

# CONSUMER ONLINE BANKING SERVICE AGREEMENT

(Effective April 2016)

## I. GENERAL DESCRIPTION OF ONLINE BANKING AND TRANSFERS OUTSIDE FIRST MERCHANTS BANK

### A. Welcome to Online Banking

Online Banking is the name for certain services offered by First Merchants Bank (hereinafter referred to as "FMB"). It includes the services described in this agreement. You should read this agreement carefully and keep it with your other account records. It includes certain disclosures for electronic funds transfers. The following terms and definitions apply when used in this agreement:

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

**"Agreement"** means this agreement setting forth the terms and conditions of using the Service for online banking and transferring funds.

**"Bill Pay Service"** means an optional service where Payees can present bills through the Service and which can 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.

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

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

**"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.

**"Online ID"** means an identification code 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 and words required by the 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.

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

**"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 FMB and available at [www.firstmerchants.com](http://www.firstmerchants.com).

**"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 Primary Service 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.

**"Service"** means the individual and collective online banking services and fund transfer service available in connection with the Financial Software and described herein.

**"Service Account"** means (i) the primary account(s) designated by you that will be used to initiate online banking services (any such account being referred to herein as a "Primary Service Account"), (ii) all other eligible deposit accounts that are linked to your Primary Service Account, (iii) lines of credit from which funds may be transferred to a Service Account, (iv) investment accounts, such as IRAs which may be funded from a Service Account, and (v) any other account or financial product accessed using the Service. All of these accounts are subject to this Agreement,

**"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.

**"User's Guide"** means any instructional materials (as amended from time to time) provided with the Service.

**"We," "us" and "our"** means FMB

**"You, " " your" and "yours"** means (i) each and every person who now or hereafter is an account holder with respect to the Service Account or has an interest therein; and (ii) each and every person who now or hereafter subscribes to the Service or uses the Service.

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

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

This agreement between you and FMB governs the use of the Service. The Service permits FMB customers (consumers) to perform a number of banking functions on Service Accounts through the use of an Access Device.

## **C. Eligibility.**

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

## **D. Accepting the Agreement**

When you or anyone authorized or permitted by you, use the Service, you 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 Service Account owned 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 provided to you for the credit account. You should review each agreement governing your accounts, including Service 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.

## **II. ONLINE BANKING SERVICES**

### **A. Online Banking for Consumers**

You may be able to use the Service to perform some or all of the following tasks:

1. Make payments to a Payee from your Primary Service Account.
2. Review past or scheduled payments from your Service Accounts.
3. Order transfers of funds among eligible accounts.
4. Order transfers of fund from Service Accounts to certain loan accounts accessible through the Service.
5. Perform balance inquiries with respect to each Service Account accessible through the Service.
6. Review account activity within each Service Account.
7. Communicate directly with us via electronic messaging.
8. Request advances from eligible loan account accessible through online banking to your service account.

9. Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, request copy of monthly statements, stopping payments on checks and changing your Online ID and Password.

Additional functionality may be added to the Service. We will notify you when they become available.

## **B. Bill Pay Service**

In addition to the online banking features listed above, FMB customers with eligible deposit accounts may also use the optional Bill Pay Service. A monthly service fee may apply for the use of the Bill Pay Service.

### **ELECTRONIC BILL PAYMENT AUTHORIZATION**

I AUTHORIZE FMB to post payment transactions generated by personal computer or any FMB approved access device from the Bill Paying Service to an external account registered through FMB's online banking service. 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 FMB. My use of the Bill Paying Service signifies that I have read and accepted all terms and conditions applicable to FMB's online banking services and Bill Paying 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. FMB 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.

**BILL PAYMENT INSTRUCTIONS.** For the Bill Payment Service, you agree to choose a 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 FMB 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. FMB 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. FMB 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.

### **C. Expedited Bill Payment Service.**

In addition to the online banking and bill payment features listed above, if you are a FMB customer 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 Fee Schedule.

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.

### **D. Internal Bank Transfers**

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

The Service allows you to transfer funds among your eligible Service Accounts held at FMB.

