the Service.

**"Password"** means a personal code selected by you that will be used to obtain access to the Service. The term includes any additional numbers, letters or symbols required by the Service Financial Software or equipment used, or otherwise established by you.

**“Payee”** means any person or entity to which you direct a payment through the Service.

**“Recurring Payment”** means a regular payment that is automatically made during recurring intervals permitted by the Service based on a recurring Transmit Date.

**“Same Day Payment”** means a payment that will be initiated on the same day that you enter the payment information through the Service.

**“Schedule of Fees”** means a listing of current fees as published from time to time by Bank and available by calling the Customer Care center at **800.205.3464** or by visiting a First Merchants Bank branch.

**“Scheduled Payment Date”** means the day you want your Payee to receive your bill payment and in the case of electronic payments is also the day your Account will be debited unless Scheduled Payment Date fall on a day other than a Business Day in which case it will be considered the previous Business Day.

**“Authorized Users or Representatives”** means any individual designated by the Administrator(s) that are authorized to perform Service functions related to the Accounts, as permitted or limited by roles and entitlements.

**“User’s Guide”** means any instructional materials (as amended from time to time), and frequently asked questions, provided with the Service.

**“Bank”, “we,” “us” and “our”** means First Merchants Bank.

**“You,” “your” and “yours”** means (i) each and every person or entity who now or hereafter is an account holder with respect to the Account or has an interest therein; and (ii) each and every person or entity who now or hereafter subscribes to the Service or is a Authorized User by you to access the Service.

Other definitions may appear within the remaining text of this agreement.

## **B. What this Agreement Covers.**

This Agreement between you and the Bank governs the use of the Service. The Service permits Bank’s business customers to perform a number of banking functions on Accounts through the use of an Access Device.

## **C. Eligibility.**

To be eligible to use the Service, you must maintain an eligible account with the Bank.

#### **D. Accepting the Agreement.**

When you or anyone authorized or permitted by you, use the Service, you and they agree to abide and be bound by the terms and conditions of this Agreement.

#### **E. Relations to Other Agreements.**

Your use of the Service may also be affected by the agreements between us and you for each Account owned or controlled by you. When you link an account to the Service, the agreement governing that account is not changed and remains in full force and effect. This Agreement is only supplemental to the separate agreements governing each account you own. Similarly, if you use the Service to access a credit account you do so under the terms and conditions set forth in the agreement and disclosure(s) provided to you for the credit account. You should review each agreement governing your accounts for any applicable fees, limitations on the number of transactions you can make, and other restrictions that might impact your use of an account within the Service. Your business services may include those from third party providers, such as Bill Pay and e-statement, similarly those services will have their own agreement governing their terms, conditions, and disclosures.

If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of any other agreements between you and us as they relate to this Service this Agreement will control.

## **II. APPOINTMENT OF ADMINISTRATOR AND REPRESENTATIVES.**

### **A. Appointment of Administrator.**

If you are a business customer, you shall designate an Administrator who is the primary contact person for the purposes of communicating with the Bank regarding the Service. The Administrator has the authority to determine who will be authorized to use the Service on your behalf (hereinafter "Authorized Representative"). The Administrator shall establish separate Authorized User credentials, where required by the Service, for each Authorized Representative, as well as the Authorized User privileges on each Authorized Representative's authority to access information and conduct transactions, subject to any maximum limitation imposed by First Merchants Bank on you, or limits that the Administrator places on Authorized Users. You are

responsible for familiarizing all Authorized Representatives with the provisions of the Agreement. You assume sole responsibility for the actions of your Administrator, the authority he or she gives to Authorized Representatives to act on your behalf, and the actions of the Authorized Representatives, and Authorized Users. You may change the appointment of its Administrator from time to time by submitting such change in writing to the Bank on your letterhead. Any changes to the Authorized Representatives shall be your sole responsibility and your Administrator, and any such change shall be within your sole control and/or your Administrator and shall not impose any additional duty or liability on the Bank. **YOU understand and acknowledge that by appointing an Administrator, YOU ARE/YOUR BUSINESS IS conferring to such Administrator total control over the Accounts. By executing this Agreement, YOU assume the risks involved in appointing an Administrator and Authorized Representatives and agree to hold the Bank harmless from any loss resulting from the wrongful acts OR OMISSIONS of THE Administrator or any Authorized Representative.**

**B. Authorized Representative(s).**

You represent that each Authorized Representative has general authority from you to access information and give instructions including general authority over the movement of your business' funds and Accounts, and services as evidenced by Banking resolution, partnership declaration and/or other agreements, certifications, or instruments you have provided to the Bank; and that the Bank has full authorization from you to rely and act upon these instructions. You are responsible for deleting and/or blocking access, service, and any Security Device used by or assigned to an Authorized Representative that is no longer employed by you.

**C. Linking Accounts of Additional Businesses.**

If you are authorized to enter into an Agreement for the Service for multiple businesses, and if you want to link the Accounts and Services for one business to the Accounts for other businesses entering into this Agreement, you will need to agree separately to this Agreement for each other business entity. Upon doing so, you may link the Accounts of more than one business and use a common Online ID and password. By linking the Accounts of multiple businesses, you are certifying that you are properly authorized to link the Accounts of the different businesses and to use all the functions of the Service for each business. The Account Owner further agrees to inform the Bank if anyone's authority over any linked account diminishes, changes, or ceases in any way. The Bank is not liable in any manner whatsoever for any damages suffered by you, your businesses, or any third party.

### **III. BUSINESS ONLINE AND MOBILE BANKING SERVICES.**

You may be able to use the Service to perform some or all of the following tasks and additional functionality may be added to the Service from time to time.

#### **A. Account Services.**

Some of the Services provide you with balance and other account information. Since certain information and transactions are not processed by the Bank until after the close of its Business Day, some transactions may not be reflected on the Service until the next Business Day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. (See the Bank's policy on funds availability, titled "Your Ability to Withdraw Funds," for more information on when deposited funds will be available for withdrawal [https://www.firstmerchants.com/docs/default-source/disclosures/availability\\_of\\_funds\\_disclosure\\_2020\\_05\\_04.pdf?](https://www.firstmerchants.com/docs/default-source/disclosures/availability_of_funds_disclosure_2020_05_04.pdf?))

You may use the Service to determine the balance and recent activity in Accounts. Any balance or recent activity shown displayed by the Service will include a date as of which the balance is current. The balance or recent activity shown on the Service may include deposits still subject to verification by us. The balance or recent activity shown also may differ from your records because it may not include deposits in progress, outstanding checks, or other withdrawals, payments, or charges.

#### **B. Internal Bank Transfers.**

##### **1. Description.**

The Service allows you to transfer funds among your eligible-Accounts held at the Bank.

##### **2. Scheduling.**

Transfers may be scheduled for the same day or for a future date. Transfers will be posted as pending transactions when initiated. Transfers initiated prior to 9:00 pm ET will be effective on the same business day. Transfers initiated after 9:00 pm ET will be effective the next business day. A Future Dated Transfer may be scheduled as a one-time request or a recurring request. Future Dated Transfers will be initiated on the Transmit Date requested (even if the Transmit Date is not a Business Day), not the date the transfer is scheduled.

The Bank is under no obligation to inform you if it does not complete a payment or transfer because there are insufficient funds or credit in your account to process the transaction. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within the Service.

You agree that you will have sufficient available funds in the designated deposit account to cover all transfers on the date scheduled. If the account does not have sufficient available funds on the scheduled transfer date, we will not initiate one or more of the transfers.

### 3. Limits.

There may be limits on the dollar amount of the transactions you can make using the Service. These limits may change from time to time in accordance with applicable laws and regulations and according to the discretion of the Bank.

### 4. Fees.

Additional fees may apply – see Schedule of Fees in the Business Checking and Savings Disclosures.

You and the Bank agree that if a payment order is a portion of a funds transfer in which other portions are subject to the Electronic Fund Transfer Act of 1978 (as in effect from time to time) (the "EFTA"), all actions and disputes between Customer and Bank concerning such payment order shall be determined pursuant to UCC Article 4A, as varied by this Agreement, and not the EFTA.

## **C. Alerts Service.**

We provide Automatic Alerts and Voluntary Account Alerts.

1. Automatic Alerts are sent to you following important account activities or when certain changes are made online to your Business Online and Mobile Banking account. You do not need to activate these alerts. We automatically activate them for you and you can choose to turn most of these off.

2. Voluntary Account Alerts must be activated by you.

Voluntary Account Alerts allow you to choose alert messages for your accounts. We may add new alerts from time to time or cancel old alerts.

3. Both Automatic Alerts and Voluntary Account Alerts are subject to the following:

- a. We may add new Automatic and Voluntary Account Alerts from time to time or cancel old alerts.
- b. Alerts will be sent to the mobile phone or email address you have provided on the Authorized User Profile associated with the Service. You can also choose to have alerts sent to a secondary email address. If your email address changes, you are responsible for informing us of that change.
- c. You understand and agree that your alerts may be delayed or prevented by a variety of factors. We do our best to provide alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance of an alert.

