

## **First Merchants Bank**

**To use First Merchants Bank consumer online mobile banking service, you must review and agree to all of the terms and conditions below in this Addendum to Consumer Online Banking Service Agreement, which includes Zelle® Network Terms of Use.  
(Effective July 2020)**

**Please note that Zelle® is a complimentary service we provide to you as a convenient way to transfer money between you and others who are enrolled directly with Zelle® or enrolled with another financial institution that partners with Zelle.**

**By clicking "Agree" after reviewing the terms and conditions of this Addendum to Consumer Online Banking Service Agreement ("Addendum") on these pages during enrollment for mobile banking services ("Mobile Banking"), you are agreeing to the terms and conditions of this Addendum to Consumer Online Banking Service Agreement, including Zelle® Network Terms of Use.**

**Additionally, by installing the Mobile Application or software necessary to utilize Mobile Banking (the "Software") and using Mobile Banking, you also agree to be bound by this Addendum. This Addendum supplements First Merchants Bank's Consumer Online Banking Service Agreement ([https://www.firstmerchants.com/terms\\_and\\_conditions/online\\_banking](https://www.firstmerchants.com/terms_and_conditions/online_banking)) which you have already agreed to.**

### **ADDENDUM TO CONSUMER ONLINE BANKING SERVICE AGREEMENT**

This service is provided to you by First Merchants Bank ("We", "Us", "FMB", "Our") and powered by a third party (the "Licensor") mobile technology solution. Section A of this Addendum, First Merchants Banks Consumer Mobile Banking End user Terms of Use, is a legal agreement between you and First Merchants Bank. Section B of this Addendum, Consumer Online Banking Mobile Banking Application, is a legal agreement between you and the Licensor. Section C of this Addendum, Zelle® Network Terms and Conditions, is a legal agreement governing your use of Zelle.

#### **SECTION A**

#### **FIRST MERCHANTS BANK CONSUMER MOBILE BANKING END USER TERMS OF USE**

Thank you for using First Merchants Bank Mobile Banking combined with your mobile device's text messaging capabilities. For help, text "HELP" to 49794. To cancel your plan, text "STOP" to 49794 at any time. In case of questions please contact customer service at [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464.

#### **Terms and Conditions**

1. The services are separate and apart from any other charges that may be assessed by your wireless carrier for text messages sent to or received from First Merchants Bank. 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.

2. The services are provided by First Merchants Bank and not by any other third party. You and First Merchants Bank are solely responsible for the content transmitted through the text messages sent to and from First Merchants Bank. You must provide source indication in any messages you send (e.g., mobile telephone number, "From" field in text message, etc.)

To enroll in Mobile Banking, Text Messaging and Mobile Deposit Service, you must also be a subscriber to First Merchants Bank's Online Banking service ("Online Banking"). You acknowledge that you have read and agreed to the terms and conditions of the First Merchants Bank's Online Banking Terms and Conditions ("Service Agreement") which applies to these End User Terms. You also acknowledge and agree to these End User Terms which supplement the Service Agreement when you enroll in Mobile Banking, Text Messaging and/or Mobile Deposit Service. (You may review the First Merchants Bank Online Banking Terms and Conditions by visiting [https://www.firstmerchants.com/terms\\_and\\_conditions/online\\_banking](https://www.firstmerchants.com/terms_and_conditions/online_banking))

1. 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.

2. 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.

3. We may terminate Online Banking services as provided in the Service Agreement, and may terminate Mobile Banking, Text Messaging and/or Mobile Deposit Service at any time, including 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.

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

1. As used in these End User Terms, "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 First Merchants Bank's Online Banking 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 Online Banking services or the functionality on the Online Banking website are available when you use a mobile device, and Mobile Banking and functionality available to you may vary based on the mobile device you use. For those Online Banking services available through your mobile device, the Online 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 Online Banking services through your mobile device. Processing of payment and transfer instructions may take longer through Mobile Banking.

