

## **FMS BANK ONLINE AND MOBILE SERVICE AGREEMENT**

**Recommendation: Read this document carefully and print or download a copy for your records.**

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## **1. Introduction**

This Online and Mobile Service Agreement (the "**Agreement**") and the Electronic Consent, together with any associated disclosures, agreements, e-mails and other communications and documentation, whether provided electronically or on our Website, constitute the entire agreement with respect to our Online and Mobile Service. As used in this Agreement, the terms "Bank," "us," "we," or "our" means "FMS Bank", or any affiliated entity that provides you with Online and Mobile Services and any agent, independent contractor, designee, or assignee that we may, at our sole discretion, involve in the provision of the Online and Mobile Service; "Customer," "you," or "your" means: (1) an individual or entity that is an Owner of an Account, (2) an Authorized Representative & Signer of a business, (3) a business Account signer, (4) a Prior Authorized User or an Enrollee (5) a party-in-interest to an Account (such as a co-trustee of a trust Account), or (6) an individual authorized by an Owner or an Authorized Representative & Signer to be a Shared User to view Account information and/or effect transactions in an Account. By enrolling and/or using the Online and Mobile Service, or authorizing another to use your access to the Online and Mobile Service, you agree to and accept the terms and conditions of this Agreement, including any instructions we provide either online, on our Website or on your Mobile Device.

This Agreement supplements, but does not replace, the Deposit Account Disclosure for Personal Accounts or the Deposit Account Disclosure for Business Accounts. Undefined terms herein shall have the meaning assigned to them in the applicable Deposit Account Disclosure for Personal Accounts or the Deposit Account Disclosure for Business Accounts.

Any feature or product offered through this Agreement shall, individually or collectively, be called a "**Service**." Except as indicated below, all Services available through the Online and Mobile Service will be available to you without additional registrations or enrollments.

## **2. Definitions**

In addition to those definitions contained within other sections of this Agreement, the following terms are defined:

"**Account**" or "**Accounts**" mean any checking, savings, money market, certificate of deposit or individual retirement accounts (collectively called "**Deposit Accounts**") that you maintain with

FMS Bank, and any installment loans, overdraft protection and other lines of credit accounts (collectively called "**Loan Accounts**") that you maintain with FMS Bank.

"**ACH Network**" means the funds transfer system, governed by the National Automated Clearing House Association or NACHA Rules that provides funds transfer services to participating financial institutions.

"**Affiliates**" are companies related by common ownership or control; the term "Affiliates" includes any individual(s), entity (ies) or organization(s) with which an Authorized Representative & Signer (formerly called an "**Authorized Business Representative**") is associated, directly or indirectly, by ownership, control or contract.

"**Alert Notifications**" means any notification you set in the Service which will alert you concerning a condition on an Account. For example, you may request an Alert Notification if an Account balance falls below a specified dollar amount or if a transfer is conducted. An Account Balance Alert Notification is based on your prior Banking Business Days' Current Balance.

"**Authorized Representative & Signer**" means an individual who is authorized by the governing body of a Business Customer to contract for and other wise act or make decisions on behalf of the Business Customer with respect to its business Account(s), any bank or financial services and who has signing authority on those business Accounts; includes any individual who enrolls on behalf of a business after the effective date of this Agreement; any individual who is registered in the Service as an Authorized Representatives & Signer.

"**Available Balance**" is the Current Balance in an Account less any activity that has not yet cleared the Account (such as pending deposits, debit card transactions and withdrawals), less any pledges (e.g. as security for a loan), or otherwise subject to restraint (e.g. due to legal process or levy). Your "Available Balance" may fluctuate during the day due to pending deposits and debit transactions.

"**Banking Business Days**" means Monday through Friday, excluding federal holidays. Except as otherwise noted in this Agreement, transactions on non-Banking Business Days will be considered to have been made the next Banking Business Day.

"**Biller**" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills, as the case may be.

"**Billing Account**" is the checking Account from which all fees related to the Service will be automatically debited.

"**Business Customer**" means a Service user who is:

- (1) A Corporation, Partnership (excluding Joint Ventures), Limited Liability Company or other Not for Profit organization or entity; or

(2) A natural person if the Account is not maintained primarily for that person's personal, family or household purposes.

**"Business Signer Only"** means an individual who is authorized by the Business Customer to have signing authority on behalf of the Business Customer with respect to its business Account(s); Business Signers Only may be given limited or full access to the Accounts of Business Customers by an Authorized Representative & Signer as permitted by the Service.

**"Computer"** means all of the equipment and software, and your communications link required or used for the Service.

**"Consumer"** means a natural person but does not mean any Business Customer, including a Sole Proprietor.

**"Credit Agreement"** means any credit agreement, as amended from time to time, applicable to your FMS Bank Loan Account(s), including all accompanying fees and other schedules and any related disclosures or notices of changes of terms or conditions (together, the **"Credit Agreement"**).

**"Current Balance"** is the total amount of funds on deposit for your Account, regardless of pending transactions, holds, pledges or restraints.

**"Cutoff Time"** means 5:00 p.m. Mountain Standard Time for mobile deposits and transfers between your eligible Account(s).

**"Deposit Agreement"** means, the Deposit Account Disclosure for Personal Accounts, the Deposit Account Disclosure for Business Accounts, as appropriate, to your Deposit Account(s), the applicable signature card(s), the applicable Schedule of Fees and Charges, and any addenda, brochures, notices of changes in terms, and other information applicable to FMS Bank Deposit Account(s) available to you through the Service.

**"Due Date"** means the date reflected on your Biller statement for which the payment is due, not the late payment date or the date beginning or a date during any grace period.

**"Eligible Transaction Account"** is a transaction account from which your payments will be debited, your Service fees, if any, will be automatically debited, or to which payments and credits to you will be credited, that is eligible for the Service. Depending on the Service, an Eligible Transaction Account may include a checking, money market or other direct deposit account, credit card account, or debit card account, including any required routing information. For the Bill Pay Service, an Eligible Transaction Account shall be limited to an account that you hold with us, and from which bill payments will be debited. For the Account to Account Transfers Service, an Eligible Transaction Account shall be limited to a checking, money market or savings account that you hold with us.

**"Enrollee"** means any Authorized Representative & Signer, any Business Signer Only or any individual who has been authorized by an Authorized Representative & Signer to have access to

the Accounts owned by a Business Customer and who enrolls in the Service on behalf of the Business Customer.

**“External Account”** means your account at another financial institution (i) to which you are transferring funds from your Eligible Transaction Account; or (ii) from which you are transferring funds to your Eligible Transaction Account.

**"Mobile Device"** means a supported mobile device including a cellular phone or other mobile device that is web-enabled and/or capable of sending and receiving text messages. "Rooted" or "jailbroken" devices are not supported mobile devices. A rooted or jailbroken device is a device from which the standard protections and limitations have been removed.

**"Mobile Service"** means any activity via [www.fmsbank.com](http://www.fmsbank.com), [online.fmsbank.com](http://online.fmsbank.com), and any published banking or financial application using the Mobile Device you have registered with us for our Mobile and Online Service, SMS Service or SMS Alerts.

**"MT"** means SMS messages initiated from a Mobile Device and addressed to a short code.

**"Online Statements”** This service allows you to receive electronically your periodic statements, any disclosures, changes in terms pertaining to your Accounts, or your other banking and financial services, or any advertisements or other information which would normally be included in your paper statement.

**"Our Address"** means FMS Bank, 520 Sherman Street, Fort Morgan, CO 80701.

**"Our Telephone Number"** means FMS Bank (970) 867-3319.

Important Note: Incoming calls to or outgoing calls from Our Telephone Number may be monitored or recorded to ensure quality service.

**"Our Website"** means the FMS Bank Website located at [www.fmsbank.com](http://www.fmsbank.com).

**"Owner"** means each person who is an owner of an Account as indicated in our records, and any authorized representative of that person.

**"Paper Check"** means a check you issue without using the Service. Except as specifically noted in this Agreement, the handling of your Paper Checks will not be affected by this Agreement. Paper Checks are handled in accordance with the Deposit Agreement and with the Uniform Commercial Code.

**"Payment Account"** is the Account from which Bill Payments will be paid or debited.

**"Payment Instruction"** means the information provided for a payment to be made under the applicable Service, which may be further defined and described below in connection with a specific Service. For the Bill Pay Service, a Payment Instruction is further defined as the

information provided by you to the Service for a bill payment to be made to the Biller (such as, but not limited to, Biller name, Biller account number, and Scheduled Payment Date).

**"Payment Network"** means a debit or credit network (such as the ACH Network or ACCEL / Exchange payment network) through which funds may be transferred.

**"PDF"** means a Portable Document Format document.

**"PFM Software"** means Personal Financial Management software, such as the Quicken® or QuickBooks® software, and other software we may identify from time to time on Our Website.

**"PTP Request"** means functionality that, if provided to you, allows a Requestor to request that another individual initiate a Payment Instruction to the Requestor through the Person to Person Service.

**"Receiver"** is a person or business entity that is sent a Payment Instruction through the Service.

**"Requestor"** is a person that requests an individual to initiate a Payment Instruction through the Person to Person Service.

**"Scheduled Payment"** is a payment that has been scheduled through the Bill Pay Service but that has not begun processing.

**"Scheduled Payment Date"** means the day you want your Biller to receive your bill payment, unless the Scheduled Payment Date falls on a non-Banking Business Day in which case it will be considered to be the previous Banking Business Day.

**"Sender"** is a person or business entity that sends a Payment Instruction through the Service.

**"Service Provider"** means any companies that we have engaged (and their Affiliates) to render some or all of the Service to you on our behalf.

**"SMS"** means short message service, commonly referred to as text messaging. SMS is the means for sending a text message to or from a Mobile Device. The maximum length of a single SMS message in the U.S. is 160 characters. [Wireless carriers may charge fees for text transmissions or data usage.]

**"Transfer"** shall refer to any form of transfer between or among Accounts maintained with us or any form of payment, including transfers outside of our system through the Service, including Bill Pay.

**"Transfer Instruction"** is a specific Payment Instruction that you provide to the Service for a transfer of funds.

**3. Service Providers.** We are offering you the Services available under this Agreement through one or more Service Providers that we have engaged to render some or all of the Services to you

on our behalf. However, notwithstanding that we have engaged such a Service Provider to render some or all of the Services to you, we are the sole party liable to you for any payments or transfers conducted using the Services and we are solely responsible to you and any third party to the extent any liability attaches in connection with the Service. You agree that we have the right under this Agreement to delegate to Service Providers all of the rights and performance obligations that we have under this Agreement, and that the Service Providers will be third party beneficiaries of this Agreement and will be entitled to all the rights and protections that this Agreement provides to us.

**4. Eligibility.** The Service is offered only to individuals and businesses that are residents of the United States who can form legally binding contracts under applicable law. Without limiting the foregoing, the Service is not offered to minors unless the minor is using an Eligible Transaction Account in the name of the minor with a parent or guardian as a co-signor or guarantor. By using the Service, you represent that you meet these requirements and that you agree to be bound by this Agreement.

**5. Acceptable Use of Service.** You agree that you are independently responsible for complying with all applicable laws in all of your activities related to your use of the Service, regardless of the purpose of the use, and for all communications you send through the Service. Your duty to comply includes, without limitation, compliance with all requirements of the U.S. Office of Foreign Assets Control ("**OFAC**"). This means, for example, that you shall not access the Service from an OFAC sanctioned country; and you will not transmit any payment or transfer to an OFAC sanctioned person or entity. While Online and Mobile networks might allow you to perform certain financial functions, it is your responsibility to comply with U.S. laws and regulations. Tourists in OFAC sanctioned countries where the Internet is available may use the Service while visiting the country. However, if you become a resident of certain OFAC sanctioned countries, you may no longer be able to use the Service. Please contact us for more information on the specific limitations imposed by the regulation.