The Bank provides additional information, terms and conditions of text communication, which can be found at <https://www.firstmerchants.com/help/agreements-disclosures/terms-of-use-for-SMS-text-messaging>

#### **D. Stop Payment Request.**

We will accept online requests to stop payment on any check, except for cashier's checks, official checks, teller's checks or other cash equivalent items subject to certain limitations. Stop payments cannot be placed on debit card or ACH transactions. We will process requests received prior to the posted cutoff time of 9:00 p.m. Eastern Time on the same Business Day received. Requests received after the posted cutoff time will be processed on the next business day. We must receive a stop payment request at a time and manner that will give us a reasonable opportunity to act upon it prior to presentment of the item. Please review your transaction history and previous statements to verify that the check has not cleared.

Stop payment requests are not effective if, either before or within 24 hours of when the stop payment order was placed, we have already cashed the item or become otherwise legally obligated for its payment. Stop payment requests are processed electronically. We will assume no responsibility if any information provided to us is incorrect, incomplete or in a manner that would result in the check being paid (i.e., incorrect check number, amount, account number or date). Once placed, the stop payment order will remain in effect for six months from the date when it was made. You or an authorized business



representative may renew the stop payment order for an additional six-month period when the expiration date arrives. You are responsible for monitoring the expiration of stop payments. No notice will be provided to you that a stop payment is expiring. A fee will be charged for each stop payment and extension thereafter.

**E. Quickbooks® connectivity.**

The Bank offers you connection with QuickBooks. You may download your account activity from the Service, or you may also access your account information directly through the QuickBooks® software. You are responsible for separately purchasing QuickBooks, and the Bank makes no warranties nor accepts any liability for such software. QuickBooks is a registered trademark of Intuit, Inc.

**F. Bill Pay Service.**

In addition to other Service features Bank customers with eligible deposit accounts may also use the optional Bill Pay Service. This feature allows a customer of the Bank to make payments to a Payee from their Accounts and review past or scheduled payments from your Accounts. A monthly service fee may apply for the use of the Bill Pay Service.

**1. ELECTRONIC BILL PAYMENT AUTHORIZATION.**

I AUTHORIZE First Merchants Bank to post payment transactions generated by personal computer or any First Merchants Bank approved access device from the Bill Pay Service to Payee. I understand that I am in full control of my account. If at any time I decide to discontinue service, I must provide written notification to First Merchants Bank. My use of the Bill Pay Service signifies that I have read and accepted all terms and conditions applicable to First Merchants Bank's Business Online and Mobile Banking Services and Bill Pay Service.

I UNDERSTAND that payments may take up to 10 business days to reach the vendor and that they will be sent either electronically or by check. You understand that First Merchants Bank or its authorized agent will use reasonable efforts to ensure payments reach payees on time but cannot guarantee the time a payment will be received/posted by a payee. First Merchants Bank is not liable for any service fees or late charges levied against me. I also understand that I am responsible for any loss or penalty that I may incur due to lack of sufficient funds or other conditions that may prevent the withdrawal of funds from my account.

**2. BILL PAYMENT INSTRUCTIONS.**

For the Bill Pay Service, you agree to choose an eligible payment date, not less than 5 business days before the actual due date without taking into account any grace period and subject to U.S. postal delivery. You agree to provide correct payee name, address, account information and payment amount. Each time you create an instruction for payment, you authorize us to debit your account for the total amount transmitted. You agree to maintain sufficient funds in the account on the transaction payment date requested to pay in full the amount of the transaction.

You understand that First Merchants Bank or its authorized agent will use reasonable efforts to ensure payments reach payees on time, but cannot guarantee the time a payment will be received/posted by a payee. First Merchants Bank or its authorized agent will use reasonable efforts in ensuring payees reverse any service fee or late charge that is related to payment process error. First Merchants Bank or its authorized agent will not be responsible for any loss or penalty that may be incurred due to lack of sufficient funds or other conditions that may prevent the withdrawal of funds from your account. See FAQ's for additional requirements and limitations.

### 3. EXPEDITED BILL PAYMENT SERVICE.

In addition to the Service and bill payment features listed above, if you are a customer of the Bank with a checking account, you may participate in the optional Expedited Bill Payment Service.

For an additional fee, you may pay your bills faster with Expedited Bill Payments, if you choose to pay your bill by Expedited Bill Payment, the following additional terms apply:

A fee will be charged for the service, as disclosed in the then-current applicable Schedule of Fees in the Business Checking and Savings Disclosures.

Because these payments are processed quickly, you cannot stop an Expedited Bill Payment once you have placed an order for an Expedited Bill Payment.

Expedited Electronic Payments are limited by the cut-off time established by the payee for accepting same day payments. Payee cut-off times vary by payee.

Expedited Bill Payment can only be sent to payees with a valid street address within the continental United States.

See FAQ's for additional requirements and limitations.

**G. ACH, Wire Transfer, Positive Pay Services and other Commercial and Treasury Services.**

**Additional ACH, Wire Transfer, Positive Pay and additional treasury management services are available and are covered by a separate Treasury Management Services Master Agreement and addenda.**

**IV. BUSINESS MOBILE BANKING.**

**A. Business Mobile Banking.**

**By installing the Bank's mobile application or software necessary to utilize Business Mobile Banking (the "Software") and using Mobile Banking, you also agree to be bound by this Agreement.**

This service is provided to you by the Bank and powered by a third party (the "Licensor") mobile technology solution. Section A is a legal agreement between you and the Bank. Section B is a legal agreement between you and the Licensor.

**SECTION A**

**FIRST MERCHANTS BANK BUSINESS MOBILE BANKING END USER TERMS OF USE ("END USER TERMS").**

TERMS AND CONDITIONS

1. The services are separate and apart from any other charges that may be assessed by your wireless carrier. You are responsible for any fees or other charges that your wireless carrier may charge for any related data or message services, including without limitation for short message service. For help, text "HELP" to 226563. To cancel your plan, text "STOP" to 226563 at any time.
2. The services are provided by the Bank and not by any other third party. You and the Bank are solely responsible for the content transmitted through the text messages sent to and from the Bank. You must provide source indication in any messages you send (e.g., mobile telephone number, "From" field in text message, etc.).
3. The Administrator shall establish separate Authorized User credentials, where required by the Service, for each Authorized Representative, as well as the Authorized User privileges on each Authorized Representative's

authority to access information and conduct transactions including Business Mobile Banking, subject to any maximum limitation imposed by the Bank.

4. We are not responsible or liable for the acts, omissions, systems or services provided by the Licensor or any of the provisions of Section B which is the responsibility of the Licensor.
5. We reserve the right to alter charges and/or these End User Terms from time to time, and we reserve the right to terminate, discontinue or suspend any service at any time.
6. We may terminate the Service as provided in the Service Agreement, and may terminate Mobile Banking, Text Messaging and/or Business Mobile Deposit Service at any time, including but not limited to if you or your accounts are not eligible for any service, if we believe you are in breach of your account agreement with us, the Service Agreement or these End User Terms, or in the event your mobile service terminates or lapses.

### **Business Mobile Banking and Text Messaging**

1. As used in these End User Terms, "Business Mobile Banking" means a service that allows you to use a mobile device (like an iPhone® or smartphone, sometimes also called a wireless device) to access the Bank's Service. "Mobile device" means a device specified by us, not a personal computer, including a mobile phone or personal digital assistant (PDA) that has text messaging capabilities and/or is Internet (Web) enabled. "Text Messaging," or "SMS," means a process that allows you to send and receive messages from us related to your accounts, of up to 160 characters each, using your mobile device.
2. Not all the Business Online Banking services or the functionality on the Business Online Banking website are available when you use a mobile device, and Business Mobile Banking and functionality available to you may vary based on the mobile device you use. For those Business Online Banking services available through your mobile device, the Business Mobile Banking services may use different terminology and appear in different formats when viewed through your mobile device. You may be required to follow different instructions to access Business Online Banking services through your mobile device. The processing of payment and transfer instructions may take longer through Business Mobile Banking.
3. Your wireless provider's standard rates apply to Internet access, including data and messaging rates. We do not charge for any content; however, downloadable content may incur additional charges from your wireless provider. Please contact your wireless provider for information about your

Internet access, data and messaging plans. Your wireless provider may impose Internet access, data, message and/or charge limitations that are outside of our control, for using this service on your account. All such charges are billed by and payable to your wireless provider. You are responsible for any charges from your wireless provider. We are not responsible for any damages resulting from your failure to comply with any terms and conditions of your wireless provider.