3. Your wireless provider's standard rates apply to Internet access, including messaging rates that apply to SMS usage. 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 and messaging plans. Your wireless provider may impose Internet access, 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 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 other such information as you may provide to us to contact you for 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 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. Mobile Banking services including Text Messaging are provided on an AS IS, AS AVAILABLE basis.

6. You understand and agree that 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 activity, balance, 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 Mobile Banking service.

7. Your wireless provider and other service providers may also collect data from your 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 Mobile Banking usage in connection with our Online Banking 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 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 Mobile Banking.

9. Our 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 personal, noncommercial use only. You will not damage, impair, interfere with, or disrupt our Online Banking service or its functionality.

10. You agree that if you are using our 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 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). You can also text the word HELP to 49794 to get additional information about the service. If you receive a message from us unexpectedly, you can text the word STOP to 49794. We do not charge for help or info messages; however, your normal wireless provider rates apply.

13. Mobile Banking is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. 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 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 Mobile Banking and Text Messaging 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. As used in these End User Terms, "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 First Merchants Bank's Online Banking 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.

16. If you have any questions, email [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464.

17. Mobile Banking is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. 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 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.

18. 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 Mobile Banking 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.

19. 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.

### **Mobile Deposit Service**

The 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 Mobile Banking Services provided above apply to the Mobile Deposit Service.

1. An account must be open for at least thirty (30) days before it is eligible for Mobile Deposit services.

2. Eligible Items. You agree:

a. to deposit only images that originated as paper checks, and no third-party or electronic checks may be deposited using the Mobile Deposit Service;

b. to implement and maintain security measures, including firewall protection, in compliance with your obligations under these End User Terms;

- c. to keep your email address updated within Online Banking;
- d. to properly endorse all items using the Mobile Deposit Service as stated in Section 6 below;
- e. not to deposit items into your account unless you have authority to do so;
- f. after you submit an item for deposit using the Mobile Deposit Service you will not redeposit, otherwise transfer or negotiate the original item;
- g. after you submit an item for deposit you are solely responsible for the storage or destruction of the original item as further provided below;
- h. the electronic image of the item will become the legal representation of the item for all purposes;
- i. any image we receive accurately and legibly represents all of the information on the front and back sides of the original item as originally drawn; and
- j. to promptly provide us with a written notice of any claim you receive regarding the Mobile Deposit Service.

3. Restrictions and Limitations. You agree not use the 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 FMB's current procedures relating to Mobile Deposit or which are otherwise not acceptable under the terms of your FMB 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 Mobile Deposit or through a Mobile deposit capture service offered at any other financial institution.

m. Checks or items that are drawn or otherwise issued by the

n. U.S. Treasury Department

#### 4. Contact.

First Merchants Bank will notify you via the email address that you provided within Online 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 Online Banking and going to the Customer Service page. 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.

#### 5. Image Quality.

The image of an item transmitted using the 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 IRDs 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.

#### 6. Endorsement

You agree to properly endorse all items captured and submitted using the 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.

#### 7. 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 Mobile Deposit Service, they are subject to our Funds Availability Policy.

#### 8. 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.

#### 9. Restrictions and Limitations.

You agree your deposits using the Mobile Deposit Service will not exceed the limitations, and may be changed from time to time.

Payment Limit (The maximum single item amount a user may deposit through Mobile deposit capture): **\$10,000**

Daily Limit (Maximum cumulative amount a depositor may deposit in a single day. The cumulative total for all accounts will apply towards this limit): **\$10,000**

Daily Limit Count (Maximum number of deposits a depositor can make in a single business day): **N/A**

Multi-Day Limit (Maximum cumulative amount a depositor may deposit over the course of a defined multi-day period): **\$40,000**

Multi-Day Limit Count (Maximum number of deposits a depositor can make over the course of a defined multi-day period): **N/A**

Multi-Day Limit Period (Number of days that constitutes the multi-day period): **22 Business Days**

#### 10. Minimum Hardware and Software Requirements.



In order to use the 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 images

#### 11. Eligibility, Termination and Changes.

You must meet the eligibility requirements as defined by the bank and subject to change in order to use the Mobile Deposit Service. We have the right to suspend or terminate the 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 Online Agreement, or Account Agreement. We may also terminate the Mobile Deposit Service in the event your wireless service terminates or lapses.