We and our Service Providers have the right but not the obligation to monitor and remove communications content that we find in our sole discretion to be objectionable in any way. In addition, you are prohibited from using the Service for communications or activities that: (a) violate any law, statute, ordinance or regulation; (b) promote hate, violence, racial intolerance, or the financial exploitation of a crime; (c) defame, abuse, harass or threaten others; (d) include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous; (e) infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; (f) impose an unreasonable or disproportionately large load on our infrastructure; (g) facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (h) constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Service or the portion of the Site through which the Service is offered without our prior written permission; (i) constitute use of any device, software or routine to bypass technology protecting the Site or Service, or interfere or attempt to interfere, with the Site or the Service; or (j) may cause us or our Service Providers to lose any of the services from our internet service providers, payment processors, or other vendors.

The following types of payments are prohibited through the Services (“**Prohibited Payments**”), and we have the right but not the obligation to monitor for, block, cancel and/or reverse such payments:

- a. Payments to or from persons or entities located in prohibited territories (including any territory outside of the United States); and
- b. Payments that violate any law, statute, ordinance or regulation; and
- c. Payments that violate the Acceptable Use terms in this Section 5 above; and
- d. Payments related to gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to, casino games, sports betting, horse or dog racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery) and sweepstakes; and
- e. Payments relating to transactions that (1) support pyramid or Ponzi schemes, matrix programs, other "get rich quick" schemes or multi-level marketing programs, (2) are associated with purchases of real property, annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, (3) are for the sale of items before the seller has control or possession of the item, (4) constitute money-laundering or terrorist financing, (5) are associated with the following "money service business" activities: the sale of traveler's checks or money orders, currency dealers or exchanges, or check cashing, or (6) provide credit repair or debt settlement services; and
- f. Tax payments and court ordered payments.

In addition to the above-referenced Prohibited Payments, we may also block and/or reverse payments that involve donations or payments to an unauthorized charity or non-profit organization, unless we have performed appropriate due diligence on and investigation of such charity or non-profit organization and have determined its legitimacy, in our sole discretion. In no event shall we or our Service Providers be liable for any claims or damages resulting from your scheduling of Prohibited Payments. We have no obligation to research or resolve any claim resulting from a prohibited payment. All research and resolution for any misapplied, misposted or misdirected prohibited payments will be your sole responsibility and not ours. We encourage you to provide notice to us by the methods described in Section 47 below or of any violations of the Agreement generally.

**6. Use of Service Outside U.S.** We make no representation that any content or use of the Service is available for use in locations outside of the United States. Accessing the Service from locations outside of the United States is at your own risk, and you are responsible for compliance with local laws.

**7. Payment Methods and Amounts.** There are limits on the amount of money you can send or receive through the Service. Your limits may be adjusted from time-to-time at our sole discretion. We also reserve the right to select the method in which to remit funds on your behalf



through the Service, and in the event that your Eligible Transaction Account is closed or otherwise unavailable to us the method to return funds to you. Those payment methods may include, but may not be limited to, an electronic or paper check or draft payment.

**8. Taxes.** It is your responsibility to determine what, if any, taxes apply to the transactions you make or receive, and it is your responsibility to collect, report and remit the correct tax to the appropriate tax authority. We are not responsible for determining whether taxes apply to your transaction, or for collecting, reporting or remitting any taxes arising from any transaction.

**9. Failed or Returned Payment Instructions.** In using certain features available in the Service, you are requesting us to attempt to make payments for you from your Eligible Transaction Account. If we are unable to complete the Payment Instruction for any reason associated with your Eligible Transaction Account (for example, there are insufficient funds in your Eligible Transaction Account, or the Payment Instruction would exceed the credit or overdraft protection limit of your Eligible Transaction Account, to cover the payment), the Payment Instruction may or may not be completed. In certain circumstances, we will attempt to debit the Eligible Transaction Account a second time to complete the Payment Instruction. In some instances, you will receive a return notice from us. In each such case, you agree that:

- a. You will reimburse us or our Service Provider immediately upon demand the amount of the Payment Instruction if we have delivered the payment but there are insufficient funds in, or insufficient overdraft credits associated with, your Eligible Transaction Account to allow us to complete the debit processing;
- b. For any amount not reimbursed to us within fifteen (15) days of the initial notification, a late charge equal to one and a half percent (1.5%) monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed by us or our Service Provider;
- c. You may be assessed a fee by our Service Provider and by us if the Payment Instruction cannot be debited because you have insufficient funds in your Eligible Transaction Account, or the transaction would exceed the credit or overdraft protection limit of your Eligible Transaction Account, to cover the payment, or if we cannot otherwise collect the funds from you; the fee amount will be as set forth in your fee schedule from us (including as disclosed on the Site) or your account agreement with us. You hereby authorize us to deduct these amounts from your designated Eligible Transaction Account, including by ACH debit;
- d. You will reimburse us and our Service Provider for any fees or costs we incur in attempting to collect any amounts from you; and
- e. We and our Service Provider are authorized to report the facts concerning the return to any credit reporting agency.

**10. Address or Banking Changes.** It is your sole responsibility and you agree to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited

to, name, physical address, phone numbers and email addresses. Depending on the Service, changes may be able to be made within the user interface of the Service or by contacting us at Our Address or Our Telephone Number. We are not responsible for any payment processing errors or fees incurred if you do not provide accurate Eligible Transaction Account, Payment Instructions or contact information

**11. Information Authorization.** Your enrollment in the applicable Service may not be fulfilled if we cannot verify your identity or other necessary information. Through your enrollment in or use of each Service, you agree that we reserve the right to request a review of your credit rating at our own expense through an authorized bureau. In addition, and in accordance with our Privacy Policy, you agree that we reserve the right to obtain personal information about you, including without limitation, financial information and transaction history regarding your Eligible Transaction Account. You further understand and agree that we reserve the right to use personal information about you for our and our Service Providers' everyday business purposes, such as to maintain your ability to access the Service, to authenticate you when you log in, to send you information about the Service, to perform fraud screening, to verify your identity, to determine your transaction limits, to perform collections, to comply with laws, regulations, court orders and lawful instructions from government agencies, to protect the personal safety of subscribers or the public, to defend claims, to resolve disputes, to troubleshoot problems, to enforce this Agreement, to protect our rights and property, and to customize, measure, and improve the Service and the content and layout of Our Website. Additionally, we and our Service Providers may use your information for risk management purposes and may use, store and disclose your information acquired in connection with this Agreement as permitted by law, including (without limitation) any use to effect, administer or enforce a transaction or to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability. We and our Service Providers shall have the right to retain such data even after termination or expiration of this Agreement for risk management, regulatory compliance, or audit reasons, and as permitted by applicable law for everyday business purposes. In addition, our Service Providers and we may use, store and disclose such information acquired in connection with the Service in statistical form for pattern recognition, modeling, enhancement and improvement, system analysis and to analyze the performance of the Service.

**12. Links and Frames.** Links to other sites may be provided on the portion of Our Website through which the Service is offered for your convenience. By providing these links, we are not endorsing, sponsoring or recommending such sites or the materials disseminated by or services provided by them, and are not responsible for the materials, services or other situations at or related to or from any other site, and make no representations concerning the content of sites listed in any of the Service web pages. Consequently, we cannot be held responsible for the accuracy, relevancy, copyright compliance, legality or decency of material contained in sites listed in any search results or otherwise linked to Our Website. For example, if you "select" a banner advertisement or a search result, your "selection" may take you off Our Website. This may include links from advertisers, sponsors, and content vendors that may use our logo(s) as part of a co-branding agreement. Those other sites may send their own cookies to users, collect data, solicit personal information, or contain information that you may find inappropriate or offensive. In addition, advertisers on Our Website may send cookies to users that we do not control. You may link to the home page of Our Website. However, you may not link to other

pages of Our Website without our express written permission. You also may not "frame" material on Our Website without our express written permission. We reserve the right to disable links from any third party sites to Our Website. Upon your linking to a third party site, our Privacy Policy will no longer apply.

**13. Remedies.** If we have reason to believe that you have engaged in any of the prohibited or unauthorized activities described in this Agreement or have otherwise breached your obligations under this Agreement, we may terminate, suspend or limit your access to or use of Our Website or the Service; notify law enforcement, regulatory authorities, impacted third parties, and others as we deem appropriate; refuse to provide our services to you in the future; and/or take legal action against you. In addition, we, in our sole discretion, reserve the right to terminate this Agreement, access to Our Website and/or use of the Service for any reason or no reason and at any time. The remedies contained in this Section 13 are cumulative and are in addition to the other rights and remedies available to us under this Agreement, by law or otherwise.

**14. Disputes.** In the event of a dispute regarding the Service, you and we agree to resolve the dispute by looking to this Agreement.

**15. Equipment Requirements; Responsibilities.** Accessing the Service requires the use of a Computer or, for some functions, a Mobile Device and a communications link for connecting to the Internet or to PFM. Certain features of our Service may require software, as described in this Section 15. You alone are responsible for selecting, obtaining, installing, maintaining and operating your Computer in accordance with the requirements provided by the respective manufacturers and their service providers. Your responsibility includes, without limitation, utilizing recent versions of supported web-browsers, and accessing devices and commercially available encryption, antivirus, anti-spyware, and Internet security software. You are additionally responsible for obtaining Internet services via the Internet Service Provider or Mobile Device Service Provider of your choice, for any and all fees imposed by such Internet Service Provider, Mobile Device Service Provider and any associated communications Service Provider charges.

In order to access your Online Statements through the Internet, you will need the current version of Adobe Acrobat<sup>®</sup> Reader to enable you to read documents in PDF.

In order to receive Electronic Communications and to optimize your use of the Service, you will need to use Internet Explorer<sup>®</sup>, Apple Safari<sup>®</sup>, Google Chrome<sup>™</sup> or Mozilla Firefox<sup>®</sup>. To receive an Electronic Communication from us by Mobile Device, your Mobile Device must be web-enabled and/or capable of receiving text messages. For best performance we recommend using a recent version of a supported web-browser. In order to keep copies of Electronic Communications, you will need to have access to a printer or have the ability to download information.

You acknowledge that there are risks associated with using open networks, such as the Internet, and you hereby expressly assume such risks. You acknowledge that you have requested the Service for your convenience and have made an independent assessment of the adequacy of the Internet, Computer and Mobile Device and are satisfied with that assessment.

## **16. Proprietary Rights**

You agree that we retain all ownership and proprietary rights in the Service, associated content, technology, and Our Website. Your use of the Service is subject to and conditioned upon your compliance with this Agreement. Other than Account information, all content received on the Service is our (or our licensors') exclusive property and is protected by copyrights or other intellectual property rights.

The trademarks, logos and service marks displayed on the Service (collectively the "**Trademarks**") are the registered and unregistered Trademarks of FMS Bank. In addition, all page headers, custom graphics, button icons, and scripts are our service marks, trademarks, and/or trade dress or those of our licensors. You may not copy, imitate, or use any of the above without our prior written consent, which we may withhold in our sole discretion, and you may not use them in a manner that is disparaging to us or the Service or display them in any manner that implies our sponsorship or endorsement. All right, title and interest in and to the Service, the portion of Our Website through which the Service is offered, the technology related to Our Website and Service, and any and all technology and any content created or derived from any of the foregoing, is our exclusive property or that of our licensors. Moreover, any suggestions, ideas, notes, drawings, concepts, or other information you may send to us through or regarding Our Website or Service shall be considered an uncompensated contribution of intellectual property to us and our licensors, shall also be deemed our and our licensors' exclusive intellectual property, and shall not be subject to any obligation of confidentiality on our part. By submitting any such materials to us, you automatically grant (or warrant that the owner of such materials has expressly granted) to us and our licensors a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed, and you warrant that all so-called "moral rights" in those materials have been waived, and you warrant that you have the right to make these warranties and transfers of rights.

