

# e-Banking Services Agreement

**BY CLICKING “I ACCEPT”, “I AGREE”, “PROCEED”, OR “CONTINUE”, AS APPLICABLE, OR BY USING ANY OF FIDELITY NATIONAL BANK’S ONLINE BANKING SERVICES (AS DESCRIBED HEREIN), YOU AGREE TO BE BOUND BY AND FULLY COMPLY WITH EACH AND EVERY PROVISION OF THIS ONLINE BANKING SERVICES AGREEMENT.**

## **e-BANKING SERVICES AGREEMENT**

THIS ONLINE BANKING SERVICES AGREEMENT states the terms and conditions that apply when you use FIDELITY NATIONAL BANK Online Banking Services. These terms and conditions are in addition to those that otherwise apply to any accounts you have with us or any other services by us for you. You must also follow all of our instructions, procedures, and policies applicable to Online Banking Services.

**1. YOU ACKNOWLEDGE AND AGREE THAT ANY PERSON USING ONLINE BANKING SERVICES MUST BE AT LEAST EIGHTEEN (18) YEARS OLD. PERSONS UNDER EIGHTEEN (18) YEARS OLD ARE PROHIBITED FROM USING OR ACCESSING ONLINE BANKING SERVICES.**

**2. Acceptance and Amendment of this Agreement.**

You agree to all of the provisions of this Agreement and each amendment to this Agreement by any and all of the following means: (a) using our Online Banking Services to perform any transaction; (b) causing your company representative to consent to this Agreement, if you are a business entity; and (c) completing a separate electronic consent form to receive disclosures and enter into this Agreement electronically.

Your electronic consent or use of our Online Banking Services has the same effect as if you had signed this Agreement with your physical signature or that of your authorized company representative.

Your electronic consent or use of our Online Banking Services is also your acknowledgement that you have read this Agreement in electronic form. If you would like to have a paper copy of this Agreement, please contact us by telephone at 870-735-8700 or write us at FIDELITY NATIONAL BANK, 330 W. BROADWAY, WEST MEMPHIS, AR 72301 and we will mail a paper copy to you. You may also access a copy of this Agreement on the Web Site at the “Documents” link.

We may amend this Agreement at any time. We will comply with any notice requirements under Applicable Law for such changes. If Applicable Law does not specify any notice requirements for the change, we will decide what kind of notice (if any) we will give you and the method of providing any such notice, which methods may include without limitation sending electronic notice or posting such amendment on the Web Site. The use of the Online Banking Services by you, the Master User, and any Sub-User after the effective date of any such amendment shall constitute an acceptance by you of such amendments to this Agreement. You shall be responsible for establishing an internal procedure for reviewing the Web Site and any messages sent by us to you through Online Banking Services on a regular basis to obtain timely notice of amendments to this Agreement. You agree not to contest the validity or enforceability of this Agreement as amended per this Section. The course of dealing among the Parties shall not modify or amend this Agreement in any respect.

You are not permitted to alter or amend this Agreement or any related document without our express written consent. Any attempt to do so will be void and unenforceable.

**3. Explanation of Certain Terms.**

For purposes of this Agreement, the following terms and all variations thereof (including the singular, plural, and possessive and the past, present, and future tense) shall have the following meanings:

“ACH Rules” means the rules of the National Automated Clearing House Association and any other relevant clearing house associations, as amended from time to time.

“Agreement” means this Online Banking Services Agreement and any amendments made in accordance with the provisions of this Agreement.

## e-Banking Services Agreement

“Applicable Law” means the constitutions, statutes, codes, ordinances, rules, regulations, orders, decisions, judgments and decrees of any governmental authority of the State of ARKANSAS and any other governmental authority having jurisdiction over the Parties.

“Bank”, “we”, “us”, “our”, and “FNB” mean FIDELITY NATIONAL BANK and any other person or legal entity whom we designate to provide Online Banking Services.

“Business Account” means an account that is not a Consumer Account.

"Business Day" means a day of the year on which banks are not required or authorized to close in WEST MEMPHIS, AR.

“Connected Accounts” shall mean and refer to any one or more of the deposit, loan, or other accounts designated by you for use in connection with Online Banking Services.

“Connect” your account(s) means to enable you to obtain information and perform transactions we make available for your qualifying accounts over the Internet by use of a personal computer and modem and/or other means we authorize or allow.

"Consumer Account" means an account established primarily for personal, family, or household use.

“Customer”, “you”, and “your” mean an individual person or business entity that we permit or they permit to use Online Banking Services.

“Customer Account” means any one or more of the loan, demand deposit, time deposit, savings, money market, or other accounts held by Customer at Bank.

“Fees and Expenses” means: (a) any fees or expenses identified on the fee schedule established by us, as may be amended from time to time by sending notice or posting such amendment on the Web Site; (b) overdrafts and overdraft fees; (c) fees and expenses relating to the Connected Accounts or any other Customer Account; (d) transaction fees; (e) any and all fees or charges incurred by you or us to third parties that are related to use of the Web Site or the Online Banking Services; (f) attorneys’ fees paid or incurred by us to enforce or interpret any provision of this Agreement; (g) attorneys’ fees paid or incurred by us if we shall file or commence any litigation to protect our rights with respect to you, the Online Banking Services, or to enforce any provision of this Agreement; (h) auditing and investigation fees; (i) any fees and expenses regarding the Required Technology; (j) all those fees and expenses identified in this Agreement; (k) late fees; and (l) all other expenses paid or incurred by us on behalf of you in connection with this Agreement.

"Master User" shall mean and refer to the individual designated by you to be responsible for supervising use of the Web Site and the Online Banking Services.