4. You represent that you are the owner or Authorized User of the mobile device you use to receive our Business Mobile Banking service, and that you are authorized to approve the applicable charges. You agree that we may send messages through your wireless provider to you and that your wireless provider is acting as your agent when sending and receiving messages. We may use the telephone or mobile phone number, email address or other delivery location we have in our records for you or any other such information as you may provide to us to contact you for Business Mobile Banking. If you use Text Messaging, we will send you a message only once per request.
5. We will not be liable for any delays or failures in your ability to access our Business Mobile Banking service or in your receipt of any text messages, as access and messaging are subject to effective transmission from your network provider and processing by your mobile device, as well as delays and interruptions in the Internet. Business Mobile Banking services including Text Messaging are provided on an AS IS, AS AVAILABLE basis.
6. You understand and agree that Business Mobile Banking messages may not be encrypted and may contain personal or confidential information about you, such as your mobile phone number your wireless providers name, and the date, time, and content of any mobile banking messages including account, balance, activity, and status of your accounts and other information that you or we may provide. We may use this information to contact you and to provide the services you request from us, and to otherwise operate, develop and improve the Business Mobile Banking service.
7. Your wireless provider and other service providers may also collect data from your Business Mobile Banking usage, and their practices are governed by their own policies. We are not responsible or liable for the acts or policies of such service providers. We will only use the information you provide to us from your Business Mobile Banking usage in connection with our Service. Nonetheless, we reserve the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, to avoid

liability, or to protect our rights or property.

8. When you complete forms online or otherwise provide us with information in connection with our Business Mobile Banking service, you agree to provide accurate, complete and true information. We will not be responsible or liable for losses or damages arising from any disclosure of your account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, the messages sent through Business Mobile Banking.
9. Our Business Mobile Banking service, as well as the content and materials you may receive or access through your use of our service, are proprietary to us and our licensors, and are for your use only. You will not damage, impair, interfere with, or disrupt our Business Online and Mobile Banking service or its functionality.
10. You agree that if you are using our Business Mobile Banking service outside the United States, you are responsible for having access to the appropriate wireless and/or telecommunications networks and are responsible for all associated fees and charges.
11. We reserve the right to alter charges and/or these End User Terms from time to time, and we reserve the right to discontinue our Business Mobile Banking service at any time without notice. We may suspend or terminate the service to you if we believe you are in breach of our End User Terms, the Service Agreement or your account agreement with us. The service is also subject to termination in the event your wireless service terminates or lapses.
12. If you have any questions, email [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call us at 800.205.3464. You can also text the word HELP to 226563 to get additional information about the service. If you receive a message from us unexpectedly, you can text the word STOP to 226563. We do not charge for help or info messages; however, your normal wireless provider rates apply.
13. Business Mobile Banking is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. Business Mobile Banking, including instructions for payment, transfer and other transactions, may be delayed, interrupted or otherwise negatively impacted by factors relating to your mobile device, your Internet service provider, wireless provider or other parties, or due to other reasons outside of our control. We will not be liable for any such delays, interruptions, or negative impacts to Business Mobile Banking, and you

agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon.

14. You agree to indemnify, defend and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of the Business Mobile Banking service and your provision of a telephone or mobile phone number, email address, or other delivery location that is not your own or your violation of applicable federal, state or local law, regulation or ordinance. Your obligation under this paragraph shall survive termination of these End User Terms.
15. You warrant and represent to us that for every remotely created check, electronically created item or electronic payment order (collectively, "ECI") we receive from you for deposit or collection: (1) the ECI was authorized by you; (2) you have received express and verifiable authorization to create the ECI in the amount and to the payee that appears on the ECI; (3) you will maintain proof of the authorization for two years from the authorization, and supply us with the proof if we ask; and (4) if an ECI is returned, you owe us the amount of the item, regardless of when the item is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance. You also agree to indemnify us for any loss we may incur as a result of any ECI transaction you initiate.

## **SECTION B**

### SECTION B END USER LICENSE AGREEMENT TERMS FOR THE DOWNLOADABLE APP.

1. Ownership.  
You acknowledge and agree that a third party provider or licensor to your financial services provider ("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to business mobile banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").
2. License.  
Subject to the terms and conditions of this Agreement, you are hereby

granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

3. Restrictions.

You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

4. Disclaimer Warranty.

THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR



ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights.

The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

7. Miscellaneous.

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of Indiana and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation is and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.

8. Content and Services.

Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

**B. Business Mobile Deposit Service.**

The Business Mobile Deposit Service allows you to make deposits of the electronic image of a check or Substitute Check (each an "item") to your eligible

Accounts by capturing an electronic image of the item with a capture device (such as a camera) on your Mobile Device and submitting images and associated information to us for processing. All terms and conditions of the Service provided above apply to the Business Mobile Deposit Service.

1. Eligible Items. You agree:

- a. You will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
- b. to deposit only images that originated as paper checks, and no third-party or electronic checks may be deposited using the Business Mobile Deposit Service;
- c. to implement and maintain security measures, including firewall protection, in compliance with your obligations under these End User Terms;
- d. to keep your email address updated within Business Online and Mobile Banking;
- e. to properly endorse all items using the Business Mobile Deposit Service as stated in Section 5 below;
- f. not to deposit items into your account unless you have authority to do so;
- g. after you submit an item for deposit using the Business Mobile Deposit Service you will not redeposit, otherwise transfer or negotiate the original item;
- h. We are authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
- i. after you submit an item for deposit you are solely responsible for the storage or destruction of the original item as further provided below;
- j. the electronic image of the item will become the legal representation of the item for all purposes;

- k. each image of a check transmitted to us is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check;
  - l. to promptly provide us with a written notice of any claim you receive regarding the Business Mobile Deposit Service.
2. Restrictions and Limitations. You agree not use the Business Mobile Deposit Service to deposit any of the following Items:
- a. Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into.
  - b. Checks containing an alteration on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
  - c. Checks payable jointly, unless deposited into an account in the name of all payees.
  - d. Checks previously converted to a substitute check, as defined in Reg. CC.
  - e. Checks drawn on a financial institution located outside the United States.
  - f. Checks that are remotely created checks, as defined in Reg. CC.
  - g. Checks not payable in United States currency.
  - h. Checks dated more than 6 months prior to the date of deposit.
  - i. Checks or items prohibited by the Bank's current procedures relating to Business Mobile Deposit or which are otherwise not acceptable under the terms of your Bank account.
  - j. Checks payable on sight or payable through Drafts.
  - k. Checks with any endorsement on the back other than that specified in this Agreement.

- l. Checks that have previously been submitted through Business Mobile Deposit or through a Business Mobile deposit capture service offered at any other financial institution.
- m. Checks or items that are drawn or otherwise issued by the U.S. Treasury Department.

### 3. Contact.

The Bank will notify you via the email address that you provided within Business Online and Mobile Banking. You agree that this email address is up to date and a valid email address to contact you at. You may change this email address by logging into your Business Online and Mobile Banking and going to Settings > Preferences > Address Management. We will notify you by email after a deposit has been received, approved, and/or declined. We may also contact you by this email address if necessary to resolve any deposit disputes.

### 4. Image Quality.

The image of an item transmitted using the Business Mobile Deposit Service must be legible and clear. It must not be altered. It must capture all pertinent information from the front and back of the item. Image quality must comply with industry requirements established and updated by the ANSI, Federal Reserve Board and any other regulatory agency. You authorize us to convert items to an Image Replacement Document (IRD) or transmit them as an image. If the electronic files and/or images transmit to us with respect to any item do not comply with our requirements for content and/or format, we may, in our sole discretion:

- a. further transmit the item and data in the form received from you;
- b. repair or attempt to repair the item or data and then further transmit it;
- c. process the item as photocopies in lieu of originals; or
- d. return the data and item to you unprocessed and charge back your account.

### 5. Endorsement.

You agree to properly endorse all items captured and submitted using the Business Mobile Deposit Service. This should include a signature (s) from the

named payee(s). It is also suggested that you write "For First Merchants Bank Mobile Deposit Only." This will help prevent a duplicate deposit being made.

#### 6. Processing Time and Availability of Funds.

We may return or refuse to accept all or any part of a deposit to your account using the Service at any time and will not be liable for doing so even if such action causes outstanding checks or other debits to your account to be dishonored and returned. Images of items transmitted by you are not considered received by us until you receive an electronic confirmation of the receipt of the deposit from us. Receipt of the confirmation from us does not mean that the transmission was error-free or complete, you may still receive a declined deposit email if the deposit is outside our guidelines. Once items have been approved through the Business Mobile Deposit Service, they are subject to our Funds Availability Policy.

#### 7. Disposal of Transmitted Items.

You are responsible for retaining each original item in a safe and secure environment in accordance with applicable laws as in effect from time to time. You will store the original items and take appropriate measures to ensure they are not deposited a second time. You will promptly (but in any event within seven (7) Business Days) provide any retained original item to us as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any item or as we otherwise deem necessary. After forty-five (45) days following transmittal to us and receipt of a confirmation from us that the image of the item has been received, you agree to mark the item as "VOID" and properly dispose it to ensure it is not presented for deposit again.

#### 8. Restrictions and Limitations.

We may establish restrictions and limitations on your use of the Business Mobile Deposit Service, including but not limited to dollar amount limitations and the number of items or deposits you are permitted to submit to your account(s) using the Business Mobile Deposit Service. We may make changes to these restrictions and limitations from time to time and without notice. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit.

#### 9. Minimum Hardware and Software Requirements.

In order to use the Business Mobile Deposit Service, you must obtain and maintain, at your expense, compatible hardware and software including but not limited to an Internet and mobile phone compatible of capturing an electronic image. We recommend that you use the latest version of the supported browsers or Mobile Banking app available, and to keep your security settings up to date.

