

**COMMERCIAL BANK OF CALIFORNIA**  
**Personal eBanking Service Agreement & Disclosure**

This Commercial Bank of California Personal eBanking Service Agreement & Disclosure (“Agreement”) will be effective as of the first day we make the Services accessible to you. Unless otherwise stated, any reference to the Agreement shall include applicable schedules, enrollment forms, and exhibits to the same, as well as applicable user guides, user manuals, set-up forms and other user materials, including online terms and information. Each time you access the Service, you confirm your agreement to these terms, as amended from time to time. **This Agreement includes disclosures applicable to consumer accounts as provided under the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E. Read this document carefully and retain a copy for your records. Any regulatory consumer protections provided to consumer accounts will not apply to commercial accounts under this Agreement.**

This Agreement is in addition to other agreements between Commercial Bank of California and you, including but not limited to (as applicable), your checking, savings, and other account agreements, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the [ACCOUNT INFORMATION-ACCOUNT AGREEMENT] (“Deposit Agreement”), this Agreement will control.

**Services**

With the Services you can, subject to system limitations:

- View/download electronic statements
- Obtain limited Account information
- Transfer funds between linked Accounts, excluding certificates of deposit (“Account Transfers”)
- Make advances from and initiate loan payments to eligible linked Accounts (collectively, “Loan Transfers”)
- Initiate check stop-payment instructions
- Set up account alerts (“Alerts”)
- Download (or “export”) limited eligible Account information for transfer to specified financial software programs and/or spreadsheets (“Download Service”)
- Initiate bill payments (“Bill Payments”) and set up online receipt of electronic bills (“eBills”)
- Access some of the Services and present checks for deposit to your linked Accounts using your wireless access device (“Mobile Banking”)

Some Services may not be available without special application to and approval by us, may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated. Some of the Services may appear on your screen that have not been activated for your use. We may make other services available to you and you agree to be bound by the terms and conditions of the additional services, as they apply, in addition to the terms of this Agreement.

**Dollar Limits**

The following dollar limits apply:

Bill Payments: \$9,999.99 transaction limit for any one payment and \$20,000.00 for the overall daily total of payments on any given day)

Mobile Deposit: \$2,500 (for any one check and for the overall total of checks on any one business day)

**Cut-Off Hours**

A Communication received by us after the cutoff time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us and

the time we receive it. All references to time in this Agreement shall refer to Pacific Time. Our current cutoff hours are as follows:

- Account Transfers: 6:00 p.m.
- Account Transfer Cancellations: 7:00 p.m.
- Loan Transfers (Advances/Payments): 6:00 p.m.
- Bill Payments: 1:00 p.m. (Same-Day Processing)
- Bill Payment cancellations: 12:00 p.m.
- Check Stop Payments: 4:00 p.m.
- Mobile Deposit: 4:00 p.m.

## General Terms

*Definitions.* In this Agreement, defined terms have the meaning given to them. In addition:

- An “account” means any deposit account you maintain with us and can include all accounts and products you use with us. Your “Account” refers to the account(s) you have designated as the account accessible to the Services, including your CBC Internet Banking Service Account.
- Your “available balance,” “available funds” and similar words mean the balance in your Account as determined under our funds availability policy, subject to our reserved right to hold or “freeze” funds after you have initiated a Service, as more fully outlined under “*Sufficient Funds*,” below.
- A “*business*” is anyone other than a consumer who owns an Account with respect to which a Service is requested. A business includes a sole proprietor, corporation, partnership, limited liability company, unincorporated association or any person not a consumer.
- “Communication(s)” means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- A “commercial account” shall mean an account that is not established primarily for personal, family or household purposes, or is otherwise not a “consumer account” under the EFTA.
- A “consumer account” shall mean an account that is established primarily for personal, family or household purposes and is subject to the EFTA as a “consumer account.”
- A “*payment order*” is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to a you, to a third party or to any other beneficiary.
- Your “Security Credentials” are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Credentials are used to access Accounts and to use the Services. The Security Credentials include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- The “Service(s)” are the online banking interface and the banking services described in this Agreement.
- “*Supporting Documents*” refers to supporting materials made available by us and includes any schedules, and exhibits, user guides, user manuals, set-up or enrollment forms and other user materials, including online terms and information.
- The word “includes” means “including but not limited to” the examples given.
- The word “may,” when used in reference to us, means at our option and sole discretion. Action (or inaction) that we “may” take is authorized by you and allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- The words “we,” “us,” “our,” “Bank” and similar terms are used to refer to Commercial Bank of California.
- The words “you,” “your,” and similar terms are used to refer to the person accepting this Agreement and to the each person who is an owner of or has an interest in an Account together with the owner’s authorized representative(s). For the purpose of this Agreement, the term “authorized representative(s)” will include but not be limited to, anyone who is an authorized signer on an Account, as well as anyone else to whom an account owner grants Service access.

*Agreement.* We may act on communications, including requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner (including joint owners), their authorized representatives, including any Account authorized signer. Each time you use our Services or you permit any other

person to use our Services, you are agreeing to the terms and conditions that we have set out in this Agreement, including any instructional materials regarding the Services, including instructions presented to you at our website, as amended. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service. You certify that you are at least 18 years or older. You authorize us to obtain information about you from others (including credit reporting agencies) as part of our review of your enrollment application and from time to time thereafter. You agree to provide us with information as we request, from time to time.

Our duty to respond to communications and service requests from you will be limited to the extent expressly provided in this Agreement, and as otherwise required by applicable law or regulation. Nothing contained in this Agreement will be construed to require us to detect and correct or report errors in information or transmissions received from you. You acknowledge and agree that you will comply with your obligations to timely review and report errors or unauthorized activity in statements and communications made available from us regarding your Accounts, including routine periodic statements, as provided in this Agreement and the Account Agreement (defined below). You agree to maintain a record of your Service communications and transactions to enable us to reconstruct activity for a reasonable period of time, as may be need by us from time to time.

You expressly agree that you are not, and you agree to take no action that would result in your being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business.

*Eligible Accounts.* If you wish to add a new Account to, or remove an existing Account from, Service access, you must call us at 1-657-289-2550. We are not, however, obligated to establish access to any or all of your Accounts, and not all Services may be available with all Accounts. Some Services may not be available without special application to and approval by us, or may be limited to specific types of Accounts.

Eligible Accounts include the following types: checking, money market, savings, loans and time deposits. In some cases, we may allow loans and lines of credit to be linked, in which case you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. Certificates of deposit are time deposits where early withdrawal penalties may result. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use. *Sufficient Funds.* You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account (if any). We may hold (or “freeze”) funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds for any reason, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). Nothing in this Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend you money. If, in our sole discretion, we pay or reject any transaction that is facilitated through the Service against insufficient funds, you agree that nonsufficient funds (NSF) and/or overdraft charges, as applicable, may be assessed pursuant to the Deposit Agreement.

*Account Information.* Account information provided using the Services may reflect funds that are not currently available, as well as funds that are pending processing and that may change before final posting. In the event of conflict between Account information provided in the Services and information reflected on our internal records, our internal records will control. Some transaction information may not be immediately accessible using the Services. You may confirm any Account or transaction information, including information provided while using the Services, by calling us directly.

*Access Restrictions Waiver:* Your Accounts may be subject to access restrictions when you conduct transactions in person or when you are using systems other than with a Service. We may limit or deny Services to you if there are access restrictions. Conversely, we may process your transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to your Accounts.

*Compliance with Laws and Rules.* You agree to comply with all state and federal laws, rules, and regulations applicable to you and to your use of the Services (the “Laws”), including the operating rules of all systems used to

provide Services to you (the “Rules”), and to provide evidence reasonably satisfactory to us of the same if requested by us. You agree not to use the Service for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, you agree and acknowledge that the Services may not be used by you in violation of the laws of the United States, including sanction laws administered by the Office of Foreign Asset Controls. You acknowledge and agree that the software you use to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations. You agree and certify that neither the software nor any direct product thereof is being or will be used by you for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- The terms or instructions appearing on a screen when using a Service;
- Our Deposit Agreement, and our rules, procedures, and policies;
- Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for bill payments facilitated through the ACH;
- Applicable state and federal laws, rules, and regulations; and
- The rules of other funds transfer systems when used in connection with a Service.