“Online Banking Services” shall mean and refer to such services provided by Bank, from time to time through the Web Site or through any Required Technology, as contemplated by this Agreement. Such services may include but are not limited to the following: Online Account Services, Stop Payment Services, Funds Transfer Services, External Funds Transfer Services, Voice Banking Services, Mobile Banking Services, Third Party Transfer Services, Online Statement Services, ACH Transfer Services, Wire Transfer Services, Bill Pay Services, Remote Deposit Capture Services, and Business Transfer Authorization Services. Such services may be provided during the Term as further defined in this Agreement.

"Party" means one or more of you and us.

"Person" means any individual, business or other corporate entity, trust, trustee, personal representative, executor, receiver, liquidator, or other person.

# e-Banking Services Agreement

"Required Technology" means the computer and communications hardware, software, web internet access, communications services, or other technology necessary to access and use Online Banking Services in accordance with this Agreement.

"Security Devices and Procedures" shall mean and refer to any user ID, password, code, mobile access code, authorization number, confidential information, encryption key, confirmation or tracking number, method, protocol, or any other information, control, identifier, document, program, mechanism, or procedure used to gain access to, verify, or protect the security and operation of the Web Site, the Online Banking Services, or other sensitive information.

"Sub-User" shall mean and refer to any one or more individuals authorized to use the Web Site or Online Banking Services by the Master User.

"Term" shall mean and refer to the term of this Agreement as set forth in this Agreement.

"Transfer" shall mean any direct or indirect, voluntary or involuntary, sale, purchase, assignment, pledge, conveyance, delegation, assumption, abandonment, or other change in ownership or possession of any kind, character, or description.

"Unauthorized Use" shall mean and refer to any of the following uses or activities regarding the Web Site or the Online Banking Services: (a) any Master User or Sub-User account being used for access by more than one individual; (b) any Person exceeding the scope of the authority granted such Person by you; (c) any use or access in violation of the terms of any loan or agreement between you and us; (d) sending any transmission to us containing errors; (e) any use or access that is in violation of Applicable Law or that may reasonably be expected to subject us to investigation, prosecution or legal action; (f) any use or access related to a failure or defect in Required Technology; (g) any action resulting in an overdraft of any Customer Account; (h) any involuntary use or access; (i) any use or access resulting from a failure to maintain confidentiality of or observe any Security Devices and Procedures; (j) any use or access that is not solely for conducting your business with Bank; and (k) any use or access by any Person other than a Sub-User or the Master User.

"Web Site" shall mean any one or more of [www.\[WEBADDRESS\].com](http://www.[WEBADDRESS].com) and [https://\[WEBADDRESS\].aspx](https://[WEBADDRESS].aspx) and any individual internal web page linked from the foregoing sites and established and maintained by FIDELITY NATIONAL BANK. The term "Web Site" shall not include any web site not controlled and maintained by FIDELITY NATIONAL BANK.

## **4. Online Banking Services.**

We may provide Online Banking Services to you during the Term from time to time as described in this Agreement. You understand and agree that we may, and you authorize us to, provide Online Banking Services through one or more third party vendors. This Agreement does not apply to services provided under separate agreements with third party vendors that do not specifically reference this Agreement or that are not specifically referenced in this Agreement.

Please refer to the online help and instructions on how to use our Online Banking Services. Such instructions are part of this Agreement. Please note that during your use of Online Banking Services, we may provide you with additional requirements and limitations regarding the use of Online Banking Services through the system by which we may provide Online Banking Services. You agree to be bound by any and all such additional requirements and limitations. You also agree to be bound by any and all of our published policies and procedures, whether published on the Web Site, through the Online Banking Services, or otherwise. Any and all such policies and procedures shall be a part of this Agreement.

## **5. Types of Online Banking Services**

You, or someone you have authorized by giving them access to your login information, password, or other Security Devices and Procedures (even if that person exceeds your authority), can instruct us to perform the following transactions: (a) transfer funds between Connected Accounts; (b) obtain information that we make available about Connected Accounts; and (c) obtain other services or perform other transactions that we allow, as discussed in this

## e-Banking Services Agreement

Agreement. You hereby authorize us to process and execute any and all requests, payment orders, or other transactions initiated by you through Online Banking Services. The following are the types of Online Banking Services we may provide under this Agreement:

5.1. Online Account Services. We may allow you to obtain an overview and history of your Connected Accounts with our Online Account Services. You may also view recent online and other account activity for your Connected Accounts and send secure messages to us requesting account information or making other inquiries. Other features we may offer through Online Account Services are allowing you to change your address on file with us, change the way information is displayed through Online Banking Services, change your password and login information, and set automated alerts for certain events occurring with respect to your Connected Accounts.

We may also allow you to download information regarding Connected Accounts to your systems for use with your third party financial management software such as Quicken®, QuickBooks® or Microsoft Money®. Please note, we cannot control and are not responsible for such information or your use or storage of such information after downloading from our systems.

Information you obtain about your Connected Accounts using our Online Banking Services may not reflect transactions that have not yet been posted to your accounts. You should keep that in mind when you perform or attempt to perform any transactions on the basis of such information.

5.2. Stop Payment Services. We may allow you to initiate stop payment requests through our Online Banking Services. You may place a stop payment on any check you have written or electronic transfer item you have initiated that has not already been processed by us for payment. The information on the stop payment request must precisely identify the check number, the date, the payee and the amount of the check. In the instance a series of checks are missing, you must detail each check number. If you do not give complete, exact information, we assume no responsibility for stopping payment. The stop payment request must be received in time to give us a reasonable time to act upon it. If the item is an electronic transfer (ACH or otherwise), we must receive this notice at least three (3) Business Days preceding the scheduled date for the payment of the item. We cannot stop payment on an electronic fund transfer resulting from a point of sale transaction. Stop payments received before 4:00 p.m. on a Business Day are intended to be processed on the day received. Stop payment requests received after 4:00 p.m. on a Business Day or on a non-Business Day will be processed on the next Business Day. A stop payment request for a check must be received before the check has been presented for payment. A stop payment order is effective for six (6) months unless renewed through Online Banking Services or in writing before the expiration of the six (6) months. If the stop payment request is not renewed before the expiration of six (6) months, it will automatically terminate, and the Bank is free to pay the check or other item. In such an instance, you hereby agree to waive any and all claims against us with respect to the stop payment request or the check or other item itself and you further agree to indemnify and hold the us harmless with regard to any and all claims involving the stop payment request and the applicable check or other item. You agree to pay a stop payment fee for each new stop payment request and each renewal of a stop payment request processed through Online Banking Services.