**17. Your Online and Mobile Service Responsibilities.** In addition to your responsibilities in Section 18 below:

You may view your transaction history by logging into the Service and looking at your transaction history. You agree to review your transactions by this method instead of receiving receipts by mail.

You agree to monitor your Account activity, Account statements (if applicable) and Account information and notices about the Service or about your Accounts delivered by us electronically or by mail.

You agree to keep informed of any changes to the Service by regularly visiting and Our Website at [www.fmsbank.com](http://www.fmsbank.com).

You agree to use reasonable caution to help ensure the safety, security and integrity of your Account and transactions when using the Service.

You agree that any non-public personal information, or Account, or personal data that might compromise the security of your financial relationship with us that is stored on your Computer or Mobile Device should be encrypted and secured with commercially reasonable security procedures. Such information includes, as an example, Account names, Account balances, Usernames and Passwords, Social Security Numbers or Employer Identification Numbers.

You agree to notify us immediately if you lose, change or cancel the number of your registered Mobile Device.

You agree to notify us immediately if you believe that someone may have unauthorized access to your Service, to your Computer or to your Mobile Device.

**18. Enrolling in Online and Mobile Service; Waiver of Requirement for Multiple Signatures.** To enroll in the Service, you must have at least one eligible Account with us. Eligible Accounts are Deposit Accounts and Loan Accounts that you maintain with FMS Bank. Not all of these Accounts are available to Business Customers.

You agree that any requirement you may have for two or more signatures on any transaction or item, such as a check, does not apply to the Service or to any transaction initiated through the Service. This provision takes precedence over any conflicting provision in any other agreements you have with us.

**19. Accounts Linked in Online and Mobile Service; Indemnity; Representations (Applicable to Business Customers)**

You represent and warrant to us that:

- a. Each Enrollee satisfies the definition of Enrollee.
- b. Each Affiliate has authorized Enrollee to: (i) open, maintain, and/or close accounts on its behalf; (ii) obtain, use, and terminate the Service on its behalf; (iii) designate who is authorized to act as a signer on, and otherwise give instructions to us regarding the Affiliate's Accounts and Service; (iv) enter into agreements with FMS Bank, as appropriate, on behalf of the Affiliate; (v) link the Account(s) of each Affiliate with those Accounts of other Affiliates (including Enrollee's Accounts) that are managed by Enrollee, it being expressly acknowledged that the linking would permit transfers between and among all linked Accounts; (vi) receive Electronic Communications from us and act with respect to the linked Affiliated Accounts and Services; and (vii) access and control all Affiliate Accounts singly via the Service without regard to any multiple signer designations, requirements, or restrictions that might otherwise be applicable to a specific Account but for other agreements with us.

You shall be deemed to make each of the above representations throughout the term of this Agreement. You and Enrollee, each agree to notify us promptly if any of the above representations and warranties ceases to be correct. You and Enrollee each shall provide to us,

upon request, written evidence, in a form acceptable to us, of your and/or Enrollee's continuing authority to act on behalf of any Affiliate.

You agree to indemnify, defend and hold us harmless from every claim, action, proceeding, loss, expense (including attorney fees), damage and liability arising from or related to: (a) actions taken or omitted by us in reasonable reliance upon the representations and warranties set forth in this Section 19; (b) allegations that you, your employees or agents acted without the authorization or beyond the authorization of an Affiliate in connection with any Account or with the Service; (c) your alleged breach of any understanding or agreement with an Affiliate with respect to any Account or the Service; (d) a third party claim, dispute, action, or allegation of infringement, misuse, or misappropriation based on information, data, files or otherwise in connection with the Service; (e) the violation of any law or rights of a third party by you or by any of your agents

## **20. Owners, Enrollees and Shared Users**

### **Consumer Accounts**

If a Consumer Account is owned by more than one person, each such owner individually has the right to provide us with instructions, make any decision, obtain any information or make any request associated with the Account and related to the Service, to the extent allowed by the terms, conditions or governing provisions of the applicable Deposit Agreement or Credit Agreement.

Any Owner of a Consumer Account is entitled to enroll independently in the Service and conduct transactions in the Service. Until a transaction in the Service is effectuated, neither Owner can view the pending instructions of any other Owner.

### **Business Accounts; Personal Accounts of Authorized Representatives & Signers**

Authorized Representatives & Signers have the ability to self-administer and manage the authority of other users (“**Shared Users**”) of the Service. This functionality permits Authorized Representatives & Signers to provide Shared Users access to the Service and to specific Account(s) within the Service. The Authorized Representative & Signer has access to both the Accounts of all Business Customer(s) of which the Authorized Representative & Signer is such AND to the personal Account(s) of the Authorized Representative & Signer and the authority to delegate to Shared User(s) Service access to both business Accounts and personal Accounts.

You agree that any Enrollee in the Service is an Authorized Representative & Signer, an individual with access to an Account as reflected on Bank’s books and records, or an individual authorized by an Authorized Representative & Signer authorized to enroll in the Service independently and without notice to any Authorized Representative & Signer or to any other Enrollee. Except as provided herein, any Enrollee shall have full access to Account(s) in the Service with full authority to delegate activities to Shared Users to the fullest extent permitted in the Service. You agree that you, and not we, are responsible for supervising your Accounts, any individual who has access to your Accounts, any enrollments in the Service, and any access to

your Accounts through the Service. You agree that you are responsible for the delegation by any Enrollee to any Shared User and for monitoring the actions any Shared User may exercise in the Service with respect to your Account(s) without regard to whether we provide the functional ability for managing the authority of Shared Users.

Business Signers Only do not have the ability to self-administer and manage the authority of Shared Users.

Access by Shared User(s) - Shared Users in the Service may be granted one of two types of access:

**Restricted Access** -online access to specific Account(s) in order to:

- a. View and download transactions (e.g., into an Excel<sup>®</sup> spreadsheet).
- b. Make internal transfers and payments
- c. Use Quick Bill Pay (make payments to existing Billers)
- d. Access Online Statements

With Restricted Access, the Authorized Representative & Signer assigns to the Shared User a Username and a temporary Password for accessing the Service. On the initial login to the Service by the Shared User, the Shared User will be required to select a password and to respond to or otherwise comply with additional security features before gaining access to the Service. With Restricted Access, a Shared User will only have access to the Account(s) as authorized by the Authorized Representative & Signer.

**Full Access** - accessing the Service and to whom you authorize online access to Account(s) in order to:

- a. View and download transaction history (e.g., into an Excel<sup>®</sup> spreadsheet).
- b. Make internal transfers and payments
- c. Use Quick Bill Pay (make payments to existing payees)
- d. Use Bill Pay (make payments and set up new payees)
- e. Access Online Statements

**Note:** An Authorized Representative & Signer may create a Full Access Shared User with delegated administrative privileges. Administrative privileges allow a Full Access Shared User to create and delete other Shared Users, as well as modify which Account(s) other Shared Users can access. A Full Access Shared User with administrative privileges cannot delete or modify

another Enrollee's access privileges. A Full Access Shared User with administrative privileges can delete or modify other Shared Users.

With Full Access, the Enrollee assigns to the Shared User a Username and a temporary Password for accessing the Service. The Shared User will be required to select a password after the initial login and to comply with additional security features before gaining access to the Service. With Full Access, a Shared User will have access to transact on all the Account(s) and will have access to online statements for all the Account(s). If you receive any combined statements, the Shared User will have access to all information on the combined statements.

**You agree that you may appoint Shared Users only in accordance with the requirements and procedures we provide to you from time to time.**

This Section of the Agreement takes precedence over any conflicting provision in any other agreement you have with us.

You are responsible for ensuring that each Shared User maintains the confidentiality of his or her Username, Password, or other credentials.

You agree that each Shared User will access and use each Account, and the Service, in accordance with the authority given to the Shared User by the Enrollee. Each time the Shared User accesses, views, or transacts on an Account in the Service, you represent and warrant to us that the action by the Shared User is authorized by you and the Enrollee. If we receive conflicting instructions, or if we believe that an Account's security or our security may be at risk as a result of the actions of a Shared User, we may at our sole discretion terminate the Shared User's access to the Service, prevent the individual from being a Shared User, or block a suspicious transaction for further investigation without prior notice to you or the Enrollee.

Unless otherwise stated above, the authority of a Shared User will terminate: (a) when we are notified by an Authorized Representative & Signer that the Enrollee appointing the Shared User ceases to be an Enrollee of the Account; (b) in the case of Consumer Accounts and Sole-Proprietorship Business Accounts, upon our receiving written notice of the death or incapacity of the Enrollee from a court of competent jurisdiction or from a source that we consider official and reliable; (c) at our sole discretion if an Owner, Enrollee or Shared User breaches any provision of this Agreement; or (d) when the Shared User ceases to be enrolled in the Service. You agree that each of your Authorized Representative & Signers will be acting as your agent and on your behalf, will be bound by this Agreement and any separate agreement(s) governing the Account or Service. We may rely and act on the instructions of any such person without our having liability to you.

We may discontinue offering Shared User options or permitting Shared Users to access your Account(s) or to the Service at any time without prior notice.

**21. Prior Authorized Users (Applicable to Business Customers)**



If, prior to the effective date of this Agreement, you had instructed us to grant access to the Service to any other persons ("**Prior Authorized Users**"), unless otherwise terminated by you or us, those Prior Authorized Users continue to have full access to the Accounts to the same extent as an Enrollee and all acts of Prior Authorized Users are hereby ratified and approved. In addition, all Prior Authorized Users will be permitted access to future functionality added to the Service. All Prior Authorized Users for a Business Customer will have the ability in the Service to grant authority to one or more Shared Users. All transactions that a Prior Authorized User performs on any Account or within the Service are deemed to have been fully authorized by you. You are solely responsible for those transactions. If you wish to revoke or change the authority of a Prior Authorized User contact us at Our Telephone Number; any revocation shall have prospective effect only. It is your obligation to monitor Prior Authorized Users. In the event we do not provide the functional ability for you to view your Prior Authorized Users' access online, you agree to regularly contact us to request a list of your Prior Authorized Users, to review it promptly, and to promptly contact us and request such access be disabled if it is no longer appropriate, due to, for example, changes in the Prior Authorized Users' job duties and responsibilities, a long-term absence, or termination of employment.

**22. Security Procedures.** When you enroll, you will be required to create your Username and Password through the enrollment process. You will need your Username and Password to gain access to the Service. If you forget your Password, you can reset it at the login page by answering a Security Question that you created in the enrollment process. If you forget your Username or Password, you may call us at 970-867-3319 for assistance.

You agree not to give or make available your Password or credentials to any unauthorized individuals, and you agree to be responsible for all actions taken by anyone to whom you have provided such credentials. You agree to memorize your credentials to access the Service.

In the event that your Computer or Mobile Device is lost or stolen you agree to call us at Our Telephone Number immediately. We will take such preventive measures, which could include the canceling of access to the Service, as are necessary to safeguard your Account(s) and confidential information. In the event of compromise of your Mobile Device, we recommend that you contact your Mobile Device Service Provider immediately.