Nothing in this Agreement relieves you of any obligation you may have under the Laws or the Rules, and this Agreement is deemed modified to the extent necessary to allow or require you to comply with the same. You will implement and maintain procedures, including retention of legal or compliance services, to ensure that you are able to comply with all current and future Laws and Rules, including any changes to them. We are not obligated to provide information, updates or notice of or regarding the Laws or the Rules, even if we are aware of the same and of the potential for material impact on you and your use of the Services, and your indemnification and other obligations to us are not relieved or reduced by our not providing the same to you. If we do provide information, updates or notices of or regarding the Laws or the Rules to you, we are not responsible for the accuracy of the same and may discontinue doing so at any time.

*Electronic Signatures, Contracts and Records.* When any Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions or communications resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been “a writing” and authenticated by you “in writing” for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been “signed” and to constitute an “original” when printed from records established and maintained by us or our authorized agent in the normal course of business.

You agree that we may contract and communicate electronically with you, including execution and retention of contracts, documents, and certifications, electronically. You agree not to contest the authorization for, or validity or enforceability of, our electronic records, contracts and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records, contracts and electronically “signed” documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our request, you agree to manually sign or place your signature on any paper original of any record, contract or “signed” document which we provide to you containing your purported signature.

*Transaction Limitations.* Certain Accounts may be subject to transaction limitations. Refer to your Deposit Agreement for further details. Additionally, for certain types of transactions/transfers from a money market or savings account, you are permitted to make no more than six transfers and withdrawals, or combination of them, per calendar month or statement cycle (of at least four weeks), to another account or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, including by check, draft, debit card or similar order by you and payable to third parties. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Services, or any combination of the foregoing.

## **Computer Equipment and Software to Access the Services**

To use the Services, you must have a sufficiently powerful computer hardware and appropriate software. Some Services may require you to download software from our website; in some cases, we may place software on your computer as part of our security and/or verification tools. You are solely responsible for the selection, installation, operation and maintenance of your equipment and software as necessary for your use of the Services. You agree to use equipment and software that is compatible with our programs and systems, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment. For security purposes, you agree to keep your browser and operating system up to date. You agree to install and maintain appropriate firewall and anti-virus software on any equipment you use to access the Service, to protect your data when connected to the Internet. Except to the extent limited by applicable law, you assume sole responsibility for any and all loss, damage or injury arising with respect to any failure of your equipment, software not provided by us, the disruptions or unavailability of connectivity, viruses, spyware, malware, or worms affecting your equipment or software.

You agree to maintain the confidentiality of the Security Credentials at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services. Note: Some browser software may store user names and security codes to facilitate the future use of a website. For security reasons, you agree to disable this feature in your browser. Check your browser's "Help" screen for more information on this feature.

Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding our efforts to insure that the Services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Services will not be monitored or read by others. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein, resulting from such wireless connectivity.

## **Privacy and Confidentiality**

All information gathered from you in connection with using the Service will be governed by the provisions of our consumer privacy policy (applicable to consumer accounts only), as well as our online privacy policy, which you agree to review by accessing on our homepage.

In addition, we will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers;
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant;
- In order to comply with government agency or court orders; or
- If you give us your written permission.

## **Linking Accounts**

We reserve the right to limit which Accounts may be "linked" under the Services. Any signer on any linked Account, acting alone, is authorized by you to access and use Services for any other linked Account, whether or not that person would be authorized to transact on the other linked Account in the absence of this Agreement.

As to commercial accounts (as applicable), you represent and warrant that you have authorization from the Account owner to engage in each Service used by you affecting an Account that is linked. You make this representation and warranty at the time the Accounts are linked and each time you use a Service to access or transact on an Account. These representations and warranties are in addition to any others contained in this Agreement or in any supplemental agreements that may be required by us.

### **Security Credentials**

During your enrollment for the Services, you are required to select or will be assigned certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and electronic communications in your name. These may include a User ID and password. These credentials, with the other components of your Security Credentials, will give access to your Accounts through the Service.

You will be required to create your User ID and Password during initial enrollment to the Service. Thereafter, you agree to change all passwords with sufficient frequency so as to protect confidentiality, and in any event no less frequently than every 90 days. You agree not to disclose your Security Credentials to anyone and to take other reasonable precautions to ensure the safety, security and integrity of transactions conducted with your computer or mobile device (for example, do not write them down). NOTE: Some browser software may store user names and security codes to facilitate the future use of a web site. For security reasons, you agree to disable this feature in your browser. Check your browser's "Help" screen for more information on this feature. For security reasons we may disable your Security Credentials, for example if they are entered incorrectly several times. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. It is also recommended you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited.

You agree that if you give your Security Credentials to anyone, you do so at your own risk since anyone with your Security Credentials will have access to your Accounts. At any time you may ask us to disable your Security Credentials to prevent further access by others or for any other reason. Except to the extent limited by applicable law, you agree to indemnify and release us from liability for any claims related to our having honored a transaction or action in reliance on your Security Credentials having been provided to us to facilitate the transaction or action.

After unsuccessful attempts to use your Security Credentials, we may revoke your access to the Services. To re-establish your access to the Services, you agree to contact us at 1-657-289-2550.

### **Contact In Event of Unauthorized Transfer**

If you believe any part of your Security Credentials, including your password, has been lost or stolen call: 1-657-289-2550, or write: Commercial Bank of California, Treasury Services Department, 19752 MacArthur Blvd, Suite 100, Irvine CA 92612.

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

### **Email**

While access to us through the secure email function of the Services is "online," messages sent to us through email are not reviewed by our personnel immediately after they are sent. If immediate attention is required, you must contact us by telephone or in person. The email function is not intended for use by you to initiate a transaction on your account(s), including check stop payment orders. If you send us an email message outside of the secure logon feature within the Services, your communication will not be secure and our receipt and response to the email may be further delayed. You agree not to rely on any form of email communication for any matter requiring immediate attention.

Your secure email messages may be acted upon by us if received in a manner and in a time providing us a reasonable opportunity to act. Nevertheless, unless otherwise provided herein, email messages will not serve as a substitute for any requirement imposed on you to provide us with "written" notice.

Email or messages sent by us to you will be deemed received by you when sent by us to you at your email address as shown on our records. You agree to notify us (using the Service or otherwise in a form acceptable to us) whenever your email address or physical address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. You agree to access the Service from time to time, in no event less than monthly, to access this information or the messages. If you fail to update or change an incorrect email address or other contact information, you understand and agree that any email shall nevertheless be deemed to have been provided to you if the email was sent to the email or other contact we have on file for you.

### **Account Information Services**

The Services include the ability to obtain Account information, subject to system limitations. Balances and transaction information reflected in the Service may not reflect all transactions against an Account on the day the transaction occurs. Some transactions may not be reflected by the system until the following business day. Services performed during nightly processing may not succeed when applied to your actual balance at the end of the nightly processing. Posted transactions may be reversed due to insufficient funds, stop payment orders, legal process, or other reasons. Certain balances may not be subject to immediate withdrawal, may include deposits still subject to verification or other items in the process of being posted to the account, and may not include outstanding checks, debits or credits. You understand and agree that Account information may not reflect transfers made by multiple users from the same Account if different login credentials are used for the same Account. You agree to communicate to other persons with authorized access to your Accounts concerning any transfers from your Accounts, in order to avoid overdrafts. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in your access to online information. If you are unable to access the Services for any reason, you may contact us directly.

### **Electronic Statements**

Electronic statements offer you a convenient way to view, save and print your periodic statements. If you elect to receive electronic statements, we may discontinue sending paper statements and make periodic statements available to you in electronic form only. This includes, but is not limited to, ongoing disclosures currently provided on the back of your paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. Each electronic statement will be available for your viewing, downloading or printing for a limited period from the date that it is made available to you. You agree to review your electronic statements in a timely manner, just as you would paper statements, and to promptly notify us of any errors, unauthorized activity or other problems, as provided in our agreement with you. You will be deemed to receive electronic statements when they are made available to you. Any time periods within which you must notify us of any problems or errors reflected on your statement(s) will begin on the date we make the electronic statement available to you, regardless of when it is actually viewed by you. We reserve the right to determine from time to time which accounts are eligible for electronic statements. A valid email address may be required to be maintained by you with us. If you fail to maintain a valid email address with us, you acknowledge and agree that any electronic statement shall nevertheless be deemed to have been provided to you if emailed to the email address we have on file for you. We reserve the right, in our sole discretion, to discontinue providing statements in electronic form. If you receive images of checks or receive cancelled checks with your paper statements, you understand that paper copies of these items will not be available once you elect to receive electronic statements. Electronic images of these items will be available within your electronic statements, through the Service. You agree to periodically logon and check on the delivery of new statements. If you cannot access, print or view your electronic statements, you must contact us immediately at 1-657-289-2550 to make alternate arrangements.