To stop a payment, you may also call or write us at the phone number or address listed in the Section titled "Notice", or by using any electronic stop payment method which we provide for this purpose. If you call or write, you must do this in time for us to receive your request three (3) Business Days or more before the transfer is scheduled to be made. If you call, we may also require you to put your request in writing and have it delivered to us within fourteen (14) days after you call.

5.3. Funds Transfer Services. This Section applies to internal funds transfers to and from accounts held with us and to external funds transfers to or from accounts held with other depository institutions. To the extent we make them available, you authorize us to establish preauthorized recurring fund transfers and one-time funds transfers in accordance with the request that is made. We may reject preauthorized recurring fund transfers that vary in amount. You must have enough available money or credit in any account from which you instruct us to make a transfer. All transfers must be in U.S. Dollars.

If any Connected Accounts are money market deposit accounts or savings deposit accounts, certain types of withdrawals from those accounts, including payments and transfers, are limited for any specified period. The



## e-Banking Services Agreement

specified period for money market deposit accounts is the monthly statement period. The specified period for savings deposit accounts is a calendar month. The kinds of withdrawals covered by this limitation are those made by means of preauthorized or automatic transfers and payments or telephone agreement, order or instruction. A limit on the total number of these kinds of withdrawals may be made by check, draft, debit card, or similar order payable to third parties.

Transfers are not final at the time we receive your instructions, but we will begin to process them promptly. You should allow at least one (1) Business Day for the transfer to post to your account(s). Please note that for external fund transfers, the time for completion and posting of the transfer may be extended due to processing times and delays by other financial institutions and intermediaries and for transfers to other countries. We will not be responsible for any delay regarding a funds transfer due to any processing time or delay of other financial institutions and intermediaries or relating to a transfer of funds to another country.

Each transfer will be posted to any Customer Account from which it is initiated, and to any other Customer Account that is involved in the transaction, on the Business Day on which the transfer is completed. Each transfer you make on a non-Business Day, or after our online banking cut-off time on any Business Day, will be considered initiated on the following Business Day. Our online banking cut-off time is 5:00 p.m. Central Time.

If you want to change transfers you have instructed us to make, you must notify us before we have started processing the transaction. This applies to both individual transactions as well as preauthorized recurring transactions. The normal way to do this is for you to access the appropriate function in our Online Banking Services no later than the day before the Business Day the transfer is scheduled to be made, and either delete it or make the change.

You may also call or write us at the phone number or address listed in the Section titled "Notice", or by using any method which we provide for changing transfers. If you call or write, you must do this in time for us to receive your request three (3) Business Days or more before the transfer is scheduled to be made. If you call, we may also require you to put your request in writing and have it delivered to us within fourteen (14) days after you call.

5.4. External Funds Transfer Services. We may allow you to Connect external accounts (accounts held at depository institutions other than us) that you own or for which you have unlimited authority to initiate deposits and withdrawals. By Connecting an external account, you authorize us to initiate automated clearinghouse debit or credit entries to such external account. By Connecting an external account you also certify that you are an owner or authorized on the external account with unlimited withdrawal or deposit rights on the depository institution's records, to originate transfers to or from the account. You agree to provide us written documentation of your ownership of or unlimited authority regarding such external Connected Accounts, as applicable, upon our request. You are required to notify us if any external Connected Account is closed or your withdrawal rights are limited or removed so such external Connected Account may be un-Connected from Online Banking Services. You acknowledge that all transactions involving external Connected Accounts must comply with Applicable Law. The offsetting entries for any transfer to or from an external Connected Account must be made to or from a Connected Customer Account. Transfers between external Connected Accounts are prohibited. When initiating a transfer to or from an external Connected Account, if you are not an owner of such account, you certify that you have full authority to initiate such transfer and that such transfer has been authorized by any and all necessary Persons.

5.5. Mobile Banking Services. We may allow you to access certain of our Online Banking Services through a mobile or smartphone software application or other Required Technology. Certain of our Online Banking Services may be unavailable or limited when you use Online Banking Services with a mobile device or smartphone. Please note you will have to comply with any minimum hardware and software compatibility requirements established by any software vendor in connection with any such mobile or smartphone software application or other Required Technology. We may also require you to register each mobile device, smartphone, or other Required Technology with which you intend to access Mobile Banking Services. As with any other Required Technology, you are required to comply with the provisions of any and all license agreements regarding your use of any mobile or smartphone software application used to access Mobile Banking Services. Our Security Devices and Procedures may also require you to provide certain account information, login information, or PIN numbers to access Mobile Banking Services. You understand and agree that we cannot control your physical environment to prevent

## e-Banking Services Agreement

interception of the contents of transmissions to and from your mobile device, smartphone, or other Required Technology in connection with your use of Mobile Banking Services. You understand that if you fail to use adequate internal Security Devices and Procedures, as required by this Agreement, your use of a mobile device, smartphone, or other Required Technology may not be secure. By accessing Online Banking Services through Mobile Banking Services, you assume any and all risk associated with your use of mobile devices, smartphones, or other Required Technology in connection with Online Banking Services, including but not limited to the risk of interception of the contents of your transmissions to and from our systems. You understand and agree that for any mobile device, smartphone, or other Required Technology that you want to use with Mobile Banking Services, you must enable and use a key lock, passcode, or other software locking process to restrict use of such Required Technology. You understand and agree that each time you finish your use of Mobile Banking Services you are required to completely exit and terminate the software application or any other program you used to access Mobile Banking Services. You also understand and agree that you are required to notify us immediately if any mobile device, smartphone, or other Required Technology used to access Mobile Banking Services is lost or stolen. To the maximum extent permitted by Applicable Law, we will not be responsible for your failure to use any of the foregoing Security Devices and Procedures.