## 2. Scheduling.

Transfers may be scheduled for the same day or for a future date, however, transfers initiated after 9:00 P.M. ET will not process until the following day. A request to transfer funds between Service Accounts may be scheduled for a future date. 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.

FMB 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 may elect not to initiate one or more of the transfers. If the transaction is completed, it may cause an overdraft in your account in which case you shall be liable for the overdraft and any overdraft fees (subject to your Regulation E opt-in/opt-out election) as set forth in your Deposit Agreement.

## 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 FMB.

## 4. Fees.

Additional fees may apply – see Schedule of Fees

## **E. External Transfers**

In addition to the online banking features and services listed above, FMB personal online banking customers (not including sole proprietor or business customers) with eligible deposit accounts may use the Service to transfer funds to accounts outside of FMB.

## 1. Description/Requirements

a. You must be enrolled in personal online banking to make and external transfer

b. Business customers are not eligible for this service

c. You agree that you will have sufficient available funds in the designated deposit account to cover all Outbound Transfers on the date scheduled. If the deposit account does not have sufficient available funds on the scheduled transfer date, we may elect not to initiate one or more of the transfers. If the transaction is completed, it may cause an overdraft in your account in which case you shall be liable for the overdraft and any overdraft fees (subject to your Regulation E opt-in/opt-out election), as set forth in your Deposit Agreement. If the transaction is completed, you agree to pay all related fees, (subject to your Regulation E opt-in/opt-out election), as disclosed in your Deposit Agreement.

## 2. Scheduling.

Transfers can be scheduled on the same day or can be scheduled for a future date; however, for a transfer to initiate on the same day it is scheduled, the transfer must be initiated prior to 9:00 P.M. ET. FMB is not responsible for another financial institution failing to act in a timely manner.

## 3. Limits.

Transfers submitted to accounts outside of FMB may be subject to daily limits. In addition, there may be a dollar limitation on a single transaction to an account outside of FMB.

## 4. Fees.

Additional fees may apply – see Schedule of Fees

## **F. ACH and Wire Transfers**

ACH transactions for consumers are covered by NACHA rules and can be found at <http://www.achrulesonline.org/>

## **G. Online Banking Alerts**

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 Online Banking account. You do not need to activate these alerts. We automatically activate them for you.
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 email address you have provided as your primary email address for Online Banking. 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.

#### **H. Stop Payment Request.**

We may accept online requests to stop payment on any check, except for cashier's checks, official checks, teller's checks or other cash equivalent items. Stop payments cannot be placed on debit card or recurring 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. 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.

#### **I. Quicken® Connectivity.**

FMB offers a connection with Quicken. You may download your account activity from Online Banking. You are responsible for separately purchasing Quicken, and FMB makes no warranties nor accepts any liability for such software. Quicken is a registered trademark of Intuit, Inc.

### **III. OTHER ONLINE 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 FMB.

**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 FMB.

**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. Money Market and Savings Accounts Transaction Limits.** Transaction limitations apply to money market and savings accounts. Please refer to your deposit agreement for any transaction limitations related to money market and savings account.

**6. Account Agreements.** Funds transferred from Service 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 [www.adobe.com](http://www.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.**

FMB 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 located on our website at [www.firstmerchants.com](http://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 Service 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 Service Account to complete the transaction;
2. if the transaction would exceed the credit limit on any overdraft line of credit linked to the Service Account;
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 do not authorize a payment within a sufficient period of time for your payment to be received by the Payee by the Due Date (External Transfers Only);
7. if you have not provided us with the correct Payee name, address, account information, payment amount, or other instructions necessary to complete the payment, or the foregoing instructions stored on your Access Device's hard drive or the host system have been lost (External Transfers Only);
8. if a Payee mishandles or delays the handling of payments sent by us (External Transfers Only);
9. if your funds are held or frozen, or a court order or other legal process prevents us from making a transaction;
10. if your Password has been reported lost or stolen;
11. if we have reason to believe that a transaction has not been properly authorized or authenticated, or is fraudulent, erroneous, or illegal;

12. if you have exceeded the limitations on frequency of transactions or dollar amount of transactions applicable to the Service Account;

13. 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;