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

#### 12. Errors.

You agree to promptly review each account statement and notify us of any errors. All deposits made through the 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 Online Agreement and Account Agreement.

#### 13. Changes.

We reserve the right to change the 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 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 Mobile Deposit Services inconsistent with the terms and conditions hereof. Further, we have the right to suspend the 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.

14. The 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 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 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.

15. 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 Mobile Deposit Service. This obligation survives termination of these End User Terms.

## **SECTION B**

### **CONSUMER ONLINE BANKING MOBILE BANKING APPLICATION END USER TERMS AND CONDITIONS**

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 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 California 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 California 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.

## **SECTION C**

### **ZELLE NETWORK® TERMS AND CONDITIONS**

#### 1. Description of Services

a. First Merchants Bank ("We", "Us", "Our") have partnered with the *Zelle* Network ("Zelle") to enable a convenient way to transfer money between you and others who are enrolled directly with Zelle® or enrolled with another financial institution that partners with *Zelle* (each, a "User") using aliases, such as email addresses or mobile phone numbers (the "Service"). Financial institutions that have partnered with *Zelle* will be referred to as "Network Banks."

b. *Zelle* provides no deposit account or other financial services. *Zelle* neither transfers nor moves money. You may not establish a financial account with *Zelle* of any kind. All money will be transmitted by a Network Bank.

c. THE SERVICE IS INTENDED TO SEND MONEY TO FRIENDS, FAMILY AND OTHERS YOU TRUST. YOU SHOULD NOT USE THE SERVICE TO SEND MONEY TO RECIPIENTS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST.

## 2. Eligibility and User Profile

When you enroll to use the Service or when you permit others to whom you have delegated to act on your behalf to use or access the Service, you agree to the terms and conditions of this agreement ("Agreement"). You represent that you have the authority to authorize debits and credits to the enrolled bank account.

You agree that you will not use the Service to send money to anyone to whom you are obligated for tax payments, payments made pursuant to court orders (including court-ordered amounts for alimony or child support), fines, payments to loan sharks, gambling debts or payments otherwise prohibited by law, and you agree that you will not use the Service to request money from anyone for any such payments.

The Service is intended for personal, not business or commercial use. You agree that you will not use the Service to send or receive payments in connection with your business or commercial enterprise. We reserve the right to decline your enrollment if We believe that you are enrolling to use the Service with your business account or to receive business or commercial payments. We further reserve the right to suspend or terminate your use of the Service if We believe that you are using the Service for business or commercial purposes, or for any unlawful purpose.

We reserve the right to alter charges and/or this Agreement from time to time, and We reserve the right to terminate, discontinue or suspend any service at any time. User's continued use of the service following such changes constitute acceptance of the updated Agreement or charges.

Debit card use with these Services is subject to applicable restrictions. Enrolled bank account and debit card limits, restrictions, and disclosures are provided at account opening and regularly as required. Any debit card used with the Services must be issued in conjunction with a US domestic deposit account (no US territories).

## 3. Consent to Share Personal Information (Including Account Information)

You consent that We may use and disclose your data to *Zelle* and its Affiliates' respective directors, officers, representatives, agents, contractors, employees, auditors and legal counsel solely for the following purposes:

- Effecting Network Transactions;
- Providing transaction record reporting to the appropriate Participants;

- Operation and maintenance of the Network;
  - Internal administrative purposes related to the operation and maintenance of the Network;
- and
- As otherwise required by Applicable Law, subpoena, or order of any court, tribunal, or governmental entity of competent jurisdiction.