5.7. Online Statement Services. We may allow you to elect to receive periodic statements for your Connected Customer Accounts electronically through Online Banking Services. You may make such election by logging into Online Banking Services, accessing the "Delivery" feature, and following the instructions provided.

By initiating an electronic request through Online Banking Services for delivery of Online Statements, you (a) consent to receiving the electronic format of periodic statements and agree that we may stop delivering paper periodic statements by mail for the Customer Accounts indicated in your electronic request, (b) you agree that you are able to view and download Adobe PDF files, and (c) you are required to update and download any software updates or other Required Technology in connection with any upgrade or modification to the PDF file format.

For joint account holders, any consent or withdrawal of consent to receive Online Statements by any one of you will be effective for all of you. By initiating a request to receive Online Statements you also agree to electronically receive any communication normally provided in the periodic statements, including contract change in terms, our Customer Information Privacy Notice, and other notices that may be required by law.

If you have "Combined Statement" accounts, then you have chosen to receive the transaction detail for those accounts on one "Full Activity" periodic statement. If you want to receive Online Statements for any account that appears in a Full Activity periodic statement you must agree to receive the Online Statement not only for the account you have chosen, but also for all accounts that appear in the Full Activity periodic statement. If you desire not to receive Online Statements for all accounts listed in a Full Activity periodic statement, you must contact us to request that an account be removed from the Full Activity periodic statement, and after we have processed your request in our ordinary course of business, you will receive a separate periodic statement for each of the removed accounts. In addition, by withdrawing your consent to receive Online Statements for any account that appears in a Full Activity periodic statement, you will also withdraw your consent and remove all of the Combined Statement accounts that appear in the "Full Activity" periodic statement from the Online Statements service. If, in the future, you link additional accounts to the Full Activity periodic statement, then your consent to receive Online Statements acts as your consent to receive Online Statements for those additional Combined Statement accounts as well.

If you receive Online Statements for a Full Activity periodic statement and later remove an account from appearing in the Full Activity periodic statement, your consent to receive Online Statements for the Full Activity periodic statement is also your consent to receive Online Statements for any account subsequently removed from the Full Activity periodic statement.

If you open a new account after the date you elected to consent to receive any Online Statements, we will automatically set that account up for the Online Statements service unless you instruct us otherwise by sending us a secure message through the "Messages" feature of Online Banking Services, or by calling us at the number listed in the Section titled "Notice". When you add accounts to a Full Activity periodic statement, you may have chosen to display summary balance information for certain other stand-alone accounts in the Full Activity periodic statement. Unless you have consented to receive Online Statements for such stand-alone accounts, you will continue to receive

## e-Banking Services Agreement

a separate periodic paper statement explaining the transaction detail for those accounts. If you have chosen to electronically receive a Full Activity periodic statement that previously displayed summary balance information for stand-alone accounts, then your Online Statements will contain such summary balance information. If you choose to withdraw your consent and stop receiving Online Statements for the Full Activity periodic statement, then you will no longer receive that summary balance information via Online Statements.

For stand-alone accounts, you may currently receive a periodic paper statement with transaction detail for that statement period only for that account. You may enroll to receive an Online Statement in lieu of your paper periodic statement for a stand-alone account if the account is a personal checking, savings, or money market account with us, and you consent to receive Online Statements for that account.

If you have consented to receive Online Statements, you must access Online Banking Services through the Web Site to get your Online Statements. You may receive notification via email that one of your accounts has a new statement available for viewing.

If you consent to the delivery of Online Statements for an account, we will no longer provide you with periodic paper statements for that account (except for the next periodic statement you receive after enrolling in Online Statements will be sent by mail and will also be available online.) You may obtain paper copies of your Online Statements by printing them yourself from the Web Site or by saving a copy to your device and printing later. You may also request a copy from us by calling us at the number listed in the Section titled "Notice", but you may be charged a fee when we mail you a copy of your periodic statement.

You may withdraw your consent to receive Online Statements at any time by changing your Online Statement preferences through the "Delivery" feature of Online Banking Services. You may also send us a message through our Online Banking system by accessing the "Messages" feature, or by calling us at the number listed in the Section titled "Notice". Also, if this Agreement is terminated or we deactivate the Master User's login account (for any reason), we will begin sending you paper periodic statements beginning in the month following the month of termination or deactivation.

If your email address changes, you must contact us and provide us with your updated e-mail address. You may update your e-mail address online by accessing the "User" link through Online Banking Services. You may also update your email address by calling us at the number listed in the Section titled "Notice".

If you want to receive Online Statements again after you have withdrawn your consent for Online Statements, you must complete the consent process again and reconfirm your ability to access Online Statements through Online Banking Services.

5.8. ACH Transfer Services. Your transfers and payments to external accounts outside the Bank may be completed by automated clearing house entries. You understand and agree that you are prohibited from using Online Banking Services to initiate a payment from an external account outside Bank to a Connected Account unless you own or have unlimited transfer and withdrawal authority with respect to such external account. You agree to be bound by the ACH Rules with respect to all such transfers and payments. You will be considered the originator of your automated clearing house entries under the ACH Rules. You agree not to initiate automated clearing house entries that violate Applicable Law, including but not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800)540-OFAC. Except for the entries we create to carry out your transfer and payment requests, this Agreement does not allow you to originate any other types of automated clearing house entries. We may terminate or suspend this Agreement immediately if we believe you have breached the ACH Rules. You agree that we may audit your compliance with this Agreement, the ACH Rules, and any other as requested from time to time. By initiating a funds transfer through Online Banking Services, you certify that such transfer complies in all respects with Applicable Law and the ACH Rules.