*Additional Electronic Notification Provisions for Consumer Disclosures.* Owners of consumer accounts have certain rights under law to receive consumer disclosures about their accounts in a non-electronic form, unless you affirmatively consent to the receipt of consumer disclosures electronically and have not withdrawn your consent. If you are a consumer, we will not substitute electronic communications in lieu of written consumer disclosures unless your consent is first obtained electronically in accordance with applicable law. This restriction does not apply to all

electronic communications from us to you, only those that include consumer disclosures under applicable law. Please see the [Commercial Bank of California eStatement Consent and Authorization Disclosure](#) for other important information about electronic statements and our electronic communications with you.

## **Account Transfers**

You must not use the Service to transfer funds to or from an account that you do not own. Transactions posted to your account as of a certain business day may not be reflected in account balances reported by the Service until the following business day. Information on transfers to or from your accounts with us will be reflected on your periodic statements, will be available to you online, and can be obtained by calling 1-657-289-2550. We do not provide any other notice of the receipt, transmittal or debiting of funds transfers.

*Scheduling Fund Transfers.* You may initiate single or recurring Account Transfers on any business day (the “Transfer Process Date”). If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the following business day. To initiate an Account Transfer, you must provide the information prompted within the Service, including the account to be debited, the account to be credited, the transfer amount, and the Transfer Process Date.

*Changing or Cancelling Account Transfer Instructions.* For same-day Account Transfer requests, once submitted, the transfers cannot be cancelled through online banking. For future dated (advanced) Account Transfers, the transfers can be cancelled through online banking subject to the applicable cutoff hour on the business day before the Transfer Process Date.

## **Loan Transfers**

*Eligible Loan Transfer Accounts.* You agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized pursuant to this Agreement. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements.

*One-Time Advance/Payment.* You can use the Loan Transfer feature to make non-recurring “on-us” loan Account advances (“Loan Advance(s)”) and payments (“Loan Payment(s)”). The Loan Transfer will be processed on the Loan Transfer processing date (“Loan Payment Processing Date”); provided that the Loan Payment Processing Date selected by you is a business day and you submit your one-time Loan Transfer instruction prior to the Loan Transfer cutoff hour for that date. If you select a Loan Payment Processing Date that is not a business day or submit your Loan Transfer instruction after the Loan Transfer cutoff hour for that date, then the Loan Payment Processing Date may be the next business day. Loan Advances will only occur to the extent there are sufficient available funds on the eligible loan Account, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the loan Account.

*Loan Payments.* You may designate the Loan Payment as a regular installment payment. Funds transferred will be applied as a regular installment payment, you are responsible for ensuring that you initiate an Loan Payment instruction in time for the payment to be received by us before its due date. We are not responsible for any damages, costs or fees you may suffer if you do not allow sufficient time between the Loan Payment Processing Date and the due date.

*Noncompliance with Borrowing Base.* This paragraph is applicable if the promissory note or other loan document for your loan Account provides that the loan Account is tied to a borrowing base of eligible receivables. At any time that you are not in compliance with the borrowing-base requirement, we may reverse any transfer that constitutes an advance on the loan Account.

*Loan Transfer Changes and Cancellation.* You may change or cancel a Loan Transfer instruction via the Service as long as you submit the change or cancellation request by 7:00 p.m. PST prior to the Loan Payment Processing Date for the Loan Transfer instruction and you follow the Loan Transfer instructions provided by the Loan Transfer feature for changes and cancellations.

*Provisional Credit.* You agree that any credit by us to you for any Loan Transfer is provisional until we have received final settlement for such Loan Transfer. We may delay availability of provisional credit at our discretion. If final settlement is not received, we are entitled to and you agree to pay a refund of the amount credited; we may charge your account for the amount due.

## **Download Service**

At this time, the Download Service is compatible with Quicken® and CSV format to other financial management software programs (“Programs”). We will not control or oversee any administrator, user or similar function that may be made available through the Programs. The fact that we are, or may be made aware of, or could have discovered, any limitation on access to the Download Service as imposed by you through the Programs, or otherwise, does not make us obligated to enforce or attempt to enforce any limitation. You understand that the Program(s) may be utilized without regard to any restrictions otherwise applicable to an Account. For example, the Program(s) may be utilized regardless of whether an individual user is also an authorized signer on your account signature card.

*Access to Account Data.* You can download balance and certain other Account information through the Download Services. Since certain information and transactions are not processed by us until after the close of our business day, some transactions may not be reflected in the Service until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in the Service, or unauthorized access to information once it has been accessed by the Program(s).

*Software, Equipment and Third Party Content.* You are responsible for obtaining and maintaining any software, including the Quicken® or other compatible software and equipment that is necessary for the Download Service to interface with the Program(s). Through the Program(s) you may be able to access content provided or operated by third parties, including content that was originally sourced from data downloaded from the Service (“Third Party Content”). Unless we tell you otherwise in writing, we do not operate or control any such Third Party Content or any of the information, products or services accessed or uploaded through the same. You acknowledge and agree that: (i) You access Third Party Content at your own risk; (ii) We make no representation or warranty, and assume no responsibility for, Third Party Content provided or operated by third parties, actions or omissions of third parties, operators or providers; (iii) We make no endorsement of, and assume no responsibility for, Third Party Content uploaded to our system or your hardware, or goods or services offered on or advertising on or by any other party; (iv) By using third party services or software, you may be exposed to material that is offensive, indecent or objectionable; (v) We do not own or operate Third Party Content and will not be responsible for the privacy or security practices of the Programs; and (vi) Although we may have a contractual or other relationship with the operators of a linked website or the providers of Third Party Content, we will not be responsible for the Third Party Content, accuracy, completeness, integrity, availability, timeliness or operation of their website or the Third Party Content provided. You agree to hold us harmless in connection with all of the foregoing.

## **Bill Payment Service**

*Generally.* When using the Bill Payment Service, you must designate the Account (“Billing Account”) from which the Bill Payments are to be made, the complete name of the payee, your account number with the payee and the payee’s remittance address (as exactly as shown on the billing statement or invoice), the amount of the payment and the date you want the payment to be processed from your Billing Account (“Send On Date”).

*Use of Vendors; Use of Information.* We may use one or more bill payment vendor(s) to provide the Bill Payment Service, and you understand that various financial intermediaries and their servicers may be involved in processing any one of your Bill Payment instructions. These intermediaries may benefit from interest that accrues on Bill Payments between the time your Billing Account is debited and the time the payee is paid. Any information you provide may be used by us or any of these other parties to complete or otherwise deal with your transaction or comply with any laws, rules or regulations. If there is a dispute between you and us, or between us and any other person (including any merchant, payee, financial institution or other intended or actual recipient of any Bill Payment), you authorize us to obtain information regarding you, your Account and your Bill Payment obligations (or the absence of

them) from any party that was involved in the Bill Payment transaction or that might otherwise assist in the resolution of the dispute or problem. This may include financial and other information.

*Setting-Up Payees.* When you sign onto the Bill Payment Service, you must establish your list of payees. A payee is anyone, including us, that you designate to receive a Bill Payment; provided that we accept the payee for the Bill Payment Service. If we accept the payee, then the payee will be placed on your authorized list of payees. Each time you want to initiate a Bill Payment, the payee must be on your authorized list of payees, and if payment will be facilitated electronically to the payee's financial account (rather than by paper check) the payee's receiving financial account must be within the United States.

We are not responsible if a Bill Payment is not made to a payee because you provided us with incomplete, incorrect or outdated information regarding the payee or we attempted to make a payment to a payee that is not on your authorized list of payees. Also, we reserve the right to refuse to approve a payee for your authorized list of payees and to otherwise prohibit payment to a payee via the Bill Payment Service.

*Payment Methods.* We reserve the right to select the method in which to remit funds on your behalf. These payment methods may include, but may not be limited to, an electronic payment, an electronic check payment (where the check is drawn off our third party service provider's account), or a demand draft payment (where a negotiable instrument is created and drawn off our third party service provider's account).

*One-Time Payment.* You can use the Bill Payment Service to make a one-time Bill Payment. A one-time Bill Payment will be processed on the Send On Date; provided that the Send On Date selected by you is a business day and you submit your one-time Bill Payment instruction prior to the Bill Payment cutoff hour for that date. When making/scheduling Bill Pay payments, the system will automatically calculate the Deliver By Date for your review based on the Send On Date selected and whether the payment method is being processed electronically or by check.

*Recurring Payments.* You can use the Bill Payment Service to make recurring Bill Payments. The Bill Payment Service will allow you to schedule Bill Payment instructions that will cause a Bill Payment to be processed from the selected Billing Account on your selected frequency on an ongoing basis. However, if the future Send On Date is on a non-business day, then the new future Send On Date may be the prior business day.