14. if making a transfer would cause us to violate any law, rule, or regulation to which we are subject; or

15. 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 (E-mail).**

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 III(Q) titled "Errors or Questions." 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 signature requirement identified on the signature card or other documents relating to your Service Account. 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 Service Account, 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 Service Account 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 III(Q) 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, FMB may require you to periodically change your Password used to access your Service Account. Additionally, if you fail to access your Service Account(s) for an extended period, FMB 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 Service 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 as Service Accounts. We also reserve the right (i) to refuse to include any account among your Service Accounts, or (ii) to allow transactions between or among Service 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 as a Service 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 Service Accounts and you are responsible for all transactions that person initiates or authorizes in connection with the Service Accounts. Tell us AT ONCE if you believe that your Password has been lost or stolen or that a Service 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 Service 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 Service Account(s) without your authorization, please contact us through the following methods:

**Call: 1-800-205-3464**

**Fax to: 1-765-378-8173**

**First Merchants Bank Online Banking  
Attention: Customer Service 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 Service Account.

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.

**THE FOLLOWING PROVISIONS OF THIS SECTION APPLY TO CONSUMER ACCOUNTS ONLY AND DO NOT APPLY TO BUSINESS ACCOUNTS**

To the extent a transaction is an electronic funds transfer, if you tell us within two (2) business days after you learn of the loss, theft, or unauthorized transaction, you can lose no more than \$50.00 if someone used your Password or made a transaction without your authorization.

If you do NOT tell us within two (2) business days after you learn of the loss, theft or unauthorized transaction, and we can prove we could have stopped someone from using your Password or the Service without your authorization if you had told us, you could lose as much as \$500.00.

Also, if your statement shows a transaction that you did not make or authorize, tell us at once. If you do not tell us within 60 days after the statement was mailed, electronically transmitted, or otherwise made available to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods as may be reasonable under the circumstances.

**N. Documentation of Transactions.**

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 Service Account from which or into which a

transaction through the Service has been completed during the month. For all other Service 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 Service 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. Fees.**

You agree to pay all fees applicable to the Service. These fees are listed in the Schedule of Fees and are subject to change from time to time. 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 your Primary Service Account or, to the extent your Primary Service 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.

#### **P. Disclosure of Service Account Information to Third Parties.**

We will only disclose information to third parties about your Service Account(s) in accordance with the Privacy Statement, which is provided to you on an annual basis, and may be obtained at any time from any of our customer service representatives or by visiting our Web site at [www.firstmerchants.com](http://www.firstmerchants.com). You agree to review the Privacy Statement 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 Statement.

#### **Q. 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**

**Fax to: 1-765-378-8173**

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

**THE FOLLOWING PROVISIONS OF THIS SECTION III(Q) APPLY TO CONSUMER ACCOUNTS ONLY AND DO NOT APPLY TO BUSINESS ACCOUNTS**

If you think that your statement is wrong or you need more information about a transaction listed on your statement or appearing on the account activity screen of your Access Device, we must hear from you no later than sixty (60) days after we sent the FIRST statement on which the problem or error appeared or you received notification of the problem or error on/our Access Device.

- a) Tell us your name and the Service Account number.
- b) Describe the error or the transaction you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- c) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) Business Days. We will determine whether an error occurred within ten (10) Business Days [twenty (20) Business Days for transactions that have occurred within thirty (30) days after the first deposit to the account] after we hear from you and will correct any error promptly. If we require more time, however, we may take up to forty-five (45) days [ninety (90) days for point-of-sale transactions, transactions initiated outside the United States, or transactions that have occurred within 30 days after the first deposit to the account] to investigate your complaint or question. If this additional time is necessary, and your written notification has been received by us, we will credit your account within ten (10) Business Days [twenty (20) Business Days for transactions that have occurred within 30 days after the first deposit to the account] for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) Business Days [twenty (20) Business Days for transactions that have occurred within thirty (30) days after the first deposit to the account], we will

not credit your account and we will still have up to forty-five (45) days [ninety (90) days for point-of-sale transactions, transactions initiated outside the United States, or transactions that have occurred within thirty (30) days after the first deposit to the account] for our investigation.