#### 10. Mobile Banking Software.

The software provided by First Merchants Bank to Customer contains software provided by one or more third parties ("Third Party Software") under contract with First Merchants Bank (each a "Third Party").

Restrictions. Customer agrees that it will not itself, and will not permit any parent, subsidiary, affiliate, agent or other third party to: (1) sell, provide, distribute, lease, rent, lend, relicense, sublicense, or display Third Party Software or related documentation except as necessary to utilize the Software for mobile check deposits; (ii) decompile, disassemble, reverse engineer or attempt to reconstruct the Third Party Software, identify or discover any source code, trade secret, know-how, or ideas underlying user interface techniques or algorithms of Third Party Software by any means whatsoever, or disclose any of the foregoing; (iii) create any derivative works or any other software program based upon Third Party Software or related documentation or modify Third Party Software in any way; or (iv) use Third Party Software or documentation to develop or enhance any product that competes with Third Party Software.

#### 11. Intellectual Property.

First Merchants Bank or the Third Parties, as the case may be, retain all rights, title and interests, including intellectual property rights, in and to the Third Party Software and services, any improvements, translations, modifications or derivatives thereof, and any related documentation provided or made available to Customer, including all intellectual property rights therein. Customer acknowledges that the Third Party Software and related documentation contain copyrighted material, trade secrets, and other material that is proprietary to one or more Third Parties. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights in the Third Party Software, services, or any related documentation or materials and all rights not expressly granted herein are reserved by Financial Institution and the Third Parties. Customer agrees to assign, and hereby does assign, to the Third Party all rights, title and interest, including all intellectual property rights, in any ideas, modifications, enhancements, improvements, inventions, works of authorship or any other suggestions that Customer or any of its employees or

agents propose, create, author or develop relating to that Third Party's Software or services, and will take all necessary action, including execution of relevant documents, to perfect such party's ownership thereof.

## 12. Eligibility, Termination and Changes.

You must meet the eligibility requirements as defined by the bank and subject to change in order to use the Business Mobile Deposit Service. We have the right to suspend or terminate the Business Mobile Deposit Service at any time if you or your accounts(s) do not meet our eligibility requirements or if you are in violation of these End User Terms, the Business Online Agreement, or the Account Agreement. We may also terminate the Business Mobile Deposit Service in the event your wireless service terminates or lapses.

We also reserve the right to change the eligibility requirements and Business Mobile Deposit Service at any time without notice to you.

## 13. Errors.

You agree to promptly review each account statement and notify us of any errors. All deposits made through the Business Mobile Deposit Service will be deemed to be correct, unless you notify us of any errors to your deposits. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared or as otherwise specified in your Business Online Agreement and Account Agreement.

## 14. Changes.

We reserve the right to change the Business Mobile Deposit Service at any time without notice to you. We reserve the right to change the fee structure for this service at any time. We reserve the right to deny, suspend or revoke access to the Business Mobile Deposit Service immediately, in whole or in part, in our sole discretion, without notice, if we believe you are in breach of these Sections or this Agreement or another agreement related to your Account with us, or are otherwise using or accessing the Business Mobile Deposit Services inconsistent with the terms and conditions hereof.

Further, we have the right to suspend the Business Mobile Deposit Service immediately in the event of an emergency or in the event of acts or circumstances beyond our control. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any items that were processed or in the process of being transmitted or collected prior to the termination date, or any returns prior to termination.

15. The Business Mobile Deposit Service is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. The Business Mobile Deposit Service may be delayed, interrupted or otherwise negatively impacted by factors relating to your mobile device, your Internet service provider, wireless provider or other parties, or due to other reasons outside of our control. We will not be liable for any such delays, interruptions, or negative impacts to the Business Mobile Deposit Service and you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon.
16. You agree to indemnify, defend and hold us harmless from and against any claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of the Business Mobile Deposit Service. This obligation survives termination of these End User Terms.
17. Compliance with Law.

Customer represents, warrants, and covenants that it will comply with all applicable laws, rules, regulations and prevalent industry standards in their use of Third Party Software, including compliance with applicable requirements under state and federal laws and regulations related to data security and nonpublic personal information, as defined or used in such applicable law or regulation.

18. Limitation of Liability.

FINANCIAL INSTITUTION AND EACH THIRD PARTY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND ANY SOFTWARE PROVIDED BY OR ON BEHALF OF A THIRD PARTY UNDER THIS AGREEMENT ARE PROVIDED "AS IS." WITHOUT LIMITING THE FOREGOING, EACH THIRD PARTY DOES NOT REPRESENT OR WARRANT, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, THAT THE OPERATION OF THE SERVICES OR THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE FUNCTIONS OR FEATURES OF THE SERVICES OR SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES OR SOFTWARE WILL OPERATE COMPATIBLY WITH PRODUCTS, SERVICES, HARDWARE OR SOFTWARE USED OR OFFERED BY ANY OTHER PARTY.



IN NO EVENT WILL ANY THIRD PARTY BE LIABLE HEREUNDER FOR AN AMOUNT EXCEEDING THE LESSER OF THE ACTUAL DAMAGES INCURRED BY CUSTOMER OR THE FEES PAID BY CUSTOMER FOR USE OF THE RESPECTIVE THIRD PARTY SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE EVENT GIVING RISE TO THE LIABILITY TOOK PLACE, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

IN NO EVENT WILL A THIRD PARTY BE LIABLE FOR ANY LOSS OF PROFITS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, OR LOSS OF BUSINESS) IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 19. Indemnification.

Customer shall indemnify, defend and hold harmless each Third Party and its respective affiliates, officers, employees and agents from and against any third party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to Customer's use of the Third Party Software, unless such claim directly results from an action or omission made by such Third Party in bad faith.

THE BANK MAKES NO WARRANTIES THAT THE BUSINESS MOBILE DEPOSIT SERVICE WILL BE ERROR- FREE, SECURE OR UNINTERRUPTED. YOU AGREE THAT THE USE OF THE BUSINESS MOBILE DEPOSIT SERVICE IS AT YOUR OWN RISK AND ON AN "AS IS' BASIS.

## **V. OTHER BUSINESS ONLINE AND MOBILE BANKING TERMS AND CONDITIONS.**

Your use of the Service is subject to the following terms and limitations:

### **A. Limits.**

1. **Dollar Amount.** There may be limits on the dollar amount of the transactions you can make using the Service. These limits may change from time to time in accordance with applicable laws and regulations and according to the discretion of the Bank.

2. **Frequency.** There may be limits on the number of transactions you can make using the Service. These limits are for security reasons and may change from time to time in accordance with applicable laws and regulations and according to the discretion of the Bank.

3. **Court Directed and Governmental Payments.** You acknowledge and agree that if you use the Service to make any payment of alimony, child-support, taxes, or other court-directed or governmental payments, fines, or penalties, or any payment to settle a securities transaction, that We may process or refuse to process any such payments in our sole and absolute discretion, and, in any event, to the fullest extent permitted by law, you assume all risk relating to the proper scheduling, initiation, processing, transmission, receipt, and application of such payments, and you release us from any and all claims, liabilities, and/or damages resulting from your making or attempting to make any such payments through the Service, whether such claims, liabilities and/or damages arise (or would arise) under this Agreement or otherwise.

4. **United States Currency Only.** You may only make payments through the Service the valid currency of the United States (U.S. Dollars).

5. **Account Agreements.** Funds transferred from Accounts to loan accounts accessible through the Service will be applied to such loan accounts according to the terms of the agreements governing such loan accounts. There may be additional limitations elsewhere in this Agreement. Your ability to initiate transactions also may be limited by the terms of your deposit, loan, or other agreements with us or applicable law. You agree to abide by and be bound by all applicable limitations.

#### **B. Access Device Specifications.**

In order to use the Service, your Access Device must meet the minimum specifications required for use of the Financial Software.

1. Internet Access.

2. You will need a currently supported internet browser tool such as; Microsoft Internet Explorer, Mozilla Firefox, Apple Safari, Google Chrome, and a currently supported version of Adobe Acrobat Reader. Cookies and JavaScript must be enabled in the browser options.

3. Adobe® Acrobat Reader – You can download the Adobe Acrobat Reader free of charge at <http://adobe.com>

4. We will give you notice of any change to the hardware and software requirements if the change will adversely affect your ability to access, receive and retain documents, eStatements, disclosures and legal notices.

#### **C. Virus Protection.**

First Merchants Bank is not responsible for any computer virus, problems or malfunctions resulting from a computer virus, or related problems that may be associated with accessing the internet or the Service. We recommend that you routinely update your virus software, apply all security patches for your operating system and install a firewall on your Access Device. We are not responsible for any errors or failures resulting from defects or malfunctions of the Financial Software. WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING YOUR ACCESS DEVICE OR RELATED EQUIPMENT, OR YOUR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. For additional information please see our Security Guidelines at <https://www.firstmerchants.com/> .

#### **D. Reviewing Payments.**

The Service automatically stores records of past payments and payments scheduled for the future. The number of records and amount of time that they will be stored will vary at our discretion.