*Available Funds.* For Bill Payments, you will need to have sufficient available funds in your designated Billing Account to cover the amount of the Bill Payment on the Send On Date. You can initiate Bill Payments up to your transaction and daily limit.

*Non-Recommended Payees.* We do not recommend that you use the Bill Payment Service to pay your federal, state or local taxes, courts or other governmental entities. These agencies normally require an accompanying coupon, which cannot be provided via the Bill Payment Service. We will not be liable for penalties, interest or other damages of any kind if you try to use the Bill Payment Service to remit or pay money for taxes, or to courts or governmental agencies.

*Scheduling Payments in Advance of the Due Date.* The Send On Date is the date that we will initiate the Bill Payment. Bill Payments should be scheduled sufficiently in advance of the due date of your bill ("Due Date") to allow the payee to receive it on the Due Date set by your payee and without taking into account any grace period that may be offered by your payee. You are responsible for ensuring that you initiate a Bill Payment instruction in time for the payment to reach the payee before its Due Date (without taking into account any grace period). You must allow at least five (5) business days, prior to the Due Date, for each Bill Payment instruction to reach the applicable payee. We are not responsible for any damages you may suffer if you do not allow at least five (5) business days between the Send On Date and the Due Date of your bill or obligation, without counting any grace period offered by the payee.

*Payment Changes and Cancellation.* You may change or cancel a Bill Payment instruction via the Service as long as you submit the change or cancellation request at least an hour before the applicable cutoff hour prior to the Send On Date for the Bill Payment instruction and you follow the Bill Payment instructions provided by the Bill Payment Service for changes and cancellations.

*Accurate Information on Payees.* The Bill Payment will be processed using the information you supply, and if the information you give to us is inaccurate or incomplete in any way the Bill Payment may be delayed or misdirected. If the Service provides you with a series of options regarding payee address or location, you are responsible for correcting that information if such information does not agree with your records or with your particular bill. We and the others that handle your Bill Payment (including the payee's bank) are entitled to rely on information you supply, such as the payee's account number or the routing number of the payee's bank, even if the name you give to us and the number you give to us identify different persons.

*ACH Entries.* Electronic payments that are made through the ACH are subject to the rules of the ACH, and you agree to be bound by the Operating Rules of the ACH, including the rule making payment to the payee provisional until receipt by the payee's bank of final settlement of the credit transaction. If final settlement is not received, you will not be deemed to have paid the payee the amount of the electronic bill payment. Furthermore, you agree that any payment by us to you for any returned credit entry or credit reversal is provisional until receipt by us of final settlement for such entry. If final settlement is not received, we are entitled to a refund from you of the amount credited and we may charge your account for the amount credited. We may refuse to permit the use of any amount credited for a credit reversal if we believe that there may not be sufficient funds in your account to cover charge back or return of such reversal.

## **eBills**

*eBill Delivery and Presentment.* This feature is for the presentment of electronic bills ("eBill Service") only and it is your sole responsibility to contact your billers ("Payees") directly if you do not receive your statements.

*Information Provided To Payee.* The eBill Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers and email addresses, with the electronic Payee. Any changes will need to be made by contacting the Payee directly. Additionally, it is your responsibility to maintain all usernames and passwords for all electronic Payee sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill.

*eBill Activation.* Upon activation of the electronic bill feature the eBill Service may notify the Payee of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Payee. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Payee reserves the right to accept or deny your request to receive electronic bills.

*Authorization To Obtain Bill Data.* Your activation of the electronic bill feature for a Payee shall be deemed by us to be your authorization for us to obtain bill data from the Payee on your behalf. For some Payees, you will be asked to provide us with your user name and password for that Payee. By providing us with such information, you authorize us to use the information to obtain your bill data.

*Notification.* The eBill Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the eBill Service, the eBill Service may send an email notification to the email 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 eBill Service and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. You are responsible for ensuring timely payment of all bills.

*Cancellation of Electronic Bill Notification.* The electronic Payee 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 Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The eBill Service will notify your electronic Payee(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. The Bill Payment Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

*Non-Delivery of eBill(s).* You agree to hold us harmless should the Payee 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 Payee directly.

*Accuracy and Dispute of eBill.* We are not responsible for the accuracy of your electronic bill(s). We are only responsible for presenting the information we receive from the Payee. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Payee directly.

### **Check Stop Payment Services**

You may request a stop payment on a check issued on your Account(s) by completing the form presented as part of the check stop payment feature and submitting all the required information to us (“Check Stop Payment”). All Check Stop Payment requests, renewals, and revocations of stop orders will be subject to our current policy on stop payment requests. For significant or material items, contact us by coming to one of our branches or by telephone in addition to using the Services for Check Stop Payment. If you wish to place a stop payment on multiple or a range of checks, you must contact us at 657-289-2550. You are responsible for reviewing all information available to you to determine whether the check has already been paid, including your account statements. Information available online may not include sufficient current and historical information to verify whether the check has been paid. Your receipt of a Check Stop Payment confirmation via the Service, or acceptance of your request via the Service, does not conclusively represent whether or not the check has already been paid. We may accept a Check Stop Payment request from you with respect to a check that has already been paid, and we will have no obligation to determine or notify you that such check was previously paid. In any event, we must receive your Check Stop Payment request sufficiently in advance to provide us with a reasonable opportunity to process your request in sufficient time prior to presentment of the check. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment. Refer to the Fees and Charges Section of this Agreement for the current fee.

You must give us timely, complete, and accurate information as prompted by the Service, iyour account number, payee, and check number. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check.

You may use the Check Stop Payment Service to stop payment on checks that you have written against your Accounts. If you wish to cancel or amend any other Service transaction, you should use the process applicable to that Service, and you will be subject to any limitations or inability to stop applicable to that Service. You may not use the Check Stop Payment Service to stop payment on any, Bill Payment Service check, ACH/electronic fund transfer/point-of-sale transaction; any cashier’s check, certified check or other official institution check you have purchased from us or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

A Check Stop Payment request against a check is effective only against the check that is described in the Check Stop Payment request form. A Check Stop Payment request is effective for six (6) months only and will expire automatically, at which time you are responsible for any renewal desired by you for another six (6) month term. The Service may require you to present your request in writing within fourteen (14) days. If you wish to change, extend or cancel a Check Stop Payment request, you must call us at 1-657-289-2550. If we do not have a reasonable opportunity to respond to your change, extension or cancellation request before the check is presented for payment, we may not be able to honor your request.

You assign to us your rights against the payee or any other holder of any check on which you have requested a Check Stop Payment, and you agree to cooperate with us in any legal action we may take against such persons. You should

be aware that a holder of a check may be entitled to enforce payment against you notwithstanding an electronic stop payment order. Your obligations under this section will survive termination of this Agreement.

### **Account Alerts**

The account Alerts feature is a convenience tool that permits you to request automated notification in specific situations by text message or email. By setting up the Alerts feature, you authorize us to send the communications by email or text message, to any address or mobile number we have on file for you. Alerts do not replace standard communications you receive from us concerning your accounts. If you elect to receive Alerts by text messaging from us, you acknowledge that such messages will be automatically sent to your wireless access device. You assume all responsibility for the secure receipt of the text messages and acknowledge that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting your access, including your Internet service provider(s), phone operator(s), and other relevant entities. We do not guaranty the delivery or the accuracy of the contents of any Alert. We will not be liable for losses or damages arising from: (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; or (iii) your use or reliance on the contents of any Alert for any purposes. We reserve the right to terminate any request from you for any Alert, at any time. Your wireless carrier's normal fees and charges, such as charges for text messages, will apply. The information in any Alert may be subject to certain time lags and/or delays. You may stop or suspend Alerts at any time.

### **Consent For Us to Contact You By Email and Phone, Including Cell Phone and Text Messaging**

You agree that we and our affiliates and agents may contact you at any email address or telephone number you provide to us (including cell phone calls and text messages) to communicate with you regarding your account, any transaction with us, and/or your relationship with us. You further represent to us that you own the email addresses and telephone numbers you provide to us, or that you are authorized to provide this consent on behalf of the owner. You authorize us to make autodialed, prerecorded or artificial voice ("PAV") calls to any number(s) you provide and you acknowledge that, in any event and to the extent not prohibited by applicable law, by voluntarily providing your telephone number(s) to us, you expressly agree to receive autodialed, PAV messages and texts from us, including from our affiliates and third parties calling on our behalf. Your service provider may impose a charge you for those calls/messages, including message and data rates. Check with your service provider to see what charges apply. If necessary, you may change or remove any of the email addresses or telephone numbers at any time by contacting us at Commercial Bank of California, Treasury Services Department, 19752 MacArthur Blvd, Suite 100, Irvine CA 92612.