You shall, not later than the settlement time as established in the ACH Rules, cause immediately available collected funds to be deposited in the applicable Connected Customer Account in satisfaction of credit entries initiated by you

## e-Banking Services Agreement

through us. You authorize us to debit the applicable Connected Customer Account on the applicable settlement date in the amount of each entry initiated by you.

With regard to credit entries subject to Article 4A of the UCC: (a) credit entries may be transmitted through the ACH system governed by the ACH Rules; (b) as between you and any Person other than us, your rights and obligations concerning credit entries shall be governed by and construed in accordance with the laws of the State of Arkansas; (c) credit given by a receiving depository financial institution to a receiver for credit entries shall be provisional until such receiving depository financial institution has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in the ACH Rules, and (d) in the event any receiving depository financial institution does not receive such payment for credit entries, such receiving depository financial institution shall be entitled to a refund from the receiver in the amount of the credit to the receiver's account, and the originator will not be considered to have paid the amount of the credit entry to the receiver.

5.9. **Bill Pay Services.** During the Term of this Agreement, we may allow you to pay bills by electronic transfer or check to any Person whom we approve and you designate as a payee in any bill payment request sent through Online Banking Services. You may access our Bill Pay Services after logging into Online Banking Services by clicking on the Bill Payment link on the left side of the screen or through a mobile device or smartphone through a software application that we may make available to you in our sole discretion. You will then be directed to the web site of our third party bill payment provider. You will establish your list of payees by following the on-screen instructions and help features and instructions on the provider's web site. You may add a new fixed or recurring payment for any payee but only if the payee is on your authorized list of payees and has been approved by us. If the payee is not able to receive electronic payments, a paper check may be generated for payment. The check will carry your account number and will clear directly through the Customer Account you designate. A unique check number will appear on your statement for easy recognition and later viewing. We reserve the right to refuse the designation of a payee for any reason. We are not responsible if a bill payment request can not be made due to incomplete, incorrect, or outdated information provided by you regarding a payee or if you attempt to pay a payee that is not on your authorized payee list.

We will process variable payments so that the payment is received on the Business Day you or the payee's statement designates as the due date, as applicable; provided the payment request is received prior to the applicable cut-off time. The current cut-off time set by us is 5:00 p.m. Central Time. Variable bill requests received after the cut-off time, or at any time on a non-Business Day may be processed on the next Business Day. We reserve our right to change the cut-off time by giving you notice of the new cut-off time. FOR RECURRING PAYMENT REQUESTS, IF YOU DESIGNATE A PAYMENT DATE OF THE 28TH THROUGH THE 31ST OF A MONTH, THE PAYMENT WILL ALWAYS BE SCHEDULED TO ARRIVE ON THE CALENDAR DAY YOU SELECTED UNLESS THAT MONTH DOES NOT HAVE THE SAME NUMBER OF DAYS IN IT. THEN IT WILL BE SCHEDULED TO ARRIVE ON THE FIRST DAY OF THE FOLLOWING MONTH. Recurring payments will be processed to be received on the payment dates you have designated, unless such payment date falls on a non-Business Day resulting in your payment being processed to arrive on the NEXT Business Day. BASED ON THE LOCATION AND MANNER IN WHICH PAYMENT IS TO BE SENT, YOU MUST INITIATE YOUR BILL PAYMENT REQUESTS A REASONABLE AMOUNT OF TIME PRIOR TO THE ACTUAL DUE DATE TO PROVIDE ENOUGH TIME FOR YOUR PAYMENT TO REACH THE PAYEE PRIOR TO THE ACTUAL DUE DATE. SUCH REASONABLE TIME SHALL NOT BE LESS THAN (A) FIVE (5) BUSINESS DAYS FOR EACH PAPER BILL PAYMENT (RECURRING OR VARIABLE) OR (B) THREE (3) DAYS FOR EACH ELECTRONIC PAYMENT. IT IS YOUR RESPONSIBILITY TO SCHEDULE/ACTIVATE PAYMENTS IN ADVANCE, WHETHER RECURRING OR ONE-TIME PAYMENTS. WE WILL NOT BE RESPONSIBLE FOR LATE PAYMENTS WHEN YOU FAIL TO TIMELY INITIATE PAYMENTS PRIOR TO THE ACTUAL DUE DATE. Due to circumstances beyond our control, some payees take longer to post payments than others. We may send out your first payment up to eight (8) Business Days in advance of the payment date, and thus the amount of your check or electronic draft will be deducted from your Connected Account sooner than a payment/payee relationship that has already been established. After your first payment has posted, you will have a better understanding of how much time to allow for each payee. You must select a payment date that is at least three (3) Business Days before the actual due date reflected on your payee statement. If your actual due date falls on a non-Business Day you must select a payment date that is at least one Business Day before the actual due date. Payment dates should be prior to any late date or grace period. When you have scheduled a payment, you authorize us to debit



## e-Banking Services Agreement

your Connected Account and remit funds on your behalf. You certify that your Connected Account is an account from which you are authorized to make payments and any payment you make will be debited from your Connected Account. You also authorize the credit of returned payments from payees using the Bill Pay Service. We will incur no liability if we are unable to complete any payments initiated because of any of the following: (a) you have not provided us with the correct payment account information, or the correct name, address, phone number, or account information for the payee upon initiation of the payment; (b) circumstances beyond our control (such as, but not limited to, fire, flood, or interference from an outside force) prevent us from properly executing the transaction; (c) the payment-processing center is not functioning properly; or (d) the payee does not accept or returns the payment for any reason.