The Network Operator may use and disclose Network Data in an aggregated, anonymized format to market the Network to potential Participants and the public, as well as to provide analyses, reports and recommendations to Participants, provided such marketing efforts or analyses, reports and recommendations do not permit the identification of any Participant or the Customers associated with any Network Transaction.

#### Retention of Records

The Network Operator shall maintain accurate and complete records of Network Transactions processed through the Network for each of the Network Services, in accordance with Applicable Laws and its record retention policy, and provide such transaction records to Participants as described in the Network Documents.

#### New Product Development; Approval of Commercial Release

The Network Operator may use Network and Transaction Data and may disclose Network and Transaction Data to its and its Affiliates' respective directors, officers, representatives, agents, contractors, employees, auditors and legal counsel to conduct data analytics, data modeling and other analyses to test and develop or enhance the Network Operator's and its Affiliates' respective products and services, including, but not limited to, services provided through the Network, so long as any such use, disclosure, or other sharing of Network or Transaction Data is only for fraud and risk services.

Notwithstanding anything to the contrary in this Section, the Network Operator will only use or disclose Network and Transaction Data in a manner consistent with an exception under the Gramm-Leach-Bliley Act ("GLBA").

#### 4. Privacy and Information Security

We make security and the protection of your information a top priority. You can access Our Privacy Policy at [<https://www.firstmerchants.com/agreements-disclosures/privacy-policy>], which is incorporated into and made a part of this Agreement by this reference.

#### 5. Wireless Operator Data

We or *Zelle* may use information on file with your wireless operator to further verify your identity and to protect against or prevent actual or potential fraud or unauthorized use of the Service. By using the Service, you authorize your wireless operator (AT & T, Sprint, T-Mobile,

US Cellular, Verizon, or any other branded wireless operator) to disclose your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status and device details, if available, to our third party service provider, solely to allow verification of your identity and to compare information you have provided to us or to *Zelle* with your wireless operator account profile information for the duration of our business relationship. See *Zelle's* Privacy Policy <https://www.zellepay.com/privacy-policy> for how it treats your data. See Our Privacy Policy [<https://www.firstmerchants.com/agreements-disclosures/privacy-policy>] for how We treat your data.

## 6. Enrolling for the Service

a. You must provide Us with an email address that you regularly use and intend to use regularly (i.e., no disposable email addresses) and a permanent U.S. mobile phone number that you intend to use for an extended period of time (i.e., no "burner" numbers). You may not enroll in the Service with a landline phone number, Google Voice number, or Voice over Internet Protocol.

b. Once enrolled, you may:

i. authorize a debit of your account to send money to another User either at your initiation or at the request of that User; and

ii. receive money from another User either at that User's initiation or at your request, subject to the conditions of the Section below titled "Requesting Money."

c. If at any time while you are enrolled, you do not send or receive money using the Service for a period of 18 consecutive months, We may contact you and/or take other steps to confirm that the U.S. mobile phone number or email address that you enrolled still belongs to you. If We are unable to confirm that you are the owner of the mobile phone number or email address, then you understand that We may cancel your enrollment and you will not be able to send or receive money with the Service until you enroll again.

## 7. Consent to Emails and Automated Text Messages

By participating as a User, you represent that you are the owner of the email address, mobile phone number, and/or other alias you enrolled, or that you have the delegated legal authority to act on behalf of the owner of such email address, mobile phone number and/or other alias to send or receive money as described in this Agreement. You consent to the receipt of emails or text messages from Us, from *Zelle*, from other Users that are sending you money or requesting money from you, and from other Network Banks or their agents regarding the Services or related transfers between Network Banks and you. You agree that We may, *Zelle* may or either of Our agents may use automatic telephone dialing systems in connection with text messages sent to any mobile phone number you enroll. You further acknowledge and agree:

a. You are responsible for any fees or other charges that your wireless carrier may charge for any related data, text or other message services, including without limitation for short message service. Please check your mobile service agreement for details or applicable fees.