You are responsible for all Service transactions initiated by any Enrollee or anyone you authorize to use the Service on your behalf by furnishing security access credentials to those persons, whether such use is pursuant to or beyond your instructions to the person given authorization to use the Service on your behalf. A transaction initiated by anyone so authorized will not be considered unauthorized for purposes of the rules described in Section 30 unless you have changed your password without giving the other person the new password and the transaction occurs after the password has been changed. You agree that all Security Procedures set forth in this Agreement for the Service are commercially reasonable.

If you believe that your credentials have been lost or stolen or that someone may attempt to use them to access Our Website or Service without your consent, you must inform us at once at Our Telephone Number. See also Section 29 regarding how the timeliness of your notice impacts your liability for unauthorized transfers.

**We reserve the right to require you to validate your identity to our sole satisfaction at any time while you are logged in to the Service. You agree to hold us harmless for any denial or delay in the use of any feature in the Service caused by your failure to satisfactorily identify yourself as an authorized user of the Service.**

Business Customers: Business Accounts and Consumers who are not eligible for protection under Federal Regulation E are not entitled to the rights provided to consumers by the Electronic Funds Transfer Act and, therefore, the following provisions of this Agreement are not applicable to those Business Account holders, holders of non-Consumer Accounts, or Consumers who are not eligible for protection under Federal Regulation E:

- a. the liability limitation provisions of Section 31 and
- b. the time period contingent re-crediting provisions of Section 32.

### **23. Basic Online Service**

Our Basic Online Service allows you to obtain Current Balance and Available Balance information for Deposit Accounts and Loan Accounts and transaction information for almost all of your Accounts. It also allows you to transfer money between certain Accounts both within the Service and through links through third party service providers.

You may use the Basic Online Service to review transaction information for your Accounts during the current and earlier statement periods, but for no earlier than thirty (30) days before enrolling and designating the Account for the Service. Additional Account information will be available when you access the Online Service. For some Accounts, transaction information will be current through the close of the previous Banking Business Day. For Account balances, the date for which the balance is current will be shown. Note, however, that amounts reflected as Deposit Account balances are provisional and subject to reversal if recent deposits are not collected from the institution upon which a deposited item is drawn, and in certain instances, recent transactions may not be reflected.

The maximum amount of any "Single" or "Recurring" funds transfer between your eligible Accounts is the current available deposit in the source Account. The maximum number of Recurring Transfers is 999. A transfer may be scheduled from and to the transfer Account you designate at a time up to 365 days in advance of the date the transfer is to be made (called a "**Single Transfer**"), or may be set-up as automatic recurring transfers to be made at substantially regular intervals (e.g., monthly, quarterly, etc.) in the same amount between the same two Accounts (called a "**Recurring Transfer**"). We reserve the right to complete or reject any attempted transfer that is not within the applicable limit, at our complete discretion, and, regardless of our decision in that regard, you understand that such attempted or completed transfers may subject your Deposit Account to an overdraft fee, as applicable and as provided in the pertinent Deposit Agreement.

Your ability to transfer funds between certain types of Accounts is limited by federal law and is described in your Deposit Agreement. Without prior notice, for security reasons, we reserve the right to limit the frequency and dollar amount of transactions from any of your Accounts.

Restricted transfers:

- a. No transfer funds out of an installment loan;
- b. No transfers into or out of a certificate of deposit.

Transfers made on or scheduled on a date falling on a Banking Business Day will be processed the same day. However, we reserve the right to decline to pay items drawn against insufficient or uncollected funds, or to pay such items but impose an overdraft/returned item fee, if:

- a. Your transfer into the Account against which the items are drawn is made after the cutoff time on the day the items are presented for payment; and
- b. Without the transferred funds, there were not or are not sufficient funds and/or available credit to cover the item(s) presented for payment

Transfers made or scheduled with a date falling on a non- Banking Business Day may not be made available until the next Banking Business Day.

If for any reason a transfer cannot be completed, we will reverse the transfer by re-crediting the amount of the transfer to the originating Account, unless we notify you otherwise.

You can cancel some Single Transfers or Recurring Transfers by using the Basic Online Service to cancel the transfer. In the case of a Recurring Transfer, you can skip the next scheduled transfer or cancel all Recurring Transfers. You must transmit your request to skip or cancel transfers before 5:00 p.m. Mountain Standard Time. If you do not meet that deadline, the Basic Online Service will not process your cancellation instructions.

If you access the Basic Online Service directly through the Internet, you have the ability to set up Alert Notifications regarding activity on your eligible Deposit Accounts and Loan Accounts. Individuals who enroll may receive Alert Notifications through email message(s) and/or text enabled Mobile Devices. You are responsible for providing accurate contact information in order to be able to properly use the Alert Notification service.

We will not be liable for losses or damages arising from: (a) non-delivery, delayed delivery, or wrong delivery of any Alert Notification; (b) inaccurate content in an Alert Notification; (c) your use or reliance on the contents of any Alert Notification for any purposes. The information in any Alert Notification may be subject to certain time lags and/or delays. Alert Notifications do not replace standard communications you receive from us concerning your eligible Account(s). We are not responsible for any losses, damages or expenses that may occur regarding the failure of an Alert Notification.

## 24. Bill Pay Service

(Available to both Consumer Customers and Business Customers)

**Description of Service.** The term “**Bill Payment Terms**” means this Bill Payment Service Section 24. The Bill Pay Service enables you to receive, view, and pay bills from Our Website.

**Payment Scheduling.** The earliest possible Scheduled Payment Date for each Biller will be designated within the portion of Our Website through which the Service is offered when you are scheduling the payment. Therefore, the Service will not permit you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling payments, you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Biller statement unless the Due Date falls on a non-Banking Business Day. If the actual Due Date falls on a non-Banking Business Day, you must select a Scheduled Payment Date that is at least one (1) Banking Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period. Depending on the method of payment, your Eligible Transaction Account may be debited prior to the Scheduled Payment Date. For example, if the selected method of payment is a draft, the draft arrives earlier than the Scheduled Payment Date due to expedited delivery by the postal service, and the Biller immediately deposits the draft, your Eligible Transaction Account may be debited earlier than the Scheduled Payment Date.

**Payment Authorization and Payment Remittance.** By providing the Service with names and account information of Billers to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions that it receives through Our Website. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Biller directives.

When the Service receives a Payment Instruction, you authorize the Service to debit your Eligible Transaction Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Eligible Transaction Account for payments returned to the Service by the United States Postal Service or Biller, or payments remitted to you on behalf of another authorized user of the Service.

The Service will attempt to make all your payments properly. However, the Service shall incur no liability if the Service is unable to complete any payments initiated by you because of the existence of any one or more of the following circumstances:

1. If, through no fault of the Service, your Eligible Transaction Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of your overdraft account;
- 2 The payment processing center is not working properly and you know or have been advised by the Service about the malfunction before you execute the transaction;

3. You have not provided the Service with the correct Eligible Transaction Account information, or the correct name, address, phone number, or account information for the Biller; and/or,

4. Circumstances beyond control of the Service (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Service has taken reasonable precautions to avoid those circumstances.

Provided none of the foregoing exceptions are applicable, if the Service causes an incorrect amount of funds to be removed from your Eligible Transaction Account or causes funds from your Eligible Transaction Account to be directed to a Biller which does not comply with your Payment Instructions, the Service shall be responsible for returning the improperly transferred funds to your Eligible Transaction Account, and for directing to the proper Biller any previously misdirected transactions, and, if applicable, for any late payment related charges.

**Payment Cancellation Requests.** Except for Same-Day Payments (defined below) you may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the portion of the Site through which the Service is offered. There is no charge for canceling or editing a Scheduled Payment. Once the Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted.

**Stop Payment Requests.** The Service's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact us at Our Telephone Number. Although the Service will attempt to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the applicable Deposit Agreement.

**Exception Payments Requests.** Exception Payments may be scheduled through the Service; however, Exception Payments are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from your scheduling of Exception Payments. The Service Guarantee (as described above in The Service Guarantee paragraph of these Bill Payment Terms) as it applies to any late payment related charges is void when Exception Payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an Exception Payment; all research and resolution for any misapplied, mis-posted or misdirected payments will be the sole responsibility of you and not of the Service.

**Bill Delivery and Presentment.** The Service includes a feature that electronically presents you with electronic bills from select Billers. Electronic bills may not be available from all of your Billers. Electronic bills are provided as a convenience only, and you remain solely responsible for contacting your Billers directly if you do not receive their statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

1. Presentation of electronic bills – You will receive electronic bills from a Biller only if both: (a) you have designated it in the Service as one of your Billers, and (b) the Biller has arranged with our Service Provider to deliver electronic bills. The Service may then present you with electronic bills from that Biller if either: (1) you affirmatively elect online within the Service to receive electronic bills from the Biller, or (2) the Biller chooses to send you electronic bills on a temporary “trial basis.” In either case, you can elect online within the Service to stop receiving electronic bills from a Biller. Electing to receive electronic bills, automatically receiving trial electronic bills, and declining further elected or trial electronic bills all occur on an individual Biller basis. The Service does not include an option to prevent ever participating in the automatic trial electronic bill feature. When affirmatively electing to receive electronic bills from a particular Biller, you may be presented with terms from that Biller for your acceptance. We are not a party to such terms.

2. Paper Copies of electronic bills – If you start receiving electronic bills from a Biller, the Biller may stop sending you paper or other statements. The ability to receive a paper copy of your statement(s) is at the sole discretion of the Biller. Check with the individual Biller regarding your ability to obtain paper copies of electronic bills on a regular or as-requested basis.

3. Sharing Information with Billers – You authorize us to share identifying personal information about you (such as name, address, telephone number, Biller account number) with companies that you have identified as your Billers and which we have identified as offering electronic bills for purposes of matching your identity on the Service’s records and the Biller’s records to (a) activate your affirmative request for electronic bills, and/or (b) confirm your eligibility for “trial basis” electronic bills.

4. Information held by the Biller. We are unable to update or change your personal information such as, but not limited to, name, address, phone numbers and email addresses that are held by the Biller. Any changes will require you to contact the Biller directly. Additionally, it is your responsibility to maintain all Usernames and Passwords for all electronic Biller sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. We may, at the request of the Biller, provide to the Biller your email address, service address, or other data specifically requested by the Biller for purposes of the Biller matching your identity against its records or informing you about the Biller’s services and/or bill information.

5. Activation. We will notify the Biller of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Biller reserves the right to accept or deny your request to receive electronic bills.

6. Authorization to obtain bill data. You authorize us to obtain bill data from your Billers that you have requested to send you electronic bills, and from your Billers that wish to send you trial electronic bills. For some Billers, you will be asked to provide us with your user

name and password for that Biller. By providing us with such information, you authorize us to use the information to obtain your bill data.

7. Notification. We will attempt to present all of your electronic bills promptly. In addition to notification within the Service, we may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new electronic bills. The time for notification may vary from Biller to Biller. You are responsible for ensuring timely payment of all bills.

8. Cancellation of electronic bill notification. The electronic Biller reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) days, depending on the billing cycle of each Biller. We will notify your electronic Biller(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. We will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

9. Non-Delivery of electronic bill(s). You agree to hold us harmless should the Biller fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.

10. Accuracy and dispute of electronic bill. We are not responsible for the accuracy of your electronic bill(s). We are only responsible for presenting the information we receive from the Biller. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be directly addressed and resolved with the Biller by you.

This Agreement does not alter your liability or obligations that currently exist between you and your Billers.