You agree to have available and collected funds on deposit in the applicable Connected Account you designate in amounts sufficient to pay for all bill payment requests, as well as, any other payment obligations you have to us. We reserve the right, without liability, to (a) reject or reverse a bill payment request or (b) suspend your use of the Bill Payment Services, if you fail to comply with this requirement or any other terms or conditions of this Agreement. If you do not have sufficient funds in the funding Connected Account and we have not exercised our right to reverse or reject a bill payment request, you agree to pay for such payment obligations on demand. You further agree that we, at our sole option, may charge any of your accounts with us to cover such payment obligations. We reserve the right to select the method in which to remit funds through the Bill Pay Service on your behalf to your payee. Any bill payment request can be changed or canceled, provided you access the Bill Pay Service prior to the cut-off time on the Business Day prior to the payment date you designate for the bill to be paid. Additionally, payments cannot be made to any federal or state governmental agency.

You must have enough available money or credit in any account from which you instruct us to make a bill payment request. All bill payment requests must be in U.S. Dollars. For security reasons, we may implement limits on the number or amount of bill payment requests you can make using our Bill Pay Services. In addition, a single bill payment request cannot exceed \$9,999.99 and the collective total for one (1) Business Day cannot exceed \$19,999.99. If you desire to make a transaction in excess of such limits, after receiving a written request from you, we may, in our sole and absolute discretion, modify such limits.

In using the Bill Pay Service, you understand that we and/or the United States Postal Service may return payments for various reasons, such as, but not limited to, the account number is not valid; the Bill Pay Service is unable to locate the account; or payee account is paid in full.

5.10. Remote Deposit Capture Services. We may provide Remote Deposit Capture Services to you during the Term of this Agreement. We may establish certain criteria that customers are required to meet prior to being permitted to use Remote Deposit Captures Services, and we reserve the right to prohibit any Person from using Remote Deposit Capture Services in our sole and absolute discretion. As used in this Section, "Files" means electronic image and data files submitted by you to us in connection with the Remote Deposit Capture Services.

Through our Remote Deposit Capture Services, we may allow you to transmit Files to us for us to process for payment through the Federal Reserve System or other clearing networks and depositing into a Customer Account. We may prepare image replacement documents to facilitate the deposit and collection of items. You will be responsible for the accurate scanning of checks and for successfully transmitting accurate, complete, balanced, and readable Files to us. You will be required to create Files using a TWAIN compliant flatbed scanner or other Required Technology, as we determine from time to time.

You shall cause the image quality of each File provided by you to satisfy the requirements of Applicable Law. You shall cause each check to be properly endorsed by all required Persons prior to conversion of the check into a File. You shall place an "electronically presented" legend and such other information required by us on the rear of each check immediately after each check shall be scanned. You shall not transmit Files to us that contain information which duplicates information you previously provided to us or that contains information with respect to checks that you have previously transferred to, deposited with, or attempted to clear through a third party. You shall not transfer to, deposit with, or attempt to clear through a third party or otherwise directly or indirectly ask any third party to make payment based on, the checks reflected in the Files transmitted to us. You shall ensure that the Files accurately represent all of the information on the front and back of checks, including all endorsements. You shall

## e-Banking Services Agreement

maintain any original checks for which a File has been sent to us in a secure environment and shall destroy the original checks within fourteen (14) days after successful transmission to us (unless doing so would be a violation of Applicable Law). You will be solely responsible for any liability resulting from further negotiation or transfer of any checks for which a File has been submitted to us. All Files transmitted by you to us shall be the result of bona fide business transactions with non-affiliated third parties and no such Files shall be directly or indirectly, for the benefit of any third party. You shall not transmit Files that represent non-cash items. You shall transmit Files that represent items drawn only on U.S. banks. You must complete transmission of Files to us prior to 5:00 p.m. WEST MEMPHIS, AR time, in order for such transactions to be processed on the same day. We reserve the right to reject any File for any reason. We will give you notice of any rejected or returned File. We are authorized to debit or credit the applicable Customer Account for Files that are returned to us. We have no obligation to pay you interest on the amount of any returned File debited from the Customer Account. A File shall not be received by us until shown as a deposit into the applicable Customer Account according to our records.

You understand and agree that substitute checks will be the legal equivalent of the original checks for all purposes as provided in the federal Check Clearing for the 21st Century Act. Pursuant to such Act, we will be deemed to make certain warranties and will have certain indemnity responsibilities to third parties with respect to Files. To the extent that we shall be required to pay any warranty claim or indemnify any third party in respect of Files, you shall reimburse us upon demand. Our right of reimbursement shall be absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment or right of recoupment.

5.11. Business Transfer Authorization Services. This Section applies to transactions regarding Business Accounts. We may provide Business Transfer Authorization Services during the Term of this Agreement in connection with certain transactions made regarding a Business Account. Through our Business Transfer Authorization Services, we may allow the Master User to specify one or more individuals who are required to approve certain transactions through Online Banking Services regarding a Business Account. The Master User may also set per-transaction and per-day limits on the amounts of transactions that the authorizing individual may approve. The Master User's designation of an authorizing individual will require certain identifying and other information regarding such authorizing individual, which may include without limitation, name, address, telephone number, and email address. In addition, designation of an authorizing individual may require assignment of a mobile authorization code to such authorizing individual.

After proper designation of all authorizing individuals, such authorizing individuals will receive a notice from us in the event a transaction is initiated that requires their approval. Such notice may be sent via email, text message, phone call, or other means we allow. In order to approve such transactions, the authorizing individual will be required to comply with certain Security Devices and Procedures required by us, which may include, without limitation, submitting a mobile authorization code, password, or passcode to us via mobile device, smartphone, personal computer, email, phone call, text message, or other Required Technology. You understand and agree that, as with other Security Devices and Procedures, anyone with access to any of the Security Devices and Procedures issued to authorizing individuals will be able to approve transactions that would otherwise be subject to approval by an authorizing individual.