b. You will immediately notify Us if any email address or mobile phone number you have enrolled is (i) surrendered by you, or (ii) changed by you.

c. In the case of any messages that you may send through either Us or *Zelle* or that We may send or *Zelle* may send on your behalf to an email address or mobile phone number, you represent that you have obtained the consent of the recipient of such emails or automated text messages to send such emails or text messages to the recipient. You understand and agree that any emails or text messages that We send or that *Zelle* sends on your behalf may include your name.

d. Your wireless carrier is not liable for any delay or failure to deliver any message sent to or from Us or *Zelle*, including messages that you may send through Us or through *Zelle* or that We may send or *Zelle* may send on your behalf.

e. To cancel text messaging from Us, send STOP to 20736. For help or information regarding text messaging, send HELP to 20736 or contact Our customer service at 800-205-3464 or [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com). You expressly consent to receipt of a text message to confirm your "STOP" request.

f. Supported Carriers: All Carriers

g. 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 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 this Agreement.

## 8. Receiving Money; Money Transfers by Network Banks

Once a User initiates a transfer of money to your email address or mobile phone number enrolled with the Service, you have no ability to stop the transfer. By using the Service, you agree and authorize Us to initiate credit entries to the bank account you have enrolled.

Most transfers of money to you from other Users will occur within minutes. There may be other circumstances when the payment may take longer. For example, in order to protect you, Us, *Zelle* and the other Network Banks, We may need or *Zelle* may need additional time to verify your identity or the identity of the person sending the money. We may also delay or block the transfer to prevent fraud or to meet Our regulatory obligations. If We delay or block a payment that you have initiated through a request for money, We will notify you in accordance with your User preferences (i.e. email, push notification).

If you are receiving a payment from a business or government agency, your payment will be delivered in accordance with both this Agreement and the procedures of the business or government agency that is sending you the payment.

## 9. Sending Money; Debits by Network Banks

You may send money to another User at your initiation or in response to that User's request for money. You understand that use of this Service by you shall at all times be subject to (i) this Agreement, and (ii) your express authorization at the time of the transaction for Us to initiate a debit entry to your bank account. You understand that when you send the payment, you will have no ability to stop it. You may only cancel a payment if the person to whom you sent the money has not yet enrolled in the Service. If the person you sent money to has already enrolled with *Zelle*, either in the *Zelle* mobile app or with a Network Bank, the money is sent directly to their bank account (except as otherwise provided below) and may not be canceled or revoked.

In most cases, when you are sending money to another User, the transfer will occur in minutes; however, there are circumstances when the payment may take longer. For example, in order to protect you, Us, *Zelle* and the other Network Banks, We may need additional time to verify your identity or the identity of the person receiving the money. If you are sending money to someone who has not enrolled as a User with *Zelle*, either in the *Zelle* mobile app or with a Network Bank, they will receive a text or email notification instructing them on how to enroll to receive the money. You understand and acknowledge that a person to whom you are sending money and who is not enrolling as a User may fail to enroll with *Zelle*, or otherwise ignore the payment notification, and the transfer may not occur.

The money may also be delayed or the transfer may be blocked to prevent fraud or comply with regulatory requirements. If We delay or block a payment that you have initiated, We will notify you in accordance with your User preferences (i.e. email, push notification).

We have no control over the actions of other Users, other Network Banks or other financial institutions that could delay or prevent your money from being delivered to the intended User.

## 10. Liability

Neither WeWe nor *Zelle* shall have liability to you for any transfers of money, including without limitation, (i) any failure, through no fault of UsUs or *Zelle* to complete a transaction in the correct amount, or (ii) any related losses or damages. Neither We nor *Zelle* shall be liable for any typos or keystroke errors that you may make when using the Service.