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

## **R. 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 Service Account, 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.

## **S. Business Days and Cut-Off Times.**

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

## **T. General Funds Transfer Provisions.**

1. Notice of Receipt of Funds Transfers. The periodic statements provided to you by FMB will notify you of funds transfer payments received by FMB for credit to your accounts at FMB. You are hereby notified and agree that FMB shall not be required to provide any other notice to you of such receipt of funds. FMB 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.

a) Credits From Funds Transfers are Provisional. Subject to FMB's Availability of Funds Disclosure, all credits to your accounts for funds transfers, which FMB receives, are provisional until FMB receives final settlement for the funds. If FMB does not receive such final settlement, you are hereby notified and agree

that FMB 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.

#### **U. 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 FMB 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 FMB or by third parties from whom FMB has secured the right to use the Services, including, but not limited to, FMB's product and service pricing structure, system design, programming techniques or other unique techniques. FMB 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 FMB will disclose information about you or your accounts has been separately disclosed in FMB's Privacy Policy and in other disclosures which have been provided. FMB'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 FMB'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 FMB 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 FMB. 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 FMB or certify to FMB that it has destroyed all copies of the Proprietary Data in your possession.

#### **V. 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 FMB) 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 FMB'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 FMB's records. All notices to FMB 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 FMB in accordance with the requirements of this Agreement.

#### **W. Fees and Charges.**

You authorize FMB to assess and deduct fees from its designated account for Services provided under the Agreement as specified in writing by FMB by means of a FMB statement, account analysis statement or fee letter; or as otherwise agreed by you and FMB. FMB 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. FMB may charge your account for any fees, charges, taxes or pass-through charges charged or incurred by FMB in respect of the provision of any Service to or on behalf of you. You agree to reimburse FMB upon demand if such charges and fees are not paid when due. FMB may charge a person who cashes a check drawn on your account a fee if that person is not a deposit customer of FMB.

#### **X. Agents.**

You acknowledge and agree that some or all of the Service may be provided by an agent of FMB; provided, further, that FMB 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 FMB, or any successor thereto, providing Services pursuant to the Agreement.

#### **Y. Authorization Representation and Warranty.**

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

#### **Z. Termination.**

You may terminate your use of the Service at any time by calling or writing us as provided in Section III(Q) 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.

**AA. 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, 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) 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.

**BB. Overdraft.**

You agree not to use or attempt to use the Service to overdraw any Service Account, 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 Service 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 Service Account to honor other instructions that otherwise could have been honored. If there are insufficient funds in the Service Account to complete the transaction you have initiated, we may either refuse to honor the request or complete the transaction and thereby overdraw the Service Account. In either event, you are responsible

for any insufficient funds or overdraft charges (subject to your Reg E opt in/opt out election) that we may impose.

### **CC. 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.

### **DD. Arbitration and Waiver of Jury Trial.**

ALL DISPUTES OR CLAIMS PERTAINING TO THE SERVICE, A SERVICE ACCOUNT 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, NA 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 STATUES 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 DELAWARE COUNTY, INDIANA, WITHOUT A JURY. YOU AND FIRST MERCHANTS BANK, NA 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.

#### **EE. 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.

#### **FF. 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.

## **GG. 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.

## **HH. 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.

## **II. Change of Terms; Electronic Disclosures.**

This Agreement and all other agreements and disclosures relating to your use of the Service may be changed or amended from time to time, but we will provide you with advance notice of such changes or amendments to the extent required by applicable law. You agree that we may send change of terms notices to you, as well as any disclosures required by applicable law (including, without limitation, the Electronic Fund Transfer Act, as amended (15 U.S.C. 1693 et seq.), Federal Reserve Regulation E, as amended (12 C.F.R. 205)) via electronic messaging, and you will be deemed to have received such notices or disclosures three days after they are sent, whether or not you have retrieved them by that time. 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.

## **JJ. 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.

## **KK. 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.

**LL. Venue.**

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

**MM. 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.

**NN. Area of Service.**

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

**OO. Construction of Defined Terms.**

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

**PP. 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.

**QQ. 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 ONLINE 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.