Right to Opt-Out. You may opt-out of autodialed, PAV calls or text messages from us at any time. To opt-out of autodialed and PAV calls (but not text messages), call us at 1-657-289-2550 or email us at [treasuryservices@cbcal.com](mailto:treasuryservices@cbcal.com). You may also opt-out of receiving text messages from us, subject to applicable law. To opt-out of text messages, reply STOP to any text message you receive. For help, text HELP. You acknowledge and agree that you may receive a text message confirming your opt-out.

Link to our Privacy Notice can be accessed at [www.cbcal.com/privacy](http://www.cbcal.com/privacy)

### **Mobile Banking**

Mobile Banking provides wireless access to the Services, as well as the ability to deposit checks to your linked Accounts ("Mobile Deposit"). Some Services may not be accessible while using your wireless access device ("Wireless Access Device"). Additional Mobile Banking Services may be added to or removed by us from time to time. Some Mobile Banking Services may not be available without special application to and approval by us, may be limited to specific types of accounts, and may require you to agree to additional terms and conditions which may be presented online at the time the feature is activated.

*Access and Use.* Once you have enrolled for Mobile Banking, designated accounts linked to your Security Credentials will be accessible through your Wireless Access Device. Additionally, to access and utilize Mobile Banking you will need a compatible Wireless Access Device. Your Wireless Access Device must be Internet enabled and connected to the Internet through your mobile communications service provider. In order to properly use Mobile Banking, you

should review and follow the instructions provided in our online banking system. You agree to accept responsibility for learning how to use Mobile Banking in accordance with the online and mobile application instructions and agree that you will contact us directly if you have any problems with Mobile Banking. You also accept responsibility for making sure that you, and anyone acting on your behalf, know how to properly use the Wireless Access Device. If you obtain a different Wireless Access Device, you will be required to download and install software to that different Wireless Access Device, under the same terms set forth in this Agreement, as amended. You agree to delete all such software from your Wireless Access Device promptly if the licenses or this Agreement terminate for any reason. We reserve the right to change, add to, or terminate services with our third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Services by other licensors and third-parties.

You agree to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by us or otherwise required for use of Mobile Banking and shall further prevent the use of Mobile Banking by unauthorized persons. You assume full responsibility for the consequences of any missing or unauthorized use of or access to Mobile Banking or disclosure of any confidential information or instructions by you, or anyone acting on your behalf.

*Hardware and Software.* You are responsible for obtaining and maintaining the compatible Wireless Access Device required to use Mobile Banking. To the extent we, in our sole discretion, provide any hardware in conjunction with Mobile Banking, the hardware will at all times remain the sole property of Commercial Bank of California. Upon termination of Mobile Banking, you must promptly return any hardware that we provided to you.

To the extent Mobile Banking involves our having granted you software license (“software”) usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use Mobile Banking in connection with your use in accordance with this Agreement. Mobile Banking does not involve the sale of software. Nothing in this Agreement will entitle you to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, you agree to immediately destroy all copies of any software which had been downloaded to your Wireless Access Device or otherwise in your possession and control as part of your access and use of Mobile Banking. You acknowledge that your license to use any software that may be required for Mobile Banking is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you. By enrolling in portions of Mobile Banking relating to those software systems and programs, and by downloading and installing Mobile Banking software, you will be evidencing your acceptance of the terms and conditions of those licenses. We may also condition your use of Mobile Banking upon you affirming such licenses by the use of “I Accept” or similar dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

*Mobile Deposit.* The Mobile Deposit feature enables you to use a software application together with your Wireless Access Device to create electronic images of the front and back of certain Original Checks (defined below) and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition (“MICR”) line, to us for review and processing in accordance with this Agreement.

*Definitions.* In addition to the terms otherwise defined in this Agreement, the following terms will have the meaning provided in this “Mobile Deposit” Section:

*“Check”* means an Original Check, as defined in Regulation CC.

*“Endpoint”* means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Imaged Items or Substitute Checks.

*“Imaged Item”* means the digitized image of a Check that is created by you and transmitted to us using the Mobile Deposit Service.

*“Image Exchange Item”* means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

*"Item"* means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or indorsed to you, and includes Original Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States money.

*"Mobile Deposit Services"* means the Mobile Deposit Services described in this Agreement, to be provided by us to you to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by us and our licensors and contractors in connection with the electronic processing of Items.

*"Non-cash Item"* means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

*"Non-qualifying Item"* means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post dated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds your transaction limitations (including dollar limitations) as established by us from time to time.

*"Original"* with respect to a Check means the first paper Item issued with respect to a particular payment transaction.

*"Payor Financial Institution"* means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.

*"Regulation CC"* means 12 C.F.R. Part 229, as it may be amended from time to time.

*"Substitute Check"* means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

*"UCC"* means the Uniform Commercial Code as enacted and amended in California.

*"United States Financial Institution"* means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

*Mobile deposit limits.* We reserve the right to establish and assign limits for the Mobile Banking Services (including limits on the dollar amount of your deposit, the number and frequency of your deposits, and the number of checks within a deposit) and to modify such limits from time to time in our sole discretion. You agree to comply with all such limits. We may allow these limits to be exceeded in its sole discretion.

*Your Responsibilities.* In connection with the Mobile Deposit Services, you agree to comply with the following:

- Each processed Imaged Item must be transmitted in compliance with the terms and conditions of this Agreement and you will assume full responsibility for any Imaged Item which for any reason is not paid;

- You will not submit Imaged Items unless: (i) you are a person entitled to enforce the Original Check and you have the legal right to accept the check for deposit and negotiation; and (ii) the drawer of the Original Check has no defense against payment of the Original Check;
- The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time you converted the Original Check to an Imaged Item;
- The Imaged Item contains all indorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and you will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. You agree to indemnify and defend us against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check;
- Except as otherwise specifically disclosed in writing to us, you are not now engaged, and will not during the term of this Agreement engage, in any business that would result in you being or becoming a “money service business” as defined in the Federal Bank Secrecy Act and its implementing regulations;
- You will not engage in any activity directly or indirectly related to the use of the Mobile Deposit Service that is illegal or fraudulent;
- You will only submit Checks for processing to us that meet the definition of “Item” as provided in this Agreement and will ensure that the Items scanned meet the standards for image quality established by the American National Standard Institute (ANSI) required by Regulation CC, or other standards established or required by us or applicable law, as amended from time to time. You will not process any Non-qualifying Items. Our processing of any Non-qualifying Items shall not constitute a waiver by us or obligate us to process such Non-qualifying Items in the future. You agree that we may discontinue processing of Non-qualifying Items at any time, without cause or prior notice;
- You will not attempt to scan and transmit to us any third party checks, or any Item which is drawn on a deposit account of yours with us or any other financial institution, or a deposit account of any business entity of which you are a principal, officer or authorized signer. You will only use the Service for your own purposes and in accordance with this Agreement;
- You will not attempt to scan and transmit to us any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with us. Notwithstanding the foregoing, we may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Deposit Agreement;
- You will (i) ensure that, prior to scanning, Items are restrictively indorsed “FOR MOBILE DEPOSIT ONLY, COMMERCIAL BANK OF CALIFORNIA, and with signatures of all payees. (ii) handle, process, maintain and destroy Original Checks as set forth in this Agreement and in the supporting documentation, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or indorser receives presentment or return of, or otherwise is charged for an Item more than once in any form (no second presentment);
- You will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to us;

- You will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous day and immediately notify us of any error or discrepancy discovered;
- You shall be responsible for verifying our receipt of your transmission(s) by verifying that deposits have been posted to the appropriate accounts, in addition to cooperating with us in any investigation and resolving any unsuccessful or lost transmissions;
- You shall be responsible for installing and implementing any changes and upgrades to the Mobile Deposit Service as required by us within 5 days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Mobile Deposit Services. You will ensure that your Wireless Access Device is clean and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes;
- If not directed otherwise by us, you will store Original Checks in a safe and secure environment for a minimum of 14 days and a maximum of 30 days after such Item has been digitized and processed. You shall take appropriate security measures to ensure that: (a) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties; (b) such Checks will not be duplicated or scanned more than one time; and (c) such Checks will not be re-deposited or renegotiated in any form. You will promptly (but in any event within 5 business days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check) to us as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as we otherwise deem necessary. You will use a commercially reasonable method which is consistent with any requirements of Regulation CC and the Bank to securely and permanently destroy Original Checks after your retention period has expired;
- You understand and agree that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will in our discretion be: (i) re-presented to the Payor Financial Institution; or (ii) returned to you and your account charged for the amount of the Item plus any associated fees as disclosed in our applicable fee schedule, which may be changed from time to time in our discretion. You agree that Items may be returned as Image Exchange Items, rather than Substitute Checks. Our right to charge your account will apply without regard to whether the Item is timely returned to us or whether there is any other claim or defense that the Item has been improperly returned to us; and
- You agree to make all encoding, transfer, presentment and other warranties made under applicable law as we are deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

*Processing.* For all Imaged Items processed pursuant to this Agreement, either: (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. We may in our sole discretion determine the manner of processing. Your account will be provisionally credited upon our acceptance of Imaged Items for deposit which are received by us from you through the Mobile Deposit Service.