THE SERVICE IS INTENDED FOR SENDING MONEY TO FAMILY, FRIENDS AND OTHERS WHOM YOU TRUST. YOU SHOULD NOT USE *ZELLE* TO SEND MONEY TO PERSONS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST. *ZELLE* DOES NOT OFFER A PROTECTION PROGRAM FOR AUTHORIZED PAYMENTS MADE THROUGH THE SERVICE (FOR EXAMPLE, IF YOU DO NOT RECEIVE THE GOODS OR SERVICES THAT YOU PAID FOR, OR THE GOODS OR SERVICES THAT YOU RECEIVED ARE DAMAGED OR ARE OTHERWISE NOT WHAT YOU EXPECTED).



## 11. Send Limits

Transaction limits are \$600 per transaction and \$900 per day. These limits are subject to change without notice and will be updated from time to time.

## 12. Requesting Money

You may request money from another User. You understand and acknowledge that Users to whom you send payment requests may reject or ignore your request. Neither We nor *Zelle* guarantee that you will receive money from other Users by sending a payment request, or that you will receive the amount that you request. Neither We nor *Zelle* accept responsibility if the other User rejects or ignores your request, or sends you an amount that is less than you request. If a User ignores your request, We may decide or *Zelle* may decide, in Our sole discretion, that We will not send a reminder or repeat request to that User.

By accepting this Agreement, you agree that you are not engaging in the business of debt collection by attempting to use the Service to request money for the payment or collection of an overdue or delinquent debt; to request money that is owed to another person; or to collect any amounts that are owed pursuant to a court order. You agree to indemnify, defend and hold harmless *Zelle*, its owners, directors, officers agents and Network Banks from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorney's fees, resulting from or arising out of any request for money that you send that is related to overdue or delinquent amounts.

You agree to receive money requests from other Users, and to only send requests for legitimate and lawful purposes. Requests for money are solely between the sender and recipient and are not reviewed or verified by Us or by *Zelle*. Neither We nor *Zelle* assume responsibility for the accuracy or legality of such requests and do not act as a debt collector on your behalf or on behalf of the sender of a request for money.

We reserve the right, but assume no obligation, to terminate your ability to send requests for money in general, or to specific recipients, if We deem such requests to be potentially unlawful, abusive, offensive or unwelcome by the recipient.

## 13. Transaction Errors and Your Liability for Unauthorized Transactions

### Consumer Liability

Tell us AT ONCE if you believe your [Mobile device that you have used to enroll in *Zelle* OR the password] has been lost or stolen, or if you believe that the related electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your Device or password, you can lose no more than \$50 if someone used your device or password without your permission.)

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

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

Contact in event of unauthorized transfer If you believe your device or password has been lost or stolen, call: 800-205-3464 or write: First Merchants Bank, PO Box 792, Muncie, IN 47308-0792.

Business days For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

#### Transfer types and limitations

Account access. You may use your device or password to:

Pay others you trust whom have agreed to accept the device or password.

You may make any number of transfers from your *Zelle* app, up to the transaction or daily dollar amount limit.

For security reasons, there are limits on the number of transfers you can make using *Zelle*.

#### ERROR RESOLUTION NOTICE

In Case of Errors or Questions About Your Electronic Transfers Telephone us at 800-205-3464, write us at First Merchants Bank, PO Box 792, Muncie, IN 47308-0792 or email us at [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

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

We will tell you the results within three 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.

#### 14. Liability for Failure to Complete Transfers

The Account Agreement, First Merchants Bank Mobile Banking Addendum to First Merchants Bank Consumer Online Banking Service Agreement, and our EFT Agreement describe our responsibility for completing electronic funds transfers and electronic payments, and our exceptions from liability for our failure to do so. This Agreement applies to your online transactions under the Services. WE WILL ALSO HAVE NO LIABILITY WHATSOEVER FOR FAILURE TO COMPLETE A PAYMENT OR TRANSFER YOU INITIATE OR ATTEMPT TO INITIATE THROUGH THE SERVICE UNDER ANY OF THESE CIRCUMSTANCES: (1) if the transfer or payment could not be completed due to Systems Unavailability or due to any circumstances beyond our control, including, without limitation, acts of God, any malfunction of your Internet access equipment, any internet virus, Trojan horse, worm or other hostile software code, or any problem that may be associated with your use of any Service or (2) if the payment was a tax payment, a court ordered payment or payment to a payee outside the U.S.A. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, WITH RESPECT TO ANY SERVICE, PRODUCT, OR OFFER. 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 MATERIAL OR SERVICES OBTAINED OR ACCESSED VIA THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### 15. Fees