**Service Fees and Additional Charges.** You are responsible for paying all fees associated with your use of the Service. Applicable fees will be disclosed in the user interface for, or elsewhere within, the Service or Site. Any applicable fees will be charged regardless of whether the Service was used, except for fees that are specifically use-based. Use-based fees for the Service will be charged against the Billing Account. There may also be charges for additional transactions and other optional services. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize the Service to deduct the calculated amount from your designated Billing Account. Any financial fees associated with your standard deposit accounts will continue to apply. You are responsible for any and all telephone access fees and Internet service fees that may be assessed by your telephone and Internet service provider. Section 9 of the Agreement (Failed or Returned Payment Instructions) applies if you do not pay our fees and charges for the Service, including without limitation if we debit the Billing Account for such fees, as described in this Section, and there are insufficient fees in the Billing Account.

**Biller Limitation.** The Service reserves the right to refuse to pay any Biller to whom you may direct a payment. The Service will notify you promptly if the Service determines to refuse to pay a Biller designated by you. This notification is not required if you attempt to make a Prohibited Payment as defined above.

**Returned Payments.** In using the Service, you understand that Billers and/or the United States Postal Service may return payments to the Service for various reasons such as, but not limited to, Biller's forwarding address expired; Biller account number is not valid; Biller is unable to locate account; or Biller account is paid in full. The Service will attempt to research and correct the returned payment and return it to your Biller, or void the payment and credit your Eligible Transaction Account. You may receive notification from the Service.

**Information Authorization.** In addition to Section 11 of the Agreement (Information Authorization), you agree that the Service reserves the right to obtain financial information regarding your account from a Biller or your financial institution (for example, to resolve payment posting problems or for verification).

**Consumer Accounts Accessible by More Than One Person**

Joint Account holders may use the same Account(s) as their funding Account(s) for their individual use of Bill Pay. Each Owner of a Consumer Account has the same right of access to Account activity such as notifying us of suspected loss, fraud or canceling Bill Pay, etc. Each Owner of a Consumer Account may individually enroll in Bill Pay and, if so enrolled, must have a unique Username and Password and will have a separate payee list and payment history.

**Business Accounts Accessible by More Than One Person**

Business Account holders may use the same Account(s) as their funding Account(s) for their individual use of Bill Pay. Each Authorized Representative & Signer of a Business Account and each Shared User with Full Access to that Account has the same right of access to Account activity, such as notifying us of suspected loss, fraud or canceling Bill Pay, etc. Each Authorized Representative & Signer and each Shared User with Full Access may individually enroll in Bill Pay and, if so enrolled, must have a unique Username and Password and will have a separate payee list and payment history.

**Bill Pay Spending Limits:** There is a transaction limit for any single bill payment of \$10,000.00. The daily transaction limit for multiple bill payments is \$20,000.00.

**Mobile Service Bill Pay Limitations:** You may not make Expedited Payments through our Mobile Service.

**Mobile Bill Pay Set Up:** The Mobile Service permits you to establish Billers in the Bill Pay Service by permitting you to capture an image of an invoice from a Biller. The technology then prefills Biller information, including, Biller name, address, your Account number and the current invoice amount. It is your obligation to verify that the pre-filled information from the image is accurate. You may not manually enter into your Mobile Device Biller information or make manual corrections to Biller information as interpreted by an image of an invoice.



## 25. Periodic Statements

Transaction and balance information provided via the Service will not replace any statements you currently receive from us. Subject to your agreement to accept Online Statements, you will continue to receive the same periodic Account statements for your Accounts as you are already receiving. Your periodic statements will reflect all your Service transactions, each of which will be given a reference number that will appear on your online Account summary and will state the amount of each transaction, the type of transaction, the Account charged or credited and the full or abbreviated name of the payee if a payment is involved.

## 26. Online Statements

**A. For Bank Accounts (Requires Enrollment; Available to Consumer Customers and Business Customers; Not Available through Mobile Service)**

a. **Online Statements Service.** We offer Online Statements for certain of your Accounts, allowing you to replace your paper mailed statement with a PDF electronic version that you can view, save to your computer or print at your convenience. Your acceptance of the Online Statement Service constitutes your request for an agreement to accept electronically, any changes in terms or other legal notices regarding your Accounts or banking or other financial services, and any advertisements or other information which would normally be included in your paper statement. Upon enrollment in the Online Statements service we will send you an email notice each statement cycle advising you that your Online Statement is ready for you to view online.

b. **Eligible Accounts for Online Statements.** Online Statements are an option that is available to anyone who is enrolled in the Service for any checking Account, money market Account, savings Account, certificate of deposit, individual retirement Account, individually and jointly called ("**Covered Accounts**").

c. **How to Enroll.** To participate in the Online Statements Service, you must enroll each Covered Account in the Online Statements service separately. Once a Covered Account is enrolled in Online Statements, no paper statements will be generated and mailed for the Covered Account unless specifically requested. A fee may apply if you elect to continue to receive paper statements by U.S. Mail in addition to Online Statements. For any Covered Account with multiple owners any one Account owner may enroll the Covered Account in Online statements and that election will govern the Account. In order to view Online Statements, however, each Owner must be enrolled in Online Banking.

d. **Combined Statements.** If your Covered Accounts are combined into one statement at your or our option, upon enrolling the Account that we designate as the primary billing Account in the Online Statements service your combined statement will be available in Online Statements.

e. **Maintaining a Current Email Address.** It is your responsibility to maintain a current and valid email address on record in the Online Service. Unless otherwise prohibited by law, rule or regulation, if your email is rejected as undeliverable for three (3) times, we may discontinue the Online Statement Service and return your Covered Account(s) to the paper statement service. You may change your email address by signing into the Service, selecting the "Options/Customer Info" tab. Select "Email Address" link under Customer Information. Enter your new email address and confirm new email address and select "Submit."

f. **Effective Date of Enrolling or Cancelling Online Statements.** Any change to your Online Statement preference (paper or electronic or both paper and electronic) will take effect in the next statement cycle.

g. **Termination of Service.**

**Automatic Termination -** Your Online Statement Service will terminate automatically if your primary billing Account closes. All remaining Accounts will revert to paper statements. Once terminated, you must re-enroll in Online Statements. **Voluntary Termination -** Either you or we may terminate delivery of Online Statements on your Accounts without notice. You may terminate your Online Statement Service by signing into the Online Banking service and selecting the "E-Statements" link in the "E-Statements" screen that lists your Accounts; indicate your decision to terminate (Opt-Out) the Online Statements Service and select "Submit." If you discontinue the Online Statement Service, your statement will convert to a paper statement.

h. **Online Statement Available for up to twelve (12) months.** Your Online Statements will remain accessible when you log into Online Banking for a period of twelve (12) months. However, if you close your account and no longer maintain a relationship with FMS Bank, or your access to Online and Mobile Service becomes inactivated, your access to Online Statements will end. You can still request a paper copy of your any statement that we have in our records and maybe charged a fee.

i. **Fee for Additional Paper Statements.** Should you request a paper statement be sent to you in addition to receiving an Online Statement, the then-current disclosed fee for a duplicate statement will apply.

## **27. Online Transfer Service - Transfers Outside FMS Bank and Person to Person Transfers**

(ONLY Available to Consumer Customers; NOT AVAILABLE to Business Customers)

### **Authorization for Electronic Funds Transfers**

By requesting and using the Transfer function of our Online Service, you agree to accept the additional terms and conditions applicable to the Service.

## **ACCOUNT TO ACCOUNT TRANSFERS ADDITIONAL TERMS**

### **USER AGREEMENT FOR TRANSFERRING FUNDS**

YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE FOR TRANSFERRING FUNDS. THIS IS A LEGAL AGREEMENT BETWEEN YOU AND THE FINANCIAL INSTITUTION THAT IS OFFERING FUNDS TRANSFER SERVICES. THESE TERMS OF SERVICE AFFECT YOUR RIGHTS, AND YOU SHOULD READ THEM CAREFULLY. In these terms, some provisions apply to "you" as the party using the service to initiate funds transfers. Some provisions apply to "you" as the party approving a request to transfer funds from or to you. In both cases, you agree to the applicable provisions of these terms. "We", "us" and "our" refer to the financial institution that initiates the funds transfers services (the "Financial Institution"). The Financial Institution uses as its agent, D+H USA Corporation, and other financial intermediaries (collectively, the "Service Provider") to accomplish funds transfers. If you are the party initiating a funds transfer, these terms of service supplement the disclosures or agreements you agreed to as part of the registration process for online banking. If you wish to review those disclosures or agreements, please close this page and review the terms of service associated with online banking or consult with a customer service representative of the Financial Institution. You may also have other agreements with another financial institution that holds your account that apply to your account but not to this service.

This service allows you to initiate or authorize funds transfers between accounts or people you have designated using the Funds Transfer Service (an "ACH Transfer"). By clicking the "Confirm" button you authorize us as the financial institution to (i) accomplish this transfer through the Automated Clearing House ("ACH") and (ii) to use the Service Provider as our agent for this purpose.

You understand that the Financial Institution and its Service Provider may originate more than one ACH entry (for example, a paired credit and debit entry) to accomplish the transfer you are requesting or authorizing. These ACH entries may be originated in any sequence (for example, a credit may be provided to you in advance of settlement on a paired debit entry against your account). You authorize us or our Service Provider to resubmit debit entries against your account as needed to fulfill the ACH Transfer you have requested. If this is a recurring ACH Transfer, this authorization will continue in full force and effect until such time as you cancel the recurring ACH Transfer as provided below.

The sections below also apply to anyone using the service, whether to send or to receive funds:

1. You represent that you are at least eighteen (18) years old, a resident of the United States and have a valid e-mail address. You represent that you are the owner of the applicable debit and/or credit accounts and have the right to access, use, and authorize us and our agents to initiate ACH entries to debit or credit such accounts in the amount you have specified.
2. You agree to comply with the National Automated Clearing House Association ("NACHA") rules when as the Originator (as defined under NACHA rules) you initiate funds ACH Transfers to or from your accounts or accounts of another person. You authorize the Service Provider to be

an Originator and to use an Originating Depository Financial Institution ("ODFI") (as defined under NACHA rules) chosen by it where appropriate to process your request to the Financial Institution.

3. If you are requesting funds be transferred from an account held by another person to an account you have with us, you authorize us and our Service Provider to send an e-mail or SMS text message on your behalf requesting him or her to authorize the funds transfer to you.

4. You accept our appointment of the Service Provider as our agents to electronically process your funds transfers on our behalf as you have instructed, subject to the terms and conditions stated herein. You understand and agree that the Service Provider is not acting as a fiduciary, trustee or money transmitter, or providing escrow service, with respect to your funds, but only acting as the Financial Institution's processor.

5. You agree to use the service for legal purposes only and not in violation of any U.S. or foreign laws, including but not limited to, laws and regulations designed to prevent money laundering or the transfer of funds to or from persons or organizations whose accounts are blocked under regulations promulgated by the U.S. Treasury Department, such as sanction laws administered by the Office of Foreign Asset Control. You agree that if we suspect or believe a transaction is unlawful or even suspicious, we may block the transaction and take any other action we deem to be reasonable. This includes acting to prevent violations of the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA") and these Terms of Service. If you are a non-consumer, you certify that you are not now engaged, and will not use the service, in any activity or business that is unlawful under the UIGEA. You agree not to use the service in any manner that could damage, disable, overburden, or impair the service or interfere with any other parties use and enjoyment of the service.

6. If you will be using an account at another financial institution to initiate ACH Transfers using this Funds Transfer Service, you authorize us and our Service Provider to make small deposits and/or withdrawals to the target account to confirm your control of that account (and to reverse these after the test is completed). The withdrawal amount(s) will never be greater than the deposit amount(s). You agree to verify online the amounts of such deposits and/or withdrawals. We will not transfer the funds in this case until verification is made, and neither we nor our Service Provider shall have any liability to you for failure to initiate the funds transfer you have requested due to your failure to complete the authorization process. Notwithstanding the foregoing, some accounts you have at another financial institution may be used without this verification process.