#### **E. Performing Account Inquiries.**

You may use the Service to determine the balance and recent activity in the Accounts. Any balance or recent activity shown displayed by the Service will include a date as of which the balance is current. The balance or recent activity shown on the Service may include deposits still subject to verification by us. The balance or recent activity shown also may differ from your records because it may not include deposits in progress, outstanding checks, or other withdrawals, payments, or charges.

#### **F. Our Liability for Failure to Complete Transactions.**

We will process and complete all payments and transfers properly initiated through the Service in accordance with this Agreement and any User's Guide. We will not be liable (and any payment guarantee provided elsewhere in this Agreement will not be applicable), in connection with any of the following

occurrences:

1. if, through no fault of ours, you do not have sufficient Collected Funds in the Accounts to complete the transaction;
2. if the transaction would exceed the credit limit on any overdraft line of credit linked to the Accounts;
3. if your Access Device, internet connection method, or other equipment is not operating properly;
4. if the Service is not working properly and you were aware of the malfunction when you initiated the transaction;
5. if you do not properly follow all instructional materials provided in connection with the Service;
6. if you have not provided us with the correct Payee name, address, account information, payment amount, or other instructions necessary to complete the payment;
7. if your funds are held or frozen, or a court order or other legal process prevents us from making a transaction;
8. if your Password has been reported lost or stolen;
9. if we have reason to believe that a transaction has not been properly authorized or authenticated, or is fraudulent, erroneous, or illegal;
10. if you have exceeded the limitations on frequency of transactions or dollar amount of transactions applicable to the Accounts;
11. if circumstances beyond our control (such as telecommunication or electrical outages and malfunctions, postal strikes or delays, computer system failures or natural disasters) prevent the transaction;
12. if making a transfer would cause us to violate any law, rule, or regulation to which we are subject; or
13. if any failure on our part was not intentional and resulted from a bona fide error notwithstanding procedures to avoid such error, except for actual damages (which do not include indirect, incidental, special or consequential

damages).

There may be other exceptions to liability stated in the agreements governing your accounts with us, or provided under applicable law.

#### **G. Electronic Messaging.**

The Service provides you with the ability to send and receive messages to and from us by two means: (i) Conventional E-mail or (ii) Secure Messaging, (i) Conventional E-mail is not a secure method of communication over the Internet, and we recommend that you do not send confidential or privileged information, such as account numbers and financial information, by conventional E-mail. An electronic message sent by you may not be immediately received by us. (ii) Secure Messaging is a secure method of communication contained within the Service application. Secure Messaging allows secure messages to be sent and received from within the Service application. If you need to contact us immediately, please refer to Section IV(N) titled "Errors or Questions at the bottom of this disclosure." No action will be made on any electronic message you send to us until we actually receive your message and have a reasonable opportunity to act on it. You cannot use Conventional E-mail or Secure Messaging to make a bill payment, account inquiry, or funds transfer. There may be other limitations to your use of electronic messaging in effect from time to time. To the extent you elect to communicate with us using E-mail, the following provisions apply to those communications:

You agree and acknowledge that the information communicated via E-mail to or from us may include information regarding any or all of the services that are part of the Service or other information we feel may be of added interest to you.

You acknowledge that you have been advised and understand the risks of using E-mail with respect to the communication of information regarding the Service and that we are unable to guarantee the authenticity, privacy or accuracy of information received or sent by E-mail or to monitor the authorization of persons using your E-mail address to send or receive information.

In the event you receive information from us via E-mail that you believe is intended for another recipient, you agree to immediately return the information to us and to thereafter delete the information from your computer system. You shall not use the information for any personal or commercial purposes.

You agree that certain information communicated from us to you may be confidential in nature as a communication between you and us. You agree to maintain the confidentiality of the information and to refrain from sharing the

information with any other person or entity or from using the information for any purpose that is not related to the Service or your financial relationship with us.

In the event that you believe that an unauthorized person has gained access to your computer system, you agree to immediately notify us so that we can cease communication of information to you via E-mail until you and we take measures agreed to jointly to protect your financial information. Having acknowledged the risks associated with communicating financial information via E-mail, you (a) agree that we have no obligation to monitor or investigate the use of your computer system or the source of any communication received from you bearing your email address, (b) release us from any claim or liability arising from or in connection with any communications sent or received using E-mail, and (c) agree to indemnify and hold us harmless from all claims, losses, expenses or liability arising in any way out of or connected in any way with the use of E-mail as contemplated by this Agreement.

To the extent any other agreement between you and us requires the delivery of a written notice to a particular address regarding any matter, you agree (a) that these provisions regarding the use of E-mail do not displace or modify any such requirement for a written notice, and (b) to comply with any requirement for a written notice without reference to these provisions regarding the use of E-mail.

#### **H. Service Hours.**

The Service is available 24 hours a day, seven days a week (with the exception of maintenance periods) for the scheduling, modification, or review of payment transactions and for balance inquiries.

#### **I. Transaction Authorization; Protecting Your Password.**

You authorize us to follow any instructions entered through the Service notwithstanding any dual or multiple approval requirement identified on the signature card or other documents relating to your Accounts. You agree and intend that the authorization of transactions through the Service shall be considered the same as your written signature in authorizing us to perform any actions relating to the transactions requested. You also agree that use of your Password is the agreed security procedure to access the Service and that such security procedure is commercially reasonable. You agree to keep your Password confidential, to prevent unauthorized access to the Accounts, and to prevent unauthorized use of the Service. You agree not to give your Password or make it available to any person or entity who is not authorized to access the

Accounts for the purpose of performing the transactions contemplated by the Service or who intends or may use the Service for the purpose of accessing and compiling account data for such person's or entity's own commercial gain. You should change your Password frequently. You should avoid using your ATM Card personal identification number (PIN) as your permanent Password. If your access to the Service is blocked or if you forget your Password, you must contact us at the number identified in the Section V(P) titled "Errors or Questions." We may issue you a new Password, although it may not be available for use in accessing the Service for several days. You understand that for security purposes, First Merchants Bank may require you to periodically change your Password used to access your Accounts. Additionally, if you fail to access your Account(s) for an extended period, First Merchants Bank reserves the right to disable your access to the inactive account at any time.

#### **J. Protecting Your Personal Information.**

In addition to protecting your Password and other account information, you should also take precautions to protect your personal identification information, such as your driver's license, Social Security number, etc. This information by itself or together with other account information may allow unauthorized access to your Account(s). It is your responsibility to treat personal information with the same level of care as your account information. You also are responsible for protecting and securing all information and data stored on your Access Device's hard drive or similar storage system.

#### **K. Accounts Eligible for Service.**

We may change from time to time the accounts that may be designated for services. We also reserve the right (i) to refuse to include any account among your Accounts, or (ii) to allow transactions between or among Accounts (and other eligible accounts) under certain circumstances as provided in this Agreement or as may be required by applicable law.

#### **L. Joint Accounts.**

When you designate a joint account, we may act on the verbal, written or electronic instructions of any authorized signer.

#### **M. Your Liability in Case of Loss, Theft or Unauthorized Transactions.**

You are responsible for all transactions you initiate or authorize using the Service. If you allow any other person to use your Password or the Service, you will have authorized that person to access your Account and you are

responsible for all transactions that person initiates or authorizes in connection with the Accounts. Tell us IMMEDIATELY if you believe that your Password has been lost or stolen or that an Account has been or may be accessed without your authorization. Telephoning is the best method for limiting your potential losses. You could lose all funds in your Accounts plus the maximum amount of any overdraft line of credit.

If you believe your Password has been lost or stolen or that someone has transferred or may access your Account(s) without your authorization, please contact us through the following methods:

**Call: 1-800.205.3464**

**First Merchants Bank Online Banking  
Attention: Customer Care Center  
P.O. Box 792  
Muncie, Indiana 47308-0792**

You agree to take any reasonable actions requested by us to prevent unauthorized transactions to your Accounts.

Notwithstanding anything to the contrary in this Agreement, you will be liable for any unauthorized use of the Service in these instances unless otherwise provided by applicable law or written agreement with us.

#### **N. Documentation of Transactions.**

The Service automatically stores records of past payments and payments scheduled for the future. The number of records and amount of time that they will be stored will vary at our discretion.

All of your transactions completed through the Service will appear on your periodic (or, as applicable, electronic) statement. You will receive a periodic statement each month for the Accounts from which or into which a transaction through the Service has been completed during the month. For all other Accounts, you will receive a periodic statement at least quarterly or as required by applicable law or the terms of the respective deposit agreements regarding such Accounts. The periodic statement will include a description of the transactions completed through the Service. The Payee name, payment amount, and transaction date will be reflected for each payment made through the Service.

#### **O. Disclosure of Accounts Information to Third Parties.**



We will only disclose information to third parties about your Account(s) in accordance with the Privacy Policy, which may be obtained at any time from any of our representatives or found at <https://www.firstmerchants.com/help/agreements-disclosures/privacy-policy>. You agree to review the Privacy Policy before initiating your first Service transaction under this Agreement, and you agree that your initiation of any Service transaction indicates that you have reviewed and agreed to the terms of the Privacy Policy.