WE CANNOT CONTROL AND WILL NOT BE RESPONSIBLE FOR, AND YOU AGREE TO INDEMNIFY AND HOLD US HARMLESS FROM, ANY LIABILITY RELATING TO ANY FAILURE BY YOU, THE MASTER USER, ANY SUB-USER, AND ANY OTHER PERSON TO (A) MAINTAIN THE SECURITY OF AND COMPLY WITH SECURITY DEVICES AND PROCEDURES OR (B) MAINTAIN THE PHYSICAL SECURITY OF THE SYSTEMS USED BY AUTHORIZING INDIVIDUALS TO APPROVE BUSINESS TRANSACTIONS.

## **6. Individual Agreement for Online Banking Services**

We do not have joint agreements for our Online Banking Services. If you are an individual or sole proprietor, you are the only customer under this Agreement. However, any of the accounts to which you have access through our Online Banking Services may be jointly owned with, or joint obligations with, others. If joint account owners or authorized individuals each obtain our Online Banking Services—meaning that each of owner or authorized individual will have separate access codes—this will be identified as two separate agreements for Online Banking Services.

## **7. Term.**

This Agreement, as amended from time to time, will stay in effect until it is amended or terminated. Either Party may terminate this Agreement by providing written notice thereof to the other Party. We will ordinarily send you notice of any termination, but we are not required to do so unless Applicable Law requires such notice. Once we terminate this Agreement, no further or pending transfers will be made, including but not limited to any transfers scheduled in advance or any preauthorized recurring transfers. We may routinely terminate Online Banking Services for customers that have not used the service for sixty (60) days. Termination shall be effective as to prospective transactions only, and shall not alter the rights of the Parties as to transactions prior to the effective date of termination. In the event we terminate this Agreement, we shall have no responsibility to complete any previously initiated transfers. You may terminate this Agreement at any time by notifying us in writing. However, in the event you terminate this Agreement, any instructions from you to make transfers will continue in effect until we have received your written notice of termination and have had a reasonable opportunity to act upon it. Once we have acted upon your notice, no further or pending transfers will be made, including but not limited to any transfers scheduled in advance or any preauthorized recurring transfers.

## **8. Fees and Expenses.**

You are required to pay us for any and all Fees and Expenses incurred in connection with Online Banking Services. Fees and Expenses will be charged to you or any of your Customer Accounts in accordance with the fee schedule established by us, as amended from time to time and published on the Web Site or sent to you otherwise. Fees and Expenses are payable monthly, and you hereby authorize us to withdraw the Fees and Expenses from any Customer Account. Fees and Expenses do not include applicable taxes, if any, which are your responsibility. In the event of an overdraft in any Customer Account, you are required to pay the overdraft and any Fees and Expenses relating to such overdraft.

## **9. Connected Accounts and Periodic Statements.**

We will tell you which types of Customer Accounts qualify for our Online Banking Services. We may reject or disqualify any account from use with Online Banking Services in our sole and absolute discretion. Our records must reflect that you are a named owner of or an individual with unlimited authority to make deposits, withdrawals, and transfers regarding the account for it to qualify. The use of Online Banking Services in connection with any account requiring more than one signature for withdrawal, draw or transfer of funds will be subject to additional restrictions or limitations established by us from time to time in our sole and absolute discretion. You agree to provide us with any authority we require before we permit access to any qualifying account. You are required to maintain at least one Connected Account to use Online Banking Services. In the event you desire that a Connected Account no longer be used in connection with Online Banking Services, you must promptly notify us and request such Connected Account be un-Connected. We will process your request in the ordinary course of business. All checks and other cash items processed by us pursuant to this Agreement shall be deposited into the Connected Accounts. The periodic statement(s) issued by us or otherwise made available to you for the Connected Accounts will reflect entries credited and debited to the Connected Accounts. In the event you believe there is a discrepancy or error in the information in any periodic statement, you should notify us within the time period set forth in the account agreement between you and us with respect to the applicable Connected Account. If you fail to notify us regarding a discrepancy or error within the applicable time period, our liability with respect to any such discrepancy or error may be reduced or discharged in accordance with Applicable Law. Please note your liability regarding review of periodic statements may be different under the Electronic Funds Transfer Act and related federal regulations if the applicable Connected Account is a Consumer Account. See the Section titled “In Case of Errors or Questions about Transactions Involving Consumer Accounts” for additional provisions regarding Consumer Accounts. You are solely responsible for monitoring the Connected Accounts. Any account or other agreement between you and us

## e-Banking Services Agreement

regarding the Connected Accounts is hereby incorporated into this Agreement. You agree to inspect all entries received or initiated through the Online Banking Services, and to notify us promptly of any errors.

### **10. Master User and Sub-Users.**

You must designate one (1) Master User. We may require such designation to be in writing. Your designation of the Master User may be amended or revoked from time to time by sending written notice to us at least seven (7) days prior to the effective date of any such amendment or revocation. The Master User shall be authorized to act on behalf of you with regard to the Web Site and Online Banking Services. The Master User may designate individuals as Sub-Users if such individuals are over the age of eighteen (18) years old. You and the Master User will be responsible for establishing adequate internal Security Devices and Procedures relating to your use of the Web Site and Online Banking Services, accepting delivery of software, system-wide configuration of bank accounts, establishing levels of authority of Sub-Users, and establishing and distributing Security Devices and Procedures. You will be bound by and responsible for the actions of the Master User and all Sub-Users with respect to the Web Site and the Online Banking Services. The Master User will also be responsible for all use of the Online Banking Services by Sub-Users. You agree that the authority given to a Sub-User by designation of such Sub-User by the Master User will supersede any conflicting provision in any agreement between you and us to the extent such provision would limit or restrict the authority given to such Sub-User by the Master-User.