We will process any returned Items in accordance with applicable law and the Deposit Agreement. Availability of credit from Items processed under this Agreement will be subject to our then current availability schedule, which may be amended by us from time to time. We may at our sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. We may from time to time establish and amend exposure limitations and assign them to you.

Notwithstanding any provisional credit that may be applied to an account in connection with your transmitted Imaged Items, Imaged Items processed for deposit through the Mobile Deposit Service will be deemed to

have been received by us for deposit at the time the Imaged Items are actually received and accepted at the location where we or our designated agent posts the credit to the account. A deposit of Imaged Items will be deemed to have been received and accepted by us for deposit when all of the following have occurred: (i) we have preliminarily verified that the image quality of the Imaged Item is acceptable to us in our discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) we have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by us for deposit may be rejected by us in our sole discretion.

You agree to view the images of each scanned Item that is sent to us. If Item information received by us is not complete or cannot be processed by us for any reason, we may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to your account. You will be responsible for verifying our receipt of your transmissions by verifying that deposits have been posted to your account.

If an Imaged Item is not accepted for deposit, you may then submit the Original Check to us for processing or contact the maker to reissue the Check. If you submit the Original Check for processing, we reserve the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require you to have the maker reissue the Check.

*Reserves; Security Interest; Held Funds.* In addition to any other rights we may have under this Agreement and otherwise with regards the accounts of yours, we may hold and use funds in any account following termination of this Agreement for such time as we reasonably determine that any Item processed by us prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which we may be responsible. Without limitation, you recognize that under the UCC, Regulation CC, The Clearing House ECCHO Rules (as applicable), and the rules of any image exchange network, our representations and warranties with regards to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

*Your Indemnification Obligation.* In addition to any indemnification obligations you have under the Agreement, and except to the extent expressly prohibited by applicable law, you agree that you will indemnify and hold us harmless against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) any fine, penalty or sanction imposed on us by, any clearing house, or any governmental entity, arising out of or connected with any Imaged Item processed by us for you or at your instruction; (ii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to us; (iii) any loss or corruption of data in transit from you to us; (iv) any claim by a third party resulting from our breach of warranty regarding the paid status or image quality of a check you have presented through the Service; or (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by you under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check.

*Our Liability.* In addition to our limitations on liability that may be stated elsewhere in the Agreement and the Deposit Agreement, and except to the extent prohibited by applicable law or regulation, we will not be liable to you for any refusal of a Payor Financial Institution to pay an Image Exchange Item or Substitute Check for any reason (other than our breach of contract, gross negligence or willful misconduct), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

*Relationship to Third Party Agreements.* You agree that, when you use Mobile Banking Services, you remain subject to the terms and condition of your existing agreements with any unaffiliated service providers, including, but not limited to your mobile service provider. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (such as data usage or text messaging charges imposed on you by your mobile service provider), and you agree to be solely responsible for all such fees, limitations and restrictions. You also agree that only your mobile service provider is responsible for its products and services.

Accordingly, you agree to resolve any problems pertaining to your Wireless Access Device or mobile services with your provider directly.

*Use of Google Maps.* You agree to abide by the Google terms and conditions of use found at [http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html) and the Google Legal Notices found at [http://maps.google.com/help/legalnotices\\_maps/](http://maps.google.com/help/legalnotices_maps/), or other URLs as may be updated by Google.

*Security of Data in Transition and Storage.* You expressly acknowledge that any wireless access to your accounts may not be secure and, as such, you assume the risk associated with unauthorized access to Mobile Banking and any information contained therein, resulting from such wireless connectivity. You assume all risk that any information you download or otherwise stored on your Wireless Access Device may be accessed by unauthorized third parties. Without limiting the foregoing, you acknowledge that your Wireless Access Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

We are not responsible for the security and confidentiality of information when you: (i) use wireless connections to download your account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded, or (ii) allow other persons access to your Wireless Access Device. You agree that any account information that you download is done at your own risk, and you are solely responsible for any damage that might occur to the electronic device to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

**YOU AGREE TO TERMINATE MOBILE BANKING, OR DISABLE YOUR REGISTERED WIRELESS ACCESS DEVICE FROM MOBILE BANKING IMMEDIATELY IN THE EVENT YOUR REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY YOU. YOU MUST ACCESS THE MOBILE BANKING CENTER VIA ONLINE BANKING TO DO SO.**

### **Provisional Credit**

You acknowledge that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. You agree that when we give you credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until we receive final settlement for the payment order. We may delay availability of provisional funds at its discretion. If we do not receive final settlement, you must return the funds previously credited to your account to us, and the person who sent the payment order will not be treated as having paid you. We may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if we believe in our sole discretion that there may not be sufficient funds in your account to cover chargeback or return of such transaction.

### **Amending/Canceling a Transaction**

Except to the extent this Agreement provides otherwise, you do not have the right to amend or cancel a payment or transfer instruction once we have received it. If we attempt to reverse a transaction at your request, we assume no liability for any interest or losses that result if the reversal is not effected. If we attempt to effect a change or cancellation, you agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any such change or cancellation. You assume sole responsibility for providing notice to the receiver/beneficiary that a reversal is being transmitted, as applicable, and the reason for the reversal no later than the settlement date of the reversing entry.

### **Inconsistencies**

We may act on a Communication by reference to the account number only, even if the name on the account is also provided and even if the account number does not actually correspond to the name. If an intermediary bank or a

beneficiary's bank is identified on a Communication by both name and identifying number, we and other financial institutions may rely on the number even if the name and the number are not consistent or identify different parties.

### **Security Interest in Accounts**

You grant us a security interest in all accounts or other deposits (whether general or special) of yours at Commercial Bank of California, to secure your obligations to us under this Agreement. This security interest will survive termination of this Agreement. We may hold any funds on deposit with us by you after termination of this Agreement for up to 90 days following the expiration of any return or chargeback rights or, if later, until any other claims to such funds have expired.

### **Third Parties**

You acknowledge and agree that we may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including our affiliates. You further agree that any such party is a third party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were us, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Our ability to provide certain Services may be dependent upon our ability to obtain or provide access to third party networks. In the event any third party network is unavailable or we determine in our sole discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, we will have no liability for the unavailability or delay of access.

Notwithstanding the limitations described above pertaining to third parties, if you authorize a third party to access the Services on your behalf, you will be solely responsible and liable for all actions and inactions of said third party. You expressly assume the risks associated with providing Service access rights to your agents or third party vendors, including but not limited to the risk of unauthorized or erroneous transactions. We will not be responsible, nor have any liability whatsoever for any services you receives from your agents or third party vendors. We reserve the right to require you to agree to additional terms and conditions as a condition precedent to your use of any agent or third party vendor in connection with your access to the Services.

### **Fees and Charges**

Our fees and charges for the online Services are reflected on our [ CBC Schedule of Fees], available upon request at any time. We may impose new fees and charges, or increase or change existing fees and charges. These fees and charges are in addition to any additional fees and charges we may impose in connection with your accounts with us and services we provide. We will provide advance notice of these changes to you if required by law. Other fees may be assessed and billed separately by your Internet and/or telephone service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then current fee schedule. You further authorize us to impose multiple fees as well as the same fees multiple times (such as fees for overdrafts, returned unpaid transactions) in connection with a single transaction that has been returned or presented multiple times. This includes, for example, when an overdraft results from an electronic debit that is paid or rejected after being represented for payment against insufficient funds.

### **Business Days**

Except to the extent otherwise provided in this Agreement and for the purpose of this Agreement, our business days are Monday through Friday, except holidays that we observe.

### **Hours of Operation; Interruption in Services; Changes**

You will generally be able to use Services seven days a week, 24 hours a day. However, a Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by law).