**P. Errors or Questions.**

In case of errors or questions about your electronic funds transactions through the Service, you should, as soon as possible:

**Call: 1-800.205.3464**

**First Merchants Bank Online Banking  
Attention: Customer Care Center  
P.O. Box 792  
Muncie, Indiana 47308-0792**

**Q. Verification.**

You authorize us to investigate or reinvestigate at any time any information provided by you in connection with your application for the Service or the Accounts, and to request reports from credit bureaus and consumer reporting agencies for such purpose. You also agree that we may obtain information regarding your Payee account in order to facilitate proper handling and crediting of your payments through the Bill Pay Service.

**R. Creating and Managing Authorized Users.**

You may add additional Authorized Users to your Business Online and Mobile Banking Service and provide each with a separate Password. For each Authorized User, you may designate the activity level. You may also designate another Authorized User as an "Administrator," which means that this Authorized User will also be able to designate additional Authorized Users. These additional Authorized Users may have limitations on the use of the Service.

Should the Account Owner or Administrator revoke the authority of any Authorized User, the account owner is obligated to inform First Merchants Bank of that fact. It is also the Account owner obligation to delete the former

Authorized User from the Service and add any new Authorized Users. If additional assistance is needed First Merchants Bank can be contacted at the number provided below.

However, the removal of the former Authorized User and the addition of a new Authorized User is the responsibility of the Administrator. The required notice must be given separately from any other notices given to other First Merchants Bank departments or banking centers, by calling us at 1-800.205.3464. You may also write us at:

**First Merchants Bank Online Banking Attn:  
Customer Care Center  
P.O. Box 792Muncie, IN 47308-0792**

### **S. Security Procedures.**

First Merchants Bank has established security procedures that include the use of layered security, multi-factor authentication, secure access codes, and out of band authentication (the "Security Procedures") to be used in connection with some Services. The Security Procedures include identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, and other systems and software ("Security Device"), designed to verify the authenticity of the instructions, payment orders, funds transfers, and other communications (each, a "Communication") sent by you or on your behalf. You acknowledge it has been provided with the Security Procedures and Security Devices for use of the Service.

You are responsible for maintaining the confidentiality of and controlling the use of the security procedure information. First Merchants Bank shall have no obligation, liability or control, either directly or indirectly over said procedures or your failure to maintain said procedures.

### **T. Acknowledgement of Commercially Reasonable Security Procedures**

**By using Services, you acknowledge and agree that the Security Procedures established for use of the Service, provide a commercially reasonable level of protection against unauthorized Communications. First Merchants Bank shall not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication where First Merchants Bank reasonably doubts its authenticity, authorization, contents, origination or compliance with the Security Procedures. Even if a Communication is given in compliance with the applicable Security Procedures, First Merchants Bank may, at its discretion,**

**delay the execution of that Communication until First Merchants Bank is able to verify the authenticity of the Communication by any means reasonably acceptable to First Merchants Bank including, without limitation, placing a telephone call to any person who is either an authorized signer on your account or who you have authorized to initiate or confirm Communication (by course of dealing or otherwise). First Merchants Bank shall not be liable to you or any other person for such delay, provided that First Merchants Bank has acted in good faith. First Merchants Bank will be responsible for acting only on those Communications actually received and cannot assume responsibility for malfunctions in transmission or communications facilities or acts of others not under First Merchants Bank's control that may affect the accuracy or timeliness of Communications. First Merchants Bank shall have no duty to discover, and shall not be liable for, your errors or omissions. If First Merchants Bank complies with the Security Procedures in respect to a Communication, First Merchants Bank shall be entitled to act on that Communication and shall not be obligated to verify the content of such Communication, establish the identity of the person giving it, or await any confirmation thereof, and First Merchants Bank shall not be liable for acting on, and you shall be bound by, any Communication sent in your name, whether or not authorized.**

**If you select certain Security Procedures to use in connection with a Service and those Security Procedures provide less protection against unauthorized transactions or activity than other Security Procedures offered by First Merchants Bank in connection with such Service, the Security Procedures selected by you shall be deemed commercially reasonable to the same extent as the Security Procedures offered by First Merchants Bank that provide greater protection. First Merchants Bank reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time.**

**You shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such Security Devices and Communication, and agree to: (a) keep the Security Device secure and strictly confidential, providing it only to its Administrator and Authorized Representatives (if applicable); (b) instruct each person to whom you give a Security Device that he or she is not to disclose it to any unauthorized person; (c) immediately notify First Merchants Bank at 1.800.205.3464 of its knowledge or suspicion that the confidentiality or integrity of any such Security Device or Communication is breached or threatened; and (d) select new Security Device if instructed to do so by First Merchants Bank. You warrant that no individual will be allowed to initiate transfers or instructions in the absence of proper supervision and safeguards. You shall be solely responsible for the safekeeping of such Security Devices and**

**assume all risk of accidental disclosure or inadvertent use of such Security Devices by any party whatsoever, whether such disclosure or use is the result of your negligence or deliberate acts or otherwise. First Merchants Bank shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any Security Devices. First Merchants Bank may, but is not obligated to, suspend or cancel your Security Device, even without receiving such notice from you, if First Merchants Bank suspects that a Security Device is being used in an unauthorized or fraudulent manner, but shall have no liability for any such Security Device supervision or cancellation.**

First Merchants Bank will not be obligated to honor, in whole or in part, any Communication which:

1. is not in accordance with the Security Procedures and any term or condition applicable to the relevant Service in the Agreement;
2. First Merchants Bank has reason to believe may not have been authorized by you or any third party whose authorization First Merchants Bank believes is necessary, or which involves funds subject to a hold, dispute, restriction or legal process First Merchants Bank believes prevents their withdrawal;
3. would violate any applicable provision of any risk control program of the Federal Reserve or any applicable rule or regulation of any other federal or state regulatory authority;
4. is not in accordance with any other requirement of First Merchants Bank's applicable policies, procedures or practices; or
5. First Merchants Bank has reasonable cause not to honor for your protection or its own.

FIRST MERCHANTS BANK WILL HAVE NO LIABILITY TO YOU FOR ANY UNAUTHORIZED PAYMENT ORDER, TRANSFER, OR OTHER INSTRUCTION MADE USING YOUR SECURITY DEVICE IF FIRST MERCHANTS BANK ACCEPTED IT IN GOOD FAITH AND IT WAS MADE IN COMPLIANCE WITH SECURITY PROCEDURES AND IT OCCURRED BEFORE YOU NOTIFIED FIRST MERCHANTS BANK OF POSSIBLE UNAUTHORIZED USE AND FIRST MERCHANTS BANK HAS HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE.

*No First Merchants Bank employee will contact you via email, phone or otherwise requesting your Access I.Ds., Passwords or other Security Device. If you are contacted by anyone*

*requesting this information, please contact First Merchants Bank immediately at 1.800.205.3464.*

**U. Business Days and Cut-Off Times.**

A Business Day means Monday through Friday, except Federal Reserve holidays. First Merchants Bank has established Business Day cut-off times for the use of some Services. First Merchants Bank may change the established cut-off times at any time without notice. First Merchants Bank may treat Communications received after such cut-off times established by First Merchants Bank, as received on the following Business Day.

**V. General Funds Transfer Provisions.**

Notice of Receipt of Funds Transfers. The periodic statements provided to you by First Merchants Bank will notify you of funds transfer payments received by First Merchants Bank for credit to your accounts at First Merchants Bank. You are hereby notified and agree that First Merchants Bank shall not be required to provide any other notice to you of such receipt of funds. First Merchants Bank may however, at its sole discretion mail or email to you an appropriate advice of charge or deposit receipt at the time of receiving funds on your behalf.

Credits from Funds Transfers are Provisional. Subject to First Merchants Bank's Availability of Funds Disclosure, all credits to your accounts for funds transfers, which First Merchants Bank receives, are provisional until First Merchants Bank receives final settlement for the funds. If First Merchants Bank does not receive such final settlement, you are hereby notified and agree that First Merchants Bank is entitled to a refund of the amount credited to your account for that transfer. In that situation, the person who originated the transfer to your account will not be deemed to have paid the amount of that transfer and, accordingly, your right to expect that payment from that third party would be preserved. For more information on when deposited funds will be available for withdrawal [https://www.firstmerchants.com/docs/default-source/disclosures/availability\\_of\\_funds\\_disclosure\\_2020\\_05\\_04.pdf?](https://www.firstmerchants.com/docs/default-source/disclosures/availability_of_funds_disclosure_2020_05_04.pdf?)

**W. Confidential Information and Proprietary Data.**

All information of a business nature disclosed by either party to the other in connection with the Agreement is confidential, including Security Devices and the Security Procedures (the "Confidential Information"). Neither party shall without the express written consent of the other, disclose or permit access to any such Confidential Information by any person, firm or corporation and each

party shall cause its officers, employees, and agents to take such action as shall be necessary or advisable, to preserve and protect the confidentiality of disclosing such Confidential Information to persons required to have access thereto for the performance of the Agreement, or to any other party to which First Merchants Bank may be required by law to report such information. You agree to hold confidential and to use only in connection with the Services provided under the Agreement all information furnished to you by First Merchants Bank or by third parties from whom First Merchants Bank has secured the right to use the Services, including, but not limited to, First Merchants Bank's product and service pricing structure, system design, programming techniques or other unique techniques. First Merchants Bank and your obligations and agreements under this paragraph shall not apply to any information supplied that: was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of the Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is authorized and agreed by the parties hereto that the performance of said Services is or might be subject to regulation and examination by authorized representatives of federal and state banking regulators, and you agree to the release of your reports, information, assurances, or other data as may be required by them under applicable laws and regulations. The circumstances under which First Merchants Bank will disclose information about you or your accounts has been separately disclosed in First Merchants Bank's Privacy Policy and in other disclosures which have been provided. First Merchants Bank's Privacy Policy may change from time to time and is available online and at banking locations.