7. We and our Service Provider will process your funds transfer request based on the information you provide. Any errors in the information (including incorrect or inconsistent account names, account numbers or ABA routing numbers) that you provide to us are your responsibility. We and our Service Provider are not required to investigate discrepancies between account numbers and names on the account, and you agree that we and our Service Provider are not responsible for investigating such discrepancies and may execute an ACH Transfer using account number information only, even if the name and the account number do not match. You agree to use a

browser or mobile application that at a minimum provides a level of security equivalent to 128-bit RC4 encryption when accessing or using the service to initiate or approve ACH Transfers.

8. If an account of yours has a joint account holder, you represent and warrant that each joint account holder has consented to the ACH Transfer(s), whether sending funds or receiving funds.

9. You may not be able to cancel or revoke an ACH Transfer once you have submitted or approved it since processing begins immediately or soon after your approval is received by us. For your rights in placing a stop payment on your account, refer to the specific account disclosures provided to you by your financial institution. You may stop payment of a recurring ACH transfer orally or in writing at least three business days before the scheduled date of the transfer. If processing has not begun, you may be allowed to cancel or delete ACH transfers from the "History" tab: ACH Transfers with a status of pending may be cancelled; recurring ACH Transfers may be deleted prior to submission of the next transfer.

10. All accounts must be located in the U.S. No International transactions are supported.

11. The typical time to transfer funds with us using the ACH network is three to five business days (that is, days we are open but excluding bank holidays and weekends). If we permit you to initiate an expedited transfer, this time may be reduced to one to two business days. However specific transaction times may vary, and neither we nor our Service Provider guarantee any specific turnaround time to complete your funds transfer. You should check your accounts to see your ACH Transfers. If you are sending funds, you should check with the intended recipient of the funds to confirm the status of the funds.

12. You agree that credits to your account are provisional and subject to return or reversal if we or our Service Provider receives returns or reversals from the ACH or if we must otherwise reverse an ACH Transfer (including for failure to receive final payment). After we have received final payment on ACH credits, these deposits are referred to as collected items. We also reserve the right to refuse to process or to return all or any funds transferred.

13. We or our Service Provider, in our sole and absolute discretion, have the right to reject, reverse, or cancel any ACH Transfer you initiate, and/or restrict or condition your ability to use the service, at any time for any reason or no reason, including but not limited to (a) insufficient funds in an account being debited; (b) suspicious activity; (c) order of any law enforcement agency or other legal process; (d) inability to verify information you or others provide or are asked to provide; (e) providing us with false or inaccurate information; (f) hacking, tampering or impacting the service functionality, availability or security; (g) using the service for unlawful purposes (as determined by us in good faith, but without the need for inquiry); or (h) failing to cooperate with any information request.

14. In consideration of the agreement by us and our Service Provider to act upon your request to make transfers of funds in the manner provided for in these Terms of Service:

1. If any fees, fines or other sanctions, or damages or loss, are incurred or suffered by us or our Service Provider in connection with your use of the service, you agree to indemnify, defend, and hold harmless us and the Service Provider.
2. The service, information, data, features and all content on this website are offered and made available on an "as is," "as available," basis. In no event shall we or our Service Provider be liable to you (and, if you are a non- consumer, your company, employees, agents, third parties, associates, or partners), or to anyone else for any consequential, incidental, special, punitive, or indirect damages of any kind whatsoever, including without limitation those resulting from loss or impairment of use, data, or profits, that you or anyone else may incur relating to your use or access to this site, or the use or access hereto by anyone else, even if we have been advised of the possibility of any such damages.
3. You expressly waive any and all claims you may have or assert against us or our Service Provider relating directly or indirectly to accessing or using or reliance upon any such information or data by you or anyone else.
4. The term "damages" as used herein includes, without limitation, any and all liability, loss, damage, injury, claim, founded or unfounded, expense, fee of any kind, including, attorneys' or accountants' fees.
5. **Note - if you are a consumer, the foregoing is limited to the extent that it may conflict with any non-waivable rights you may have under applicable law.**

15. WE AND OUR SERVICE PROVIDERS MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER REGARDING THIS SERVICE, WEBSITE OR ANY CONTENT ACCESSIBLE HEREIN OR AVAILABLE FROM OTHER SITES ACCESSIBLE HEREBY, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR USE, WARRANTY OF NON-INFRINGEMENT, WARRANTY OF TITLE, OR WARRANTY OF ANY OTHER KIND.

16. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. In such states liability is limited to the extent permitted by law. Accordingly, some of the above limitations may not apply to you.

17. In the case where a provision in another agreement we have with you conflicts with a provision in these Terms of Service, these Terms of Service will apply.

18. These Terms of Service will be interpreted according to their fair meaning and shall not be interpreted strictly against or for either party. These Terms of Service constitute the entire agreement with respect to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether, electronic, oral or written, between you and us.

## Account to Account and Person to Person Transfer Limitations

Standard Transfers (3-5 Business Days) Account to Account	
Minimum amount per transaction	\$10.00
Maximum amount per transaction	\$1,000.00
Maximum transactions per day	3
Maximum transaction amount per day	\$2,000.00
Maximum # of transactions per week	5
Maximum transaction amount per week	\$3,000.00
Personal Payments – Send Money – Person to Person	
Minimum amount per transaction	\$10.00
Maximum amount per transaction	\$250.00
Maximum # transactions per day	10
Maximum transaction amount per day	\$250.00
Maximum transaction amount per week	\$2,000.00
Personal Payments – Receive Money – Person to Person	
Minimum amount per transaction	\$10.00
Maximum amount per transaction	\$250.00
Maximum # transactions per day	10
Maximum transaction amount per day	\$250.00
Maximum transaction amount per week	\$3,000.00

## 28. Mobile Services

(Requires enrollment; Available to Consumer Customers and Business Customers.)

### Program:

Mobile Service - Our Mobile Service is an Internet-based platform you access via a URL from your Mobile Device's browser or by downloading an App from either the Apple App Store or Google Play. Internet access from your Mobile Device is required to enroll in some Mobile Services, including the Mobile Web Service. The Mobile Service features and services may vary. Some features available on the FMS Bank mobile apps are not available on the mobile service accessed via the fmsbank.com website. Specific information concerning the methods and Account services currently offered are provided to you at [www.fmsbank.com](http://www.fmsbank.com) at any time prior to or after you sign up for the Mobile Service.

The Mobile Service allows you (i) to access available information regarding your Accounts including: Current Balance, Available Balance (each as defined in this Agreement and in the Online Help Menu Account Overview Section over SMS text messaging) and transaction history; (ii) conduct transfers between your Deposit Accounts; (iii) with the Bill Pay Service, make and schedule payments to Billers, view pending bills, and view Scheduled Payments; (iv)

capture check images and deposit checks to your Deposit Accounts (limited to the Mobile Service app for iPhone, iPad and Android Devices); (v) locate FMS Bank ATMs and branches; and (vi) receive alerts (e.g., low balance alerts) regarding your Account activity to be sent to your Mobile Device. (See Mobile Service Funds Transfers Section below). Important Note: the balances displayed in the Mobile Service may not reflect any limitations. While we endeavor to provide you with prompt access to your Accounts and to answer your requests promptly, we cannot guarantee that there will not be any delays/failures in transmissions and we are not liable for any delays/failures in transmissions.

**Eligibility:** To be eligible for the Mobile Service, you must enroll in the Online Banking Service via [www.fmsbank.com](http://www.fmsbank.com). You must accept (a) the Electronic Disclosure Terms and Conditions; and (b) this Agreement.

**Enrollment/Registration/Activation:** The Mobile Service is offered as a convenience and is a supplemental service to your Online Service via Our Website. It is not intended to replace access to the Online Service from your Computer or other methods you use for managing your Accounts and services with us.

To enroll in the Mobile Service, you must have at least one active Account in good standing. If you are an owner of a jointly held Account, each joint owner may enroll separately in the Mobile Service. You must have a Mobile Device with which to use the Mobile Service.

You may activate our Mobile Service, directly from your Mobile Device. You may enroll in the Text Service or Alerts by going to our Online Service at [www.fmsbank.com](http://www.fmsbank.com) or using your Mobile Device. You may also call us at Our Telephone Number for assistance.

To register a Mobile Device for any of our Mobile Services, you must be the authorized user for the Mobile Device registered. You agree to provide us with true, accurate, current and complete information during the enrollment/registration process

**Text Service** - The Text Service allows you to access available information regarding your FMS Bank credit card(s) and Accounts via SMS text messaging from your Mobile Device.

**Mobile Alerts** - Mobile Alerts allows you to receive alert notifications for specific account statuses on your Mobile Device.

We may limit the types and number of Accounts eligible for the Mobile Service. Mobile Service may not be supported for all device models or for all carriers at all times. The Bank cannot guarantee the availability of underlying data services provided by your mobile carrier. We are not responsible for carrier data outages or "out of range" issues.

### **Electronic Fund Transfers Provisions.**

**Permitted Mobile Service Transfers.** You may use the Mobile Service to transfer funds between your eligible FMS Bank Accounts ("**Internal Transfer**") and to send and manage payments using the Bill Pay Service.



To request a transfer, select Transfer via the Mobile Service and follow the instructions provided on your Mobile Device. If you submit your transfer request prior to the Transfer deadline established by the Bank for the Mobile Service as disclosed in the Mobile Service ("**Mobile Transfer Cutoff Time**"), you will initiate an Internal Transfer via the Mobile Service. Mobile Transfer Cutoff Time may be different than other transfer cutoff times. Transfer requests after the Mobile Transfer Cutoff Time will be treated as being made on our next Banking Business Day.

You must have sufficient funds available in the selected Account at the time the transfer request is received.

Each Transfer from a savings or money market Account using the Mobile Service is counted as one of the six (6) limited transactions permitted each cycle period, as described in the applicable Deposit Agreement; for savings Accounts the cycle period is a calendar month; for money market Accounts, the cycle period is the statement cycle. You may be subject to fees and even discontinuance of your specified type of Account if you exceed the transaction limits of your Account using the Mobile Service. Please see the applicable Deposit Agreement for more information. We may also limit the type, frequency and amount of transfers for security purposes and may change or impose the limits without notice, at our option.

You agree to verify the successful completion of each transfer in your applicable Account balance and transaction history before withdrawing the transferred funds. You may also call our Telephone Number to verify if a transfer has been completed.

### **Setting up Biller Using Device**

The Mobile Service permits you to establish Billers in the Bill Pay Service by permitting you to capture an image of an invoice from a Biller. The technology then prefills Biller information, including, Biller name, address, your account number and the current invoice amount. It is your obligation to verify that the pre-filled information from the image is accurate. You may not manually enter Biller information or make manual corrections to Biller information as interpreted by an image of an invoice.

Except as stated in this section, the provisions in Section 24 shall apply to Bill Pay using your Mobile Device.

### **Mobile Deposit Service**

(Available to Approved Consumer Customers and Business Customers based on Bank's Eligibility Requirements; Not Available to all Customers or Account Types; Applicable to Accepted Devices.)

The Mobile Deposit Service is a remote deposit capture service (sometimes referred to as "**Mobile Deposit Service**") designed to allow you to make deposits to your checking, savings, or money market Accounts from your home or other remote locations by capturing a photo of

eligible checks, called "**Eligible Items**," and delivering the images of the Eligible Item(s) and associated deposit information to us. Such deposits are not deemed received by us until the imaged items are received by the Bank at our location.

Eligible Items - Eligible Items means checks as defined by Federal Regulation CC. You agree that you will only use the Mobile Deposit Service to scan and deposit:

Checks or items payable to you alone and to no other person or entity (if your Account is a joint Account, the checks or items may be payable to any or all Account holders and to no other person or entity)

Ineligible Items - You agree that you will not deposit any ineligible items through the Mobile Deposit Service. Ineligible items include:

- a. U. S. savings bonds
- b. U.S. postal money orders
- c. Travelers checks
- d. e) Checks or items with NO magnetic Ink Character Recognition ("**MICR**") line
- e. Checks or items drawn or otherwise issued by you or any other person on any of your Accounts or on any Account on which you are an authorized signer or joint Account holder
- f. Checks or items containing obvious alterations to any of the fields 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 or item is drawn
- g. Checks or items previously converted to a substitute check, as defined in Regulation CC
- h. Checks or items drawn on a financial institution located outside the United States
- i. Checks or items that are remotely created checks, as defined by Regulation CC
- j. Checks or items not payable in U.S. currency
- k. Checks that are irregular, e.g., check amount number that differs from the written amount
- l. Checks or items dated more than six (6) months prior to the date of deposit
- m. Checks or items prohibited by our current procedures relating to the Mobile Deposit Service as published from time to time at [fmsbank.com](http://fmsbank.com) or which are otherwise not acceptable for deposit under the terms of your Deposit Agreement

**Image Quality.** The image of an item transmitted to us using the Mobile Deposit Service must be legible. The image quality of the check or item must comply with the requirements established from time to time by ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association.

**Endorsements and Procedures.** You agree to restrictively endorse any check or item transmitted through the Mobile Deposit Service as "For mobile deposit only, FMS Bank [Enter Your Account Number]" or as otherwise instructed by us. You agree to follow any and all other procedures and instructions for use of the Mobile Deposit Service as we may establish from time to time.

**Receipt of Checks or Items.** At our sole discretion and without liability to you, we reserve the right to reject any check or item transmitted through the Mobile Deposit Service. We are not responsible for any checks or items we do not receive or for the images that are dropped during transmission.

Once the check image is received, it will be reviewed before it is accepted by us for deposit. If upon review of the check image, we determine that the check information is not complete, is otherwise not usable, or does not conform to the Bank's deposit guidelines, we may reject that deposit notwithstanding any confirmation by us of receipt of the deposit. Should this occur, we may adjust any provisional credit given to your Account and will provide you with a notice setting forth the reasons why your deposit could not be processed through the Mobile Deposit Service.

**Availability of Funds; Right to Reject.** We reserve the right to place a hold on or to reject any item(s) deposited through the Mobile Deposit Service.

**Storage and Disposal of Original Checks and Items; Retention of Copies.**

**Checks Submitted to Us.** With respect to any original check for which a check image has been transmitted to us via the Mobile Deposit Service, you agree to safely store the check in such a manner that others cannot gain access to it.

**The Original Check and Retention of Copy.** Once the check image has been accepted for processing, you agree to immediately cancel (destroy the negotiability of) the original check by prominently marking the face of the item as "Electronically Presented" or "VOID" in order to ensure that it cannot be presented for payment a second time. The original check should be retained for a minimum of fourteen Banking Business Days. We recommend that you securely store all checks deposited through the Mobile Deposit Service until you: (1) are satisfied that the check has been collected, and (2) have reconciled your records to the applicable Account statements we provide you. You should securely destroy the original check such as by shredding it, once you no longer need it for tax, recordkeeping or other purposes. We recommend that you keep a copy (photocopy) of all checks deposited through the Mobile Deposit Service.

**Delivery of Copy of Check to Us.** You agree to provide us with any original checks (or a

sufficient copy) that are still in your possession within two (2) Banking Business Days of our request in order to resolve claims or to aid in the clearing and collection process.

### **Mobile Deposit limits:**

The following deposit limits apply to the combined total of deposits you can make to your FMS Bank Accounts using the Mobile Deposit Service:

#### Standard Limit:

\$2,500 each rolling 24-hour period. Limits are subject to change at any time.

We reserve the right to grant you higher or lower mobile deposit limits at any time, including limits different from those noted above, at the sole discretion of the Bank.

Presentment of Checks and Items to Drawee Bank. The manner in which the checks or items are cleared, presented for payment, and collected shall be in our sole discretion and is subject to the Deposit Agreement governing your Account.

**Your Right to Cancellation of the Mobile Service or Alert Feature(s).** You may cancel the Mobile Service at any time from your profile page at [www.fmsbank.com](http://www.fmsbank.com) or by contacting us at Our Telephone Number.

**Mobile Service Suspension or Cancellation by Us: You agree that at any time and without prior notice we may suspend access to your Mobile Service if we suspect fraudulent activity or misuse of the Mobile Device or of the Mobile Service functionality. We may cancel your Mobile Service at any time.**

### **29. Reporting Unauthorized Transactions on your FMS Bank Accounts - Your Liability for Unauthorized Transactions**

Tell us AT ONCE if you believe that your Username or Password has been lost, compromised or may have been discovered by a third party, your Mobile Device has been lost or stolen, someone has transferred or may transfer money from your Account without your permission, or any of your Accounts have been improperly accessed. Calling us immediately at Our Telephone Number is the best way to minimize your possible losses. You may write to us at Our Address shown in Section 2.

### **Consumer Customers**

You could lose all the money in your Accounts (plus the credit available under your Ready Credit line of credit). If you tell us within two (2) Banking Business Days after you learn of the loss, compromise or discovery by a third party of your Username or Password or of unauthorized use, you can lose no more than \$50 if someone used your Username and Password without your permission.

If you do NOT tell us within two (2) Banking Business Days after you learn of the loss, compromise or discovery of your Username or Password by a third party or of unauthorized use, and we can prove we could have stopped someone from using your Username and Password without your permission if you had told us, you could lose as much as \$500.

Also, if your Account statement shows transfers that you did not make, tell us at once. If you do not tell us within sixty (60) days after the statement on which the problem or error appeared was mailed or otherwise made available to you, you may not get back any money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had told us within the required timeframe.

If a good reason (such as a long trip or hospital stay) kept you from telling us, we may extend the aforementioned time period.

The rights and the liability limitations under this Section 29 and the following Section 30 apply to Consumers, and do not apply to you if you are a Business Customer, a non-Consumer or for Consumer credit card transactions.

### **Non-Consumer Customers and Business Customers**

You assume the entire risk for fraudulent, unauthorized or otherwise improper use of the Service and your security credentials, including without limitation, your Usernames or Passwords, to the fullest extent permitted by law.

### **30. FMS Bank's Liability If We Fail to Make a Transfer or Payment**

If we do not complete an Online Transfer, an External Transfer, or an Online Bill Payment (collectively, in this Section 30 and the following Section 31, a "**Transfer**"), to or from your Deposit Account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- a. If, through no fault of ours, you do not have enough money in your Deposit Account (or, if linked to a line of credit, not enough available credit) or there is not available credit on your credit Account to make the Transfer.
- b. If any portion of the system used to access or use the Service was not working properly and you knew about this before you attempted the Transfer.
- c. If circumstances beyond our control (such as strikes, riots, fire, flood, hurricane, power failure, equipment failure, government action, computer viruses, computer hackers, etc.) prevent the Transfer, despite reasonable precautions we have taken.
- d. If you violate any law or regulation in connection with your use of the Service, including without limitation the sanctions laws administered by the U.S. Office of Foreign Assets Control.

- e. If you did not properly follow the terms of this Agreement and/or online instructions about how to make the Transfer.
- f. If you did not give us complete, correct and current instructions regarding the Transfer.
- g. If you did not authorize a payment soon enough for the payment to be made, transmitted, received and credited by the payee on or before the due date.
- h. If we made a timely payment but the payee did not promptly or properly credit your payment after receipt.
- i. If your Computer, Mobile Device or associated telecommunications service malfunctioned for any reason.
- j. If the Transfer could not be completed because your Service has been suspended or was otherwise not available.
- k. If you or we terminate this Agreement before a payment is scheduled to occur.

There may be other exceptions stated in our Agreement with you. In any case, we will not be responsible for any errors or failures due to any malfunction of your Computer, Mobile Device or for any unsuitability or incompatibility of your Computer or Mobile Device that may be associated with the use of the Service, regardless of the cause of the error or failure.

### **31. Consumer Customers: In Case of Errors or Questions About Electronic Transfers on Your FMS Bank Accounts**

Call Our Telephone Number or write to Our Address as shown in Section 2 as soon as you can if you think your statement is wrong or if you need more information about a transfer listed on the statement. We must hear from you no later than sixty (60) days after we sent you the first statement on which the problem or error appeared. When reporting an error or requesting more information:

- a. Tell us your name and Account number.
- b. 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.
- c. Tell us the date and 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) Banking Business Days.

We will tell you the results of our investigation within ten (10) Banking Business Days (or twenty (20) Banking Business Days for investigations on new Accounts) after we hear from you

and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days (ninety (90) days for transactions on new Accounts, point of sale or foreign-initiated transactions) to investigate your complaint or question. If we decide to do this, we will re-credit your Account within ten (10) Banking Business Days (twenty (20) Banking Business Days for new Accounts) 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) Banking Business Days (twenty (20) Banking Business Days for new Accounts), we may not re-credit your Account.

We will tell you the results within three (3) Banking Business Days after completing our investigation.

If we decide that there was no error, we will send you a written explanation within three (3) Banking Business Days after we finish our investigation. You may ask for copies of documents that we used in our investigation.

### **Electronic Fund Transfer Provisions for Non-Consumers, Consumers who are not Eligible for Protection under Federal Regulation E or Business Customers**

The above error resolution and liability provisions and any other provision that we may include with periodic statements for Consumer Accounts that you may receive do not apply to non-Consumers, Consumers who are not eligible for protection under Federal Regulation E, Investment Services Accounts or Business Accounts. Those individuals and businesses must notify us immediately if they discover any unauthorized transactions, errors, or lost Mobile Devices. If you are a Non-Consumer, a Consumer who is not eligible for protection under Federal Regulation E or a Business Customer, you acknowledge that your ability to require the Bank to correct such errors is governed by the Deposit Account Agreement for Business Accounts. You assume the entire risk for fraudulent, unauthorized or otherwise improper use of the Service, security credentials, user names or Passwords to the fullest extent permitted by law or the Deposit Account Agreement for Business Accounts.

**32. Hours of Operation - Account Updates - Cutoff Times - Scheduled Maintenance and Unscheduled Unavailability.** Our Service will generally be available to you 24 hours per day, every day of the year except during periods of scheduled or unscheduled maintenance.

All Bill Payments that you complete and transmit will generally be processed shortly after the cutoff time on every Banking Business Day, although we cannot assure that this will not occasionally be later. Transactions transmitted at or after the actual cutoff time or on a day other than a Banking Business Day will be processed at the cutoff time on the following Banking Business Day.

### **33. Fees**

Monthly fees, if any, will be deducted from your designated Payment Account typically on or about the 5th of each month. Should your Payment Account be overdrawn or have insufficient funds to cover a monthly fee, at our sole option, we may still charge your Payment Account for

the fee and for an additional Overdraft Fee, or we may deduct the fee from any other Deposit Account held by you.

Any applicable fees will be charged regardless of whether the applicable Service was used during the billing cycle. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize the Service to deduct the calculated amount from your designated Payment Account for these amounts and any additional charges that may be incurred by you. Any financial fees associated with your standard Deposit Accounts will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone, Mobile Device and/or Internet service provider.

Fees for using the Service are in addition to the standard fees and charges applicable to your Accounts. Those fees and charges have been separately disclosed to you in your Deposit Agreements.

### **Bill Pay Fees**

Expedited Payments: For a fee, same day payments or overnight check payments ("**Same-Day Payments**") are available for certain Billers. Those Billers may offer scheduling of payments on non-Banking Business Days (i.e., weekends and/or holidays). The Bill Pay Service can be used to determine if a Biller supports Same-Day Payments and the earliest possible Scheduled Payment Date and the fee that would apply if a Same-Day Payment is selected. You will be sent a confirmation email when a Same-Day Payment has been scheduled.

### **Consumer Customers**

Each enrolled Joint Account holder of the same Consumer Account(s) will be considered as a separate Online and Mobile Bill Pay Service user and each will be assessed the applicable monthly fee.

Online and Mobile Service accessed through the Internet	No Charge
Online and Mobile Bill Pay	No Charge

### **Mobile Service Fees**

You are responsible to pay any other charges you may incur in connection with your use of the Service, such as long distance charges; or Internet service provider fees. We make our Mobile Service available for no charge. Wireless carriers may charge fees for text transmissions or data usage for which you are responsible.

### **External Transfer Fees**

There is no fee for using the "Make a Transfer" function of the Service to transfer funds between your own Accounts at FMS Bank. There is also no FMS Bank fee for External Transfers that



transfer funds into your FMS Bank Deposit Account from other financial institutions. Your other financial institution may separately assess a fee which is your responsibility.

Standard Three (3) Banking Business Day Outbound External Transfer	\$2.00
Failed Transaction	\$25.00

### Person to Person Transfer Fees

Outbound	\$1.00
Inbound	\$1.00
Failed Transaction	\$25.00

**34. Your Privacy.** Protecting your privacy is very important to us. Please review our Privacy Policy in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your information

Except as otherwise expressly agreed, the current Privacy Policy applies only to Consumers. Information is collected and disclosed in accordance with the applicable Privacy Policy. You can review FMS Bank’s complete Privacy Policy on Our Website or by selecting the links on our Home Page and sign in screen. You should read the applicable Privacy Policy before you formally enroll in the Online and Mobile Service.

We will disclose information to third parties (including Billers and our Service Providers) about your Account(s) and the transfers you make as is permitted by our Privacy Policy and the law including, without limitation:

- a. When it is necessary or helpful to enable you to use the Service, such as transferring or paying funds, obtaining Account information or performing any other functions described in this Agreement.
- b. To resolve questions or problems regarding your use of the Service.
- c. To verify the existence and condition of your Account for a third party, such as a credit bureau or merchant.
- d. To comply with government agency or court orders.
- e. To our affiliates.
- f. If you give us your written permission.

**Note:** A joint Account holder is not a third party and the Bank shares information on an Account with any joint Account holder.

If you receive information about another person through the Service, you agree to keep the information confidential and only use it in connection with the Service.

**35. Bank Account Address or Banking Changes; Notices.** Any changes in your Payment Account should also be made in accordance with the procedures outlined within the applications Help files. All changes made are effective immediately for scheduled and future payments paid from the updated Payment Account information.

**36. Disputes regarding Banking Accounts.** In the event of a dispute regarding the Service, you and we agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you and the Bank regarding the Service and that this Agreement supersedes any proposal or prior agreement, oral or written, and any other communications between you and us relating to the subject matter of this Agreement. If there is a conflict between what an employee or agent of the Bank or one of our Service Providers says and the terms of this Agreement, the terms of this Agreement will prevail.

Deposit Accounts have special resolution of disputes by arbitration provisions which are detailed in the applicable Deposit Agreement. Refer to the applicable Deposit Agreement for details.

**37. Assignment.** You may not assign this Agreement to any other party. We may assign this Agreement, directly or indirectly, to any future affiliated company. We may also assign or delegate certain of our rights and responsibilities under this Agreement to Service Providers or other third parties.

**38. Release.** You release us and our Affiliates and Service Providers and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with any dispute that may arise between you or one or more other users of the Our Website or the applicable Service.

**39. No Waiver.** We shall not be deemed to have waived any of our rights or remedies hereunder unless such waiver is in writing and signed by us. No delay or omission on our part in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

**40. Indemnification.** You agree to defend, indemnify and hold harmless us and our Affiliates and Service Providers and their Affiliates and the employees and contractors of each of these, from any loss, damage, claim or demand (including attorney's fees) made or incurred by any third party due to or arising out of your breach of this Agreement and/or your use of Our Website or the applicable Service.

#### **41. Limited Liability for Use of Online and Mobile Service/Exclusions of Warranties**

OUR WEBSITE AND THE SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" AND "AS-AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF OUR SERVICE, AND OPERATION OF OUR WEBSITE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF OUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. THIS PARAGRAPH GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

**Limitation of Liability.** THE FOREGOING SHALL CONSTITUTE YOUR EXCLUSIVE REMEDIES AND THE ENTIRE LIABILITY OF US AND OF OUR AFFILIATES AND SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, FOR THE SERVICE AND THE PORTION OF THE OUR WEBSITE THROUGH WHICH THE SERVICE IS OFFERED. YOU ACKNOWLEDGE AND AGREE THAT FROM TIME TO TIME, THE SERVICE MAY BE DELAYED, INTERRUPTED OR DISRUPTED PERIODICALLY FOR AN INDETERMINATE AMOUNT OF TIME DUE TO CIRCUMSTANCES BEYOND OUR REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERRUPTION, DISRUPTION OR FAILURE IN THE PROVISION OF THE SERVICE, WHETHER CAUSED BY STRIKES, POWER FAILURES, EQUIPMENT MALFUNCTIONS INTERNET DISRUPTION OR OTHER REASONS. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE CAUSED BY OR ARISING OUT OF ANY SUCH DELAY, INTERRUPTION, DISRUPTION OR SIMILAR FAILURE. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE SERVICE OR THE PORTION OF OUR WEBSITE THROUGH WHICH THE SERVICE IS OFFERED, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVEN REGARDING THEM. IN NO EVENT SHALL WE OR OUR AFFILIATES OR SERVICE PROVIDERS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE BE LIABLE FOR ANY CLAIM ARISING FROM OR RELATED TO THE SERVICE OR THE PORTION OF OUR WEBSITE THROUGH WHICH THE SERVICE IS OFFERED THAT YOU DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT WITHIN ONE (1) YEAR OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. OUR AGGREGATE LIABILITY, AND THE AGGREGATE LIABILITY OF OUR

AFFILIATES AND SERVICE PROVIDERS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF \$500 (FIVE HUNDRED DOLLARS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**42. Complete Agreement, Severability, Captions, and Survival.** You agree that this Agreement is the complete and exclusive statement of the agreement between us, sets forth the entire understanding between us and you with respect to the Service and the portion of the Our Website through which the Service is offered and supersedes any proposal or prior agreement, oral or written, and any other communications between us. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. The captions of Sections in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Sections 3, 8, 9, 13, 14, 17 39-48 of the Agreement, as well as any other terms which by their nature should survive, will survive the termination of this Agreement. If there is a conflict between the terms of this Agreement and something stated by an employee or contractor of ours (including but not limited to its customer service personnel), the terms of the Agreement will prevail.

**43. Amendment.** We may add to, delete from or otherwise modify this Agreement and any applicable fees and charges at any time Unless we believe that immediate implementation of the change is necessary to protect the security or integrity of the Service system, we will give you notification as required by law of any change.

Any use of any Service after the effective date of a notification of a change to the Service will constitute your agreement to be bound by the change(s).

**44. Notices to You.** You agree that we may provide notice to you by posting it on our Website, sending you an in-product message within the Service, sent to you at either the email address you have provided to us or through the Online and Mobile Secure Message system, sent by U.S. Mail to any postal address that you have provided us, or by sending it as a text message to any mobile phone number that you have provided us, including but not limited to the mobile phone number that you have listed in your Service setup or customer profile. All notices by any of these methods shall be deemed received by you no later than twenty-four (24) hours after they are sent or posted, except for notice by postal mail, which shall be deemed received by you no later than three (3) Banking Business Days after it is mailed. You may request a paper copy of any legally required disclosures and you may terminate your consent to receive required disclosures through electronic communications by contacting us at Our Address or at Our Telephone Number. We reserve the right to terminate your use of the Service if you withdraw your consent to receive electronic communications.

**45. Notices to Us Regarding the Service.** Except as otherwise stated in this Agreement, notice to us concerning Our Website or the Service must be sent to Our Address or by email through the

Service Secure Message system. Notice from any of you will be effective for everyone with power to give us a notice with regard to the affected Account(s). Your notices to us will be effective when we have had an opportunity to act upon the notice after it is received by us except as to situations in which this Agreement provides or contemplates an earlier effectiveness. For purposes of our receipt of notices, email messages will be deemed received when we read them or at 12 p.m. Pacific Time on the Banking Business Day following their receipt by our email system, whichever is earlier.

**46. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of laws and provisions. To the extent that the terms of this Agreement may conflict with applicable state or federal law, the applicable state or federal law shall replace such conflicting terms only to the extent required by law. Colorado law shall apply to this Agreement. You agree that any legal action that may be filed by you elsewhere will be transferred to the appropriate court in Colorado, if we decide we want it to be transferred.

#### **47. Suspension and/or Termination of Service**

**Cancellation by You.** If you wish to cancel the Service or any Service offered, you may contact us Our Address. Any payment(s) that have begun processing before the requested cancellation date will be processed by us.

**Cancellation by Us.** You agree that we may terminate or suspend your use of the Service or any Service offered at any time without prior notice to you and for any reason or no reason. Neither termination, cancellation nor suspension shall affect your liability or obligations under this Agreement.

If your use of the Service is suspended or terminated by us, previously scheduled Transfers that have not begun processing may be cancelled or suspended.

*If your Service is inactive for more than ninety (90) days (meaning you have not logged-in to the Service for more than ninety (90) days) we reserve the right to terminate your service without notice. If any of your online Accounts have future-dated "recurring transfers" or bill payments scheduled, we will not terminate your Service until such transfers and/or bill payments have been completed. If you become unenrolled, you will not receive alerts and you will not be able to perform online transfers or payments until you re-enroll.*

If either you or we close the Payment Account while there are any payments pending, this may cancel all payments scheduled to be made from that Account but will not terminate this Agreement as to other Accounts. We reserve the right to assign any open checking Account in your name as the new Payment Account.

All other provisions of this Agreement shall remain in full force even if one or more provisions of this Agreement are held invalid, illegal, void or unenforceable by any rule or law, administrative order or judicial decision. You agree that this Agreement as made available by us

online is controlling, and changes that you might attempt to make to it by modifying it after downloading it onto your Computer or Mobile Device will not be effective for any purpose.

The Service or any feature or service under the Service may terminate or be suspended at any time. Neither termination nor suspension shall affect your liability or obligations under this Agreement. All applicable provisions of this Agreement shall survive termination.

**48. Our Communications with You.** You agree that we, any of our affiliates, agents, independent contractors or Service Providers may monitor and record telephone calls regarding your Service to assure the quality of our service or for other reasons. You also expressly consent that we, any of our affiliates, agents, independent contractors or Service Providers may use written, electronic or verbal means to contact you. Your consent includes, but is not limited to, contact by manual calling methods, prerecorded or artificial voice messages, text messages, e-mails and/or automatic telephone dialing systems. You agree that we, any of our affiliates, agents, independent contractors or Service Providers may contact you by using any e-mail address or any telephone number you provide, including a telephone number for a cellular phone or other wireless device, regardless of whether you incur any charges as a result.