No specific fees are charged for use of the Service, other service fees may apply. Please see our Personal Banking Fees

[<https://www.firstmerchants.com/docs/default-source/default-document-library/genbnk-hndt-personalfeeschedule-web.pdf>]

#### 16. Use of Our On-line Banking Site and/or Mobile App

You agree to access this website and/or mobile app in compliance with Our applicable Terms and Conditions, including the Consumer Online Banking Service Agreement ("Service Agreement"), which are available at [<https://www.firstmerchants.com/agreements-disclosures>] and incorporated into and made part of this Agreement by this reference.

#### 17. [Intentionally left blank]

#### 18. Right to Terminate Access

We reserve the right terminate, discontinue or suspend any service at any time. We may terminate *Zelle* at any time, including if you or your accounts are (1) not eligible for any service, (2) if We believe you are in breach of your account agreement with Us, the Service Agreement or this Agreement.

#### 19. Disclaimer of Warranties

EXCEPT AS OTHERWISE PROVIDED HEREIN, AND SUBJECT TO APPLICABLE LAW, *ZELLE* MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER WITH RESPECT TO THE SERVICE. *ZELLE* EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH REGARD TO THE SERVICE DESCRIBED OR PROVIDED. *ZELLE* DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

#### 20. Limitation of Liability

EXCEPT AS OTHERWISE PROVIDED HEREIN AND SUBJECT TO APPLICABLE LAW, IN NO EVENT WILL *ZELLE*, ITS OWNERS, DIRECTORS, OFFICERS, AGENTS OR NETWORK BANKS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES ARISING OUT OF (I) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY THE SERVICE; (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICES DESCRIBED OR PROVIDED; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (IV) ANY OTHER MATTER RELATING TO THE SERVICES DESCRIBED OR PROVIDED, EVEN IF *ZELLE* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE

DISSATISFIED WITH *ZELLE'S* SERVICE OR WITH THE TERMS OF THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE.

IN THOSE STATES WHERE THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES MAY NOT APPLY, ANY LIABILITY OF *ZELLE*, ITS OWNERS, DIRECTORS, OFFICERS AND AGENTS OR THE NETWORK BANKS LIABILITY IN THOSE STATES IS LIMITED AND WARRANTIES ARE EXCLUDED TO THE GREATEST EXTENT PERMITTED BY LAW, BUT SHALL, IN NO EVENT, EXCEED ONE HUNDRED DOLLARS (\$100.00).

#### 21. Indemnification

You acknowledge and agree that you are personally responsible for your conduct while using the Service, and except as otherwise provided in this Agreement, you agree to indemnify, defend and hold harmless *Zelle*, its owners, directors, officers, agents and Network Banks from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, errors, or inability to use the Service, or any violation by you of the terms of this Agreement. You will 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 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 this Agreement.

#### 22. Governing Law; Choice of Law; Severability

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. If any provision of this Agreement is determined to be unenforceable or invalid, the remaining provisions of this Agreement will remain in full force and effect.

#### 23. Miscellaneous

Subject to the terms of this Agreement, the Services are generally available 24 hours a day, seven days a week with the exception of outages for maintenance and circumstances beyond Our or *Zelle's* control. Live customer service generally will be available Monday through Friday, excluding US bank holidays.

Zelle and the *Zelle* related marks are wholly owned by Early Warning Services, LLC and are used herein under license.