You have a nonexclusive, nontransferable license to use First Merchants Bank's services, user manuals and other implementation and reference guides and manuals, as in effect from time to time, and all other material and associated documentation that First Merchants Bank supplies to you pursuant to the Agreement (collectively, "Proprietary Data"). You acknowledge that you are not purchasing title to the Proprietary Data and the Proprietary Data constitutes trade secrets; Customer will use reasonable care to keep the Proprietary Data confidential and will not disclose any Proprietary Data to any person. The obligation to keep the Proprietary Data confidential shall survive termination of the Agreement. You will not use, make or have made, any additional copies of the Proprietary Data, or any part of it, without obtaining the prior written consent of an officer of First Merchants Bank. You will not remove any identifying marks or copyright marks in or on the Proprietary Data. Upon the termination of the Agreement, you may be required to return all the Proprietary Data to First Merchants Bank or certify to First Merchants Bank

that it has destroyed all copies of the Proprietary Data in your possession.

#### **X. Notices.**

Unless otherwise provided in the relevant Addendum or by applicable law, all notices to you may be delivered by hand, mail, private delivery service or (unless otherwise specified by First Merchants Bank) by facsimile, electronic mail, or via the Service and shall be effective when received. Notices may be delivered to some customers in electronic format, including posting to First Merchants Bank's website, if requested and authorized, or appropriate. All notices delivered via mail to you shall be delivered to the address, facsimile or email address designated for you in First Merchants Bank's records. All notices to First Merchants Bank shall be delivered to the attention of First Merchants Bank, P.O. Box 792, Muncie, IN 47303-0792. Each notice shall be addressed as specified in writing by the parties from time to time. Your continued use of Services after amendment of this Agreement shall constitute an acceptance of the amended terms and conditions of this Agreement. If you do not wish to agree to the amended terms of this Agreement, you must immediately discontinue use of, and access to, the Services, and provide notice to First Merchants Bank in accordance with the requirements of this Agreement.

#### **Y. Fees and Charges.**

You authorize First Merchants Bank to assess and deduct fees from your designated account for Services provided under the Agreement as specified in writing by First Merchants Bank by means of a First Merchants Bank statement, account analysis statement or fee letter; or as otherwise agreed by you and First Merchants Bank. First Merchants Bank may change the Service fees, at any time without notice. You will be notified of any such change as required by applicable law, either by mail or by an electronic message. First Merchants Bank may charge your account for any fees, charges, taxes or pass-through charges charged or incurred by First Merchants Bank in respect of the provision of any Service to or on behalf of you. You agree to reimburse First Merchants Bank upon demand if such charges and fees are not paid when due. Without limiting the generality of the foregoing, you agree that we may impose a fee for research requested by you. You authorize us to deduct all fees from the account that you designate or, to the extent your account lacks sufficient funds, from any of your other accounts maintained with us. You also acknowledge that these fees are in addition to any costs you incur for the telephone service or Internet service provider you use to access the Service.

#### **Z. Agents.**

You acknowledge and agree that some or all of the Service may be provided by an agent of First Merchants Bank; provided, further, that First Merchants Bank has no obligation to disclose the identity of any agent to you, or to obtain your consent prior to delivering any information to such agent. It is the intent of the parties to the Agreement that the provisions of the Agreement and any Service terms will inure equally to the benefit of any such agent of First Merchants Bank, or any successor thereto, providing Services pursuant to the Agreement.

**AA. Authorization Representation and Warranty.**

You represent and warrant to First Merchants Bank that the person acknowledging these Terms and Conditions is duly authorized to enter into the Agreement with First Merchants Bank, and to execute any and all documents, including the Agreement.

**BB. Termination.**

You may terminate your use of the Service at any time by calling or writing us as provided in Section IV(N) titled "Errors or Questions." You must notify us at least ten (10) Business Days prior to the date on which you wish to have the Service terminated. We may require that you put your request in writing. If you have scheduled transactions with a Transmit Date within this ten-day period, you also must separately cancel those transactions. If we have not completed processing your termination request and you have not otherwise canceled a transaction, you will be responsible for transactions with a Transmit Date during the ten (10) Business Days following our receipt of your notice of termination. We may terminate your use of the Service, in whole or in part, at any time without prior notice. If you would like to (a) transfer the Service to a different account with us, or (b) add or remove an account with respect to the Service, you must provide ten (10) business days advance written notice. Termination will not affect your liability or obligations under this Agreement accruing prior to the date of termination.

**CC. Exclusion of Warranties; Limitation of Liability.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OR EXCEPT AS REQUIRED BY APPLICABLE LAW, WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING THE SERVICE OR ANY ASPECT THEREOF, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR BY APPLICABLE LAW, YOU AGREE THAT NEITHER WE NOR OUR SERVICE PROVIDERS SHALL BE



RESPONSIBLE FOR ANY LOSS, INJURY, OR DAMAGE, ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF ANY USE OF OR INABILITY TO USE THE SERVICE, THE FIRST MERCHANTS BANK WEBSITE, OR BUSINESS MOBILE APPLICATION OR ANY PORTION THEREOF, REGARDLESS OF WHETHER FIRST MERCHANTS BANK HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, TORT, (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. WHETHER CAUSED BY THE OPERATION OF EQUIPMENT (WHETHER OWNED BY YOU OR US OR ANY OF OUR SERVICE PROVIDERS), THE SERVICE, THE FINANCIAL SOFTWARE, OR US, AND IN NO EVENT SHALL WE OR OUR SERVICE PROVIDERS BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST OPPORTUNITY) CAUSED BY THE SERVICE OR THE USE THEREOF, OR ARISING IN ANY WAY OUT OF THE INSTALLATION, USE OR MAINTENANCE OF THE FINANCIAL SOFTWARE, EQUIPMENT OR THE SERVICE, EVEN IF WE OR OUR SERVICE PROVIDERS HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**DD. Overdraft.**

You agree not to use or attempt to use the Service to overdraw any Accounts, to exceed your limit on any credit account, or to engage in any transaction that is not specifically authorized and permitted. Such use or attempted use may result in the immediate cancellation of the Service and the Accounts, and may expose you to possible legal action. We may honor instructions to initiate transactions on the same business day (whether received through the Service, ATM or point-of-sale (POS) terminals, checks or other means) in any order we determine, even if honoring a particular item or instruction results in an insufficient balance in the Accounts to honor other instructions that otherwise could have been honored. If there are insufficient funds in the Accounts to complete the transaction you have initiated, we may either refuse to honor the request or complete the transaction and thereby overdraw the Accounts. In either event, you are responsible for any insufficient funds or overdraft charges that we may impose.

**EE. Third Party Service Providers.**

We may offer third-party provider products and services ("Third Party Services") through Business Online and Mobile Banking and those Third-Party Services

also may be governed by separate agreements with the applicable provider. By using any Third-Party Service, you agree that we make no warranties and have no liabilities as to the accuracy, completeness, availability or timeliness of the Third-Party Service to the fullest extent of the law. The Bank and those third parties, as applicable, reserve the right to change, suspend, remove or disable access to any of the Third-Party Services at any time without notice. In no event will we be liable for access to certain services, in any case and without notice or liability.

**FF. Statements of Representatives.**

If there is a conflict between what one of our representatives says and the terms of this Agreement, the terms of this Agreement will prevail.