## **Harm to Computer Systems/Data**

You agree that we will not be liable for viruses, worms, Trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental or consequential damages that may result from such harmful components.

## **Disclaimer of Warranty**

We make no warranty of any kind, express or implied, including any implied warranty or merchantability or fitness for a particular purpose, in connection with Services provided to you under this Agreement. We do not and cannot warrant that Services will operate without errors, or that any or all Services will be available and operational at all times. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided "as-is," without warranty of any kind. We make no representation and specifically disclaim any express or implied warranties to users of any third parties, including but not limited to, warranties as to accuracy, timeliness, completeness, merchantability, or fitness for any particular purpose.

## **Credit Criteria; Ownership Change Notice**

We may, in our sole discretion, and you hereby authorize us to, perform credit reviews of you in accordance with our credit criteria. You shall, upon our request, provide us with any credit-related information and assistance as we may require to perform any such review. You agree to provide us with financial statements or other information regarding your financial condition upon our request.

Without limiting the foregoing, if you are a commercial account holder you agree to provide us with at least 30 days advance written notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in type, scope or nature of your business; and (iii) any anticipated material (20% or greater) increase in the amount or volume of your use of the Services to facilitate transfers to third parties over the preceding calendar quarter.

## **Uploaded Content, Linked Sites and Advertisements**

From our website or while using the Services, you may be able to access uploaded content provided or operated by third parties. Unless we tell you otherwise in writing, we do not operate or control any such content or any of the information, products or services on such linked websites. You acknowledge and agree that: (i) you access such content and linked sites at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, content on our website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) we make no endorsement of, and assume no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and Services, you may be exposed to content that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. You agree to hold us harmless in connection with all of the foregoing.

We reserve the right, but shall have no obligation, to reject, move, or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including viruses, that may interfere with the operation of our website. We may, but have no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. We shall have the right, but not the obligation, to disclose content to any third party if required by law or if we believe reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any content violates rights of third parties; or (d) protect our rights, property, or personal safety, or those third parties.

## **Third Party Content**

We may receive, process, and make available to you content that we receive from you and others. In this regard, we are merely a passive conduit for such content, although we reserve the right to block or remove any content that we believe violates this Agreement. We assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that you or others provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. We will not have a duty to interpret or evaluate any content transmitted to us or through our website or Services, except to the limited extent, if any, set forth in this Agreement. We will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on our website, even if we have reason to know of its existence. Use of any content you obtain from our website is at your own risk.

### **User Communication and Personalization Settings**

Our website and Services may permit you to send or receive communications and to store content and personalized settings for various options. We are not responsible for any delay, deletion, alteration, mis-delivery or failure to deliver or store any such communications, content or settings.

### **Idea Submission**

If you submit any materials or other information to any public areas of our website (such as bulletin boards, guest books, forums, wish lists and chat rooms), you hereby grant us a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, sub-licensable, assignable, transferable, irrevocable license under copyright and patent, with the unrestricted right to use, self, reproduce, distribute, transmit, create derivative works of, publicly display, and publicly perform any such materials and other information (including, without limitation, ideas contained therein for new or improved products and services) by all means and in any media now known or hereafter developed or commercialized. In addition, you represent and warrant to us that you have the right to grant to us the foregoing license.

### **Our Intellectual Property**

You acknowledge and agree that the software and content used by us in the operation of our website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by us on our website and as part of the Services and our name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by us and our licensors. As such, you will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

You may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer any portion or element of the Services or the Intellectual Property. Further, you may not (a) create derivative works of any portion or element of our website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology we incorporate in our website or the Services; (d) modify or erase any copyright or trademark notice we place at our website; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of our content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via our website; (g) frame our website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing our name, trademark, URL, product name or Intellectual Property. You agree to comply with the terms of any license agreement we make available to you with any software.

### **User Conduct**

You agree not to use the Service or the content or information in any way that would: (a) infringe any third party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing

export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.

### **No Commercial Use or Re-Sale**

You agree that the Service is only for the personal use of the individuals authorized to access your Account information with us. You agree not to make any commercial use of the Service or resell, lease, rent or distribute access to the Service.

### **Services Not Substitute for Legal, Tax, or Financial Advice or Planning**

You acknowledge that the Services, Commercial Bank of California, our employees, and service providers are not intended to provide legal, tax or financial advice or planning. The Services are merely a tool for use to assist your independent decision-making and have not been designed in contemplation of your specific needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, you represent that you will have obtained appropriate and independent legal and tax advice regarding the same, as you deem appropriate.

### **Purchase**

Our website or Services may permit you to purchase goods and services from various online or offline merchants, retailers, vendors, suppliers, services, or individuals (collectively, "Merchants"). The web pages from which you conduct such transactions may bear our logos, names, trademarks or service marks, or brand identity. Nonetheless, we have no responsibility for any of your transactions with any such Merchants, and make no guarantees, representations or warranties regarding any of them. We shall not be responsible for any loss or damage you or anyone else incurs as a result of such transactions or Merchants.

### **Confirmations and Periodic Statements; Duty to Examine**

You agree to examine any confirmations or monthly account statements promptly. **Except to the extent expressly provided otherwise under the "Consumer Liability" and "Errors and Questions" sections below** with respect to your duty to review periodic statements and to otherwise notify us of unauthorized electronic fund transfers, you agree to notify us immediately if you think there is an error or an unauthorized transaction shown on a confirmation or account statement. If you fail to notify us promptly, but no later than 14 calendar days following the earlier of the statement or confirmation mailing date or the date we make the statement or confirmation available to you, then you agree that you cannot assert any error, problem or unauthorized transaction against us. If you fail to notify us of any such discrepancy within the time provided in this paragraph, you agree that we will not be liable for any other losses resulting from your failure to give such notice or for any loss of interest with respect to a transaction that is or should have been shown. Except to the extent expressly limited by applicable law, if you fail to notify us of any such discrepancy within one year of receipt of such confirmation or statement, you will be precluded from asserting the discrepancy against us. For purposes of this Section, you will be deemed to have "received" a periodic statement at the earlier of the time that: (a) we first make it available to you for pick-up; or (b) the statement or the information is mailed or otherwise made available to you electronically.

### **Preauthorized Payments (applicable to electronic fund transfers to or from a consumer account as provided under the EFTA and its implementing Regulation E)**

#### **Right to Stop Payment and Procedure For Doing So**

If you have told us in advance to make regular electronic payments out of your Account, you can stop any of these payments. Here's how:

You may follow the directions provided in the Services, to stop the payment through the Services, or

Call us at 1-657-289-2550, or write to us at: Commercial Bank of California, Treasury Services Department, 19752 MacArthur Blvd, Suite 100, Irvine CA 92612 in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. We will charge you a fee for each stop payment order you give. Refer to the Fees and Charges Section of this Agreement for fee details. A separate process will apply to the extent you wish to initiate check stop payment requests through the Services. Refer to “Check Stop Payment Services,” above, for further details.

*Notice of Varying Amounts.* If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set).

*Liability for Failure to Stop Payment of Preauthorized Transfer.* If you order us to stop one of these electronic payments 3 business days or more before the transfer is scheduled to be made, and we do not do so, we will be liable for your losses or damages.

**Consumer Liability (applicable to electronic fund transfers to or from a consumer account as provided under the EFTA and its implementing Regulation E)**

Tell us AT ONCE if you believe any part of your Security Credential, including your password, has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit, as applicable). If you tell us within 2 business days after you learn of the loss or theft of any part of your Security Credential, including your password, you can lose no more than \$50 if someone used your Security Credential without your permission.

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

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

**Errors and Questions (applicable to electronic fund transfers to or from a consumer account as provided under the EFTA and its implementing Regulation E)**

In case of errors or questions about your electronic transfers, telephone us at 1-657-289-2550, or write us at: Commercial Bank of California, Treasury Services Department, 19752 MacArthur Blvd, Suite 100, Irvine CA 92612, 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.

- Tell us your name and account number (if any).
- 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.
- The dollar amount of the suspected error.

If you tell us orally, we may require you to send us the complaint or question in writing within 10 business days. We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate a complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you

will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing, and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

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

### **Electronic Check Conversion**

You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases; and (ii) pay bills.

### **Financial Institution's Liability**

If we do not complete a transfer to or from your 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:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- The transfer would go over the credit limit on your overdraft line (if applicable).
- Circumstances beyond our control (e.g., fire, flood, power outage, equipment or technical failure or breakdown) prevent the transfer, despite reasonable precautions that we have taken.
- The computer or related system was not working properly and you knew about the breakdown when you started the transfer.
- Your funds are subject to legal process or other encumbrances restricting the transfer.