You hereby represent, warrant, and covenant, as of the date of this Agreement and upon designation of each Sub-User, that (a) you have investigated any and all Sub-Users as much as you deem necessary, and you have made an informed decision to designate such Sub-Users; (b) all Sub-Users are able to properly use any and all Security Devices and Procedures, the Web Site, and the Online Banking Services; and (c) none of the Master User, the Sub-Users, or your employees are a national of a designated blocked country or "Specially Designated National", "Blocked Entity", "Specially Designated Terrorist", "Specially Designated Narcotics Trafficker", or "Foreign Terrorist Organization", as defined by the United States Office of Foreign Assets Control.

**YOU HEREBY AGREE TO INDEMNIFY AND HOLD US HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY IN ANY WAY RELATED TO THE ACTIONS OF THE MASTER USER AND ANY AND ALL SUB-USERS WITH RESPECT TO ONLINE BANKING SERVICES.**

In the event you want to remove or limit the authority of a Sub-User, the Master User may login to the Online Banking Services and modify the authorization designations applicable to such Sub-User. You also may call or write us at the address and phone number listed in the Section titled "Notices" to request we remove or modify a Sub-User's authority to use Online Banking Services. However, any time you request to remove or limit the authority of a Sub-User, we must be provided a reasonable time before any such modifications may be made. We may limit or restrict certain Online Banking Services to allow only the Master User to use such services.

### **11. Bank Security Devices and Procedures.**

We will control access to the Online Banking Services through the use of Security Devices and Procedures we establish and amend from time to time. You are required to comply with all Security Devices and Procedures required by us or this Agreement. We reserve the right to reject any transaction or service request that is not made in accordance with our required Security Devices and Procedures. You acknowledge that our required Security Devices and Procedures shall be deemed commercially reasonable in all respects. You are required at all times to use a web browser that supports 128-bit SSL minimum encryption. You are also required to change passwords for the Master User and each Sub-User on a regular basis no less frequent than every one hundred eighty (180) days. You are prohibited from using your computer, browser, or other Required Technology to store passwords, passcodes, or Security Devices and Procedures used to authorize or authenticate your use of Online Banking Services. In the event you fail to change passwords in accordance with this Agreement, our liability to you or any third party for any loss or damage resulting from, or arising out of, your failure to change passwords may be limited or discharged pursuant to this Agreement or Applicable Law. You understand that our required Security Devices and Procedures are not for the purpose of detecting errors in transmission or content of a payment order or other request not initiated by us. You acknowledge that anyone with knowledge of the Security Devices and Procedures will be able to use Online Banking Services and act on your behalf. You are required to inform all Sub-Users that Security Devices and Procedures should not be shared with any Person and maintain a secure environment to ensure against Unauthorized Use, including but not limited to securing physical access to the terminals or devices used for



# e-Banking Services Agreement

services when the Master User or a Sub-User has logged on to use Online Banking Services or otherwise. Due to emerging technologies and ensuing changes in Security Devices and Procedures, we reserve the right to supplement or amend our Security Devices and Procedures from time to time upon reasonable notice to you as published on the Web Site or otherwise. If we shall in good faith believe that changes in our Security Devices and Procedures shall be immediately necessary to reduce the risk of Unauthorized Use, we may initiate such changes immediately and give notice to you as soon as practicable. You acknowledge and agree that, notwithstanding anything to the contrary set forth in any agreement, in matters of Unauthorized Use, reasonable notice may be less than one day or even, in some cases, notice after the fact. You acknowledge receiving an electronic copy of our current Security Devices and Procedures.

If you are a corporation, partnership, limited liability company, association or some other form of business entity, we will issue Security Devices and Procedures to the Master User. It is your responsibility to ensure that Security Devices and Procedures are provided only to persons you authorize. You represent to us that the Master User and each Sub-User (to the extent such Sub-User has been given the ability through Online Banking Services to initiate transactions) has general authority from you to give us instructions to perform transactions using our Online Banking Services.

Each person using the Security Devices and Procedures issued to you may have the ability to: (a) make transfers from qualifying accounts, regardless of the dollar amount of the transaction; (b) make transfers regardless of whether he/she is otherwise an authorized signer or an obligor on any accounts that are accessed; (c) obtain information that we make available about Connected Accounts; (d) obtain other services or perform other transactions that we authorize or allow; and (e) allow anyone else to use those Security Devices and Procedures to make transfers or obtain information or other services.

None of our employees or employees of our affiliates will contact you via telephone or e-mail requesting your access codes. If you are contacted by anyone requesting this information, please contact us immediately at our phone number shown in the Section titled "Notice".

## **12. Customer Security Devices and Procedures.**

In addition to the Security Devices and Procedures required by us, you are required to establish and maintain internal Security Devices and Procedures sufficient to prevent any Unauthorized Use, including but not limited to (a) running antivirus software before transmitting data to us or to or through the Web Site, (b) maintaining the security of your internal communications networks, and (c) ensuring a secure physical environment when using Online Banking Services. You understand and agree that your failure to do so may result in Unauthorized Use. You may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for you to execute virus scanning for each file manually. You are required to update your antivirus software regularly and in no event less often than once every month, and at all times, to act in accordance with Applicable Law. You are further required to conduct an annual audit to ensure that your information or information obtained by you from third parties is protected by Security Devices and Procedures that include adequate levels of: (1) physical security to protect against theft, oral or electronic eavesdropping, tampering or damage, (2) personnel and access controls to protect against Unauthorized Use, and (3) network security to ensure secure capture, storage, transmission, and distribution of financial information. You must provide proof of your security audits to us upon request. Any such information provided to us shall be kept confidential as required by Applicable Law. We may cease providing the Online Banking Services if we in our sole and absolute discretion determine that your internal Security Devices and Procedures are inadequate.

In addition to protecting your Security Devices and Procedures, you should also take precautions to protect your personal identification information, such as your driver's license, social security number, or tax identification number. This information by itself or together with account information may allow unauthorized access to your accounts. You should also protect and secure all information stored in any personal computer or other equipment you use to access our Online Banking Services.

## **13. Your Liability for