**GG. Arbitrations and Waiver of Jury Trial.**

**ALL DISPUTES OR CLAIMS PERTAINING TO THE SERVICE, ACCOUNTS OR THE RELATIONSHIPS THAT ARISE THERE FROM, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, SHALL BE RESOLVED BY BINDING ARBITRATION UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA) AND THE FEDERAL ARBITRATION ACT IN TITLE 9 OF THE US CODE. ARBITRATION HEARINGS WILL BE HELD IN THE STATE OF INDIANA IN A CITY OF FIRST MERCHANTS BANK'S CHOOSING. A SINGLE ARBITRATOR WILL BE APPOINTED BY THE AAA AND WILL BE AN ATTORNEY OR A RETIRED JUDGE WITH EXPERIENCE AND KNOWLEDGE IN BANKING TRANSACTIONS. ANY ISSUE CONCERNING WHETHER OR THE EXTENT TO WHICH A DISPUTE OR CLAIM IS SUBJECT TO ARBITRATION, INCLUDING BUT NOT LIMITED TO ISSUES RELATING TO THE VALIDITY OR ENFORCEABILITY OF THESE ARBITRATION PROVISIONS, SHALL BE DETERMINED BY THE ARBITRATOR. ALL STATUTES OF LIMITATIONS OR OTHER DEFENSES RELATING TO THE TIMELINESS OF THE ASSERTION OF A DISPUTE OR CLAIM THAT OTHERWISE WOULD BE APPLICABLE TO AN ACTION BROUGHT IN A COURT OF LAW SHALL BE APPLICABLE IN ANY SUCH ARBITRATION, AND THE COMMENCEMENT OF AN ARBITRATION UNDER THIS AGREEMENT SHALL BE DEEMED THE COMMENCEMENT OF AN ACTION FOR SUCH PURPOSES. NO PROVISION OF THIS PARAGRAPH SHALL RESTRICT THE ABILITY OF ANY PERSON TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE UNDER APPLICABLE LAW OR THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE EXERCISE OF THOSE RIGHTS OR REMEDIES IS SUBJECT TO THE RIGHT OF ANY OTHER PERSON TO DEMAND ARBITRATION AS PROVIDED HEREIN. THE**

**COMMENCEMENT OF LEGAL ACTION BY A PERSON ENTITLED TO DEMAND ARBITRATION DOES NOT WAIVE THE RIGHT OF THAT PERSON TO DEMAND ARBITRATION WITH RESPECT TO ANY COUNTERCLAIM OR OTHER CLAIM. A PERSON ENTITLED OR OBLIGATED TO DEMAND ARBITRATION SHALL BE PERMITTED TO ASSERT A DISPUTE OR CLAIM THAT IS BROUGHT ON BEHALF OF ANY OTHER PERSON AND THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE OR CLAIM TO BE ARBITRATED AS, OR ON THE BASIS OF, A CLASS ACTION. SIMILARLY, AN ARBITRATION PROCEEDING UNDER THIS AGREEMENT MAY NOT BE CONSOLIDATED WITH OTHER ARBITRATIONS PROCEEDINGS. JUDGMENT UPON THE AWARD RENDERED IN ARBITRATION SHALL BE FINAL AND MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. IF A DISPUTE OR CLAIM IS NOT SUBJECT TO ARBITRATION FOR ANY REASON, THEN THE DISPUTE OR CLAIM SHALL BE DECIDED IN THE COURTS OF MARION COUNTY, INDIANA, WITHOUT A JURY. YOU AND FIRST MERCHANTS BANK IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY.**

**YOU AGREE TO THE TERMS STATED ON EVERY PAGE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE ARBITRATION OF CLAIMS AND DISPUTES CLAUSE AS OF EFFECTIVE DATE ABOVE AND ACKNOWLEDGES RECEIPT OF THIS AGREEMENT.**

#### **HH. Other Agreements.**

You agree to use the Service according to any User's Guide and any other instructional materials provided to you (including on-screen help). You will be bound by these instructional materials, together with all agreements controlling the use of the Service or relating to any accounts accessed through the Service (such as your deposit agreement with us). To the extent any provision of this Agreement conflicts with such other agreements or instructional materials, the provision herein shall control; otherwise, the provision supplements but does not displace such other agreements and instructional materials.

#### **II. Waivers.**

No delay or omission by us in exercising any rights or remedies under this Agreement or applicable law shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy shall not preclude further exercise of that right or remedy or the exercise of any other right or remedy. No waiver shall be valid unless in writing signed by us. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

## **JJ. Prohibited Uses.**

We reserve the right to suspend or terminate your use of the Service if we believe, in our sole discretion, that you are using the Service for other purposes, or if we believe you are using the Service in a manner that exposes First Merchants Bank to liability, reputational harm or brand damage, including but not limited to using the Service to request, send or receive money related to illegal or brand-damaging activities, to be determine in our sole discretion.

## **KK. Assignment.**

You may not assign this Agreement or any of your rights or responsibilities under this Agreement to any other party. We may assign this Agreement or any or all of our rights and/or responsibilities hereunder, or delegate any or all of such rights and responsibilities to any third party or parties.

## **LL. Data Recording.**

When you use the Service, the transaction or other information you enter may be recorded. By using the Service, you consent to such recording.

## **MM. Change of Terms; Consent to Receive Electronic Disclosures.**

This Agreement and all other agreements and disclosures relating to your use of the Service may be changed, amended, or added to from time to time, but we will provide you with reasonable notice of such changes or amendments to the extent required by applicable law. If you do not agree to any change or amendment, you must discontinue use of the Service to which the change or amendment relates or cancel your access to the Service. By using the Service after any change or amendment, you agree to that change or amendment.

BY AGREEING TO THE TERMS OF THIS AGREEMENT, YOU CONSENT TO RECEIVING ANY AND ALL DISCLOSURES SENT OR PROVIDED BY FIRST MERCHANTS BANK IN AN ELECTRONIC FORM. In order to receive the disclosures, information, and/or messaging electronically, you must be able to access the Mobile and Online Banking Service application or website to view or print the electronic documents. You have the option to receive the disclosures, information, and/or messaging in a non-electronic paper format from time-to-time upon your request by contacting customer services [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464. It is your responsibility to inform us of any changes to your address, email address or other contact information that we require to send you disclosures, information,

and/or messaging electronically. You may update this information by updating your settings in Mobile or Online banking or by contacting customer service. If you choose to withdraw your consent to receive the disclosures, information, and/or messaging electronically, you must contact us at [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464. Please know some services require you to receive electronic disclosures, information, and/or messaging, and you may not be able to utilize some Mobile and Online Banking Services without consenting to receive documents electronically.

**NN. New Services.**

We may introduce new services from time to time that are available through the Financial Software. By using these new services after they become available, you agree to be bound by all terms and conditions applicable thereto.

**OO. Applicable Law.**

Regardless of where you live or work or where you access the Service, this Agreement, any enrollment form, and your deposit relationship with us will be governed by the substantive laws (excluding laws of conflict) and regulations of the United States and the State of Indiana, including without limitation, the Indiana Uniform Commercial Code.

**PP. Venue.**

Any proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of Marion County, Indiana.

**QQ. No Unilateral Alterations to This Agreement or Any Enrollment Form by You.**

Neither this Agreement nor any enrollment form may in any way be altered by you without our expressed written agreement. Any attempt by you to alter either this Agreement or any enrollment form without our express written agreement shall be void and shall have no legal effect. You hereby agree to indemnify and hold us harmless from and against any and all claims, losses, liabilities, penalties', expenses and punitive and other damages (including without limitation reasonable attorneys' fees) directly or indirectly resulting from, relating to or arising in connection with any successful or unsuccessful attempt by you to alter either this Agreement or any enrollment form without our express written agreement.

**RR. Area of Service.**

The Service and any application for deposit or other services at our Web site are solely offered to businesses operating in the United States of America (USA) and may not be accessed while outside the USA.

## **SS. Construction of Defined Terms.**

As appropriate, the singular number shall include the plural and the plural shall include the singular.

## **TT. Headings.**

The headings used in this Agreement are for convenience only and shall not be held to limit or affect the terms of this Agreement.

## **UU. Potential Disruption of Service.**

Access to the Business Online Banking Website or to the Business Mobile Banking Application may from time to time be unavailable, delayed, limited or slowed due to, among other things:

- Hardware failure, including among other things failures of computers (including your own computer), servers, networks, telecommunication lines and connections, and other electronic and mechanical equipment;
- Software failure, including among other things, bugs, errors, viruses, configuration problems, incompatibility of systems, utilities or applications, the operation of firewalls or screening programs, unreadable codes, or irregularities within particular documents or other content;
- Overload of system capacities;
- Damage caused by severe weather, earthquakes, wars, insurrection, riots, civil commotion, act of God, accident, fire, water damage, explosion, mechanical breakdown or natural disasters;
- Interruption (whether partial or total) of power supplies or other utility of service;
- Strike or other stoppage (whether partial or total) of labor;
- Governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or
- Any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond the control of First Merchants Bank.

## **W. Links to Other Sites**

Links to non-First Merchants Bank Websites are provided solely to direct

you to information on topics or services, that may be useful to the Websites, and First Merchants Bank has no control over the content on such non- First Merchants Bank Websites. If you choose to link to a Website not controlled by First Merchants Bank, First Merchants Bank makes no warranties, either express or implied, concerning the content of such site, including the accuracy, completeness, reliability or suitability thereof for any particular purpose, nor does First Merchants Bank warrant that such site or content is free from any claims of copyright, trademark or other infringement of the rights of third parties or that such site or content is devoid of viruses or other contamination. First Merchants Bank does not guarantee the authenticity of documents on the Internet. Links to non- First Merchants Bank sites do not imply any endorsement of or responsibility for the opinions, ideas, products, information or services offered at such sites, or any representation regarding the content at such sites.

**WW. Severability.**

If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

YOU AGREE TO THE TERMS STATED ON THIS BUSINESS ONLINE AND MOBILE BANKING SERVICE AGREEMENT AND ADDENDA, INCLUDING, BUT NOT LIMITED TO, THE ARBITRATION AND WAIVER OF JURY TRIAL CLAUSE AS OF TIME OF SUBMISSION AND ACKNOWLEDGES RECEIPT OF THIS AGREEMENT.