There may be other exceptions stated in this Agreement and in other agreements with you.

### **Limitation on Financial Institution's Liability**

Except to the extent otherwise restricted by applicable law, we are responsible only for performing Services as expressly stated in this Agreement, and will be liable only for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct.

EXCEPT TO THE EXTENT OTHERWISE RESTRICTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR ANY OF OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOSS OF DATA, FILES, PROFIT OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES, OR THE INABILITY TO USE THE SERVICES, IRRESPECTIVE OF WHETHER WE HAVE OR HAVE NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT TO THE EXTENT RESTRICTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE LIMITED TO THE FEES YOU PAID TO US DURING THE SIX MONTHS PRECEDING THE DATE OF THE ALLEGED ACTIVITY GIVING RISE TO THE CLAIM.

Without limiting the foregoing, we will not be responsible for any loss, delay, cost or liability which arises, directly or indirectly, in whole or in part, from: (a) your actions or omissions, or those of third parties which are not within our immediate and reasonable control; (b) your negligence or breach of any agreement with us; (c) any ambiguity, inaccuracy or omission in any information provided to us; (d) any error, failure or delay in the transmission or delivery of data, records or items due to a transmission error or a breakdown in any computer or communications facility; (e) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God; (f) causes beyond our reasonable control; (g) limitations placed on transactions by any bank regulatory agency, clearing house or exchange network rules or guidelines; (h) your failure to provide us with complete and correct check images and data in accordance with this Agreement and our instructions regarding this Service; (i) our inability to confirm to our satisfaction the authority of any person to act on your behalf; (j) the return of any check by the institution upon which it is drawn; (k) any information that is lost, intercepted or destroyed during its transmission to us; (l) the unavailability of this Service for any reason; (m) your failure to follow any applicable software manufacturer's recommendations or our instructions regarding this Service; or (n) limitations placed on transactions by Federal Reserve, clearing house or exchange network rules or guidelines.

You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with the Services. You acknowledge that Service fees have been established in contemplation of: (A) these limitations on our liability, (B) Your agreement to review statements, confirmations, and notices promptly and to timely notify us of any discrepancies or problems; and (C) Your agreement to assist us in any loss recovery effort.

In addition to our right to reject transactions as provided elsewhere in this Agreement and our other agreements with you, we will not be obligated to honor, in whole or in part, any transaction or instruction or Communication which:

- Is not in accordance with any term or condition applicable to the relevant Service or Account;
- We have reason to believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to hold, dispute, restriction or legal process we believe prevents their withdrawal, transfer or availability;
- Would result in us exceeding any limitation of our net funds position established pursuant to present or future Federal Reserve guidelines;
- Would violate any applicable law, rule or regulation, or any guidance or directive of any federal or state regulatory authority;
- Is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- We have reasonable cause not to honor for our or your protection.

### **Indemnification Obligation**

Except to the extent prohibited by applicable law for regulation, you agree to indemnify and hold us harmless, including our affiliates, licensors, processors, third party contractors and service providers, from and against all claims, loss, damage or liability of any nature whatsoever (including but not limited to attorneys' fees and court costs) arising directly or indirectly out of: (i) your wrongful acts or omissions, or any person acting on your behalf in connection with your use of the Services; (ii) any act or omission of ours that is in accordance with the Agreement and instructions from you; (iii) any claims, loss or damage resulting from your breach of, or failure to perform in accordance with, the terms of the Agreement. This indemnity will survive the termination of the Agreement.

### **Documentation**

*Preauthorized Credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at (714) 431-7000 to find out whether or not the deposit has been made.

*Periodic Statements.* You will get a monthly account statement (unless there are no transfers in a particular month). In any case, you will get the statement at least quarterly.

### **Collection**

If we initiate collection proceedings against you in an effort to recover any amounts owed, you agree to reimburse us for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.

### **Refusal to Process or Delay in Processing**

We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you, but are not obligated to do so. We may delay or refuse processing, for example, if: (a) processing would or may exceed the available funds in your affected Account; (b) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (c) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (d) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (e) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (f) for any other reason under this Agreement. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

### **Severability**

Wherever possible, each provision of this Agreement shall be interpreted in a manner which makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

### **Entire Agreement**

This Agreement contains the entire agreement between the parties and no statements, promises or inducements made by either party or agent of either party that are not contained in this Agreement or other documents referenced by this Agreement.

### **Choice of Law and Venue**

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California, except where preempted by federal law. In the event any action between the parties to this Agreement regarding any dispute under this Agreement, whether in alleged tort, breach of contract, statutory or regulatory violation or other theory, is to be brought in state or federal court, such action will be brought only in the state or federal court in Orange County, California. The parties to this Agreement consent to the jurisdiction of such court.

### **Amendment of this Agreement**

We may amend, add to or change this Agreement (including changes in its fees and charges, or Services). We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.

### **Waiver**

We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.

## **Assignment**

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election. This Agreement is binding upon your heirs, successors and assigns.

## **Termination; Suspension; Delay**

We may terminate or suspend this Agreement and any service provided hereunder at any time. Without limiting the foregoing, we may suspend or terminate your access to any service if you do not access the Services for a period of time as determined in our sole discretion. If we provide notice of termination or suspension, we may do so in writing or electronically. Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without notice. Without limiting the foregoing, if you do not use this Service for any three-month period, we reserve the right to discontinue your Service without notice to you. Termination of your access to the Service may impact your account status or eligibility. If an Account is closed for any reason, you will no longer have access to the Services for the closed Account and transfers you have scheduled from the closed account will be cancelled once the Account is closed. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination. Any of your obligations pursuant to this Agreement that by their nature would continue beyond the termination, suspension or delay shall survive termination, suspension or delay.

## **Set Off**

To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-deferred deposit. You may terminate this Agreement upon 30 days written notice to us.

## **Headings**

The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions.

## **Commercial Account Use**

This Agreement is not intended for use by commercial account holders and any regulatory consumer protections provided to consumer accounts will not apply to commercial accounts under this Agreement. To the extent commercial accounts are accessed using the Services, the account owner(s) assume full liability for all transactions conducted with their Security Credentials. Further each commercial account owner agrees to the following: (i) to consider the size, type and frequency of the payment orders or other money transactions you will or intend to use Services to accomplish; (ii) to consider the risks presented by the possibility of unauthorized access to these Services, including the risk loss to you that we may process Communications and instructions that are your responsibility even though they were not authorized by you; and (iii) to use Services only after determining, and only for so long as you continue to determine, that the security procedures are a commercially reasonable method of providing security against unauthorized payment orders or other Communications. Each commercial account owner agrees and acknowledges that the security procedures are commercially reasonable for each of you and that each of you will be bound by instructions or Communications in your name, as set forth above. Each commercial account owner agrees to notify us if their use of the Services would necessitate or be better served by a level of security that exceeds that offered by the Services. If you fail to notify us, then each commercial account owner acknowledges and agrees that the security procedures are appropriate for your needs and will provide you with a commercially reasonable degree of security against unauthorized use. The Security Credentials are security procedures. You agree that we may use the security procedures to verify the authenticity of Communications that are received by us in your name. If we verify the authenticity of a Communication or instruction received in your name using the security procedures, we may rely on it and you will be obligated on the Communication or instruction, whether or not it was authorized by you. On the other hand, if a Communication or instruction was authorized by you or if you would otherwise be bound by it under this Agreement, you will be obligated on it even if we did not verify its authenticity using the security procedures and

even if the security procedures would have prevented error. You agree that the security procedures are intended to verify authenticity and not to detect error.

**ACCEPT OR CANCEL**

**You and we agree that this Agreement may be electronically accepted. This Agreement may be provided to you through such things as hyperlinks or “click-through” agreements made available electronically. You and we further agree: (i) that signatures and acceptance of the Agreement may be obtained electronically and includes mouse clicks, key strokes, use of passwords or other authentication systems, or as is otherwise set forth in the particular electronic communication; (ii) not to contest the authorization for, or validity or enforceability of, this electronic Agreement, or the admissibility of copies thereof, under any applicable law; and (iii) that this Agreement electronically “signed,” if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records; and (iv) to manually sign or place their signature on any paper original of the Agreement upon request.**

**Upon review and agreement of the Commercial Bank of California Personal eBanking Service Agreement and Disclosure, we ask that you select/check the box online during the online enrollment process indicating “I have read and agree to the terms of the Personal eBanking Agreement and Disclosure” to accept the terms of this Agreement and click on “CONTINUE” to proceed, or select the “CANCEL” to exit from these setup procedures and decline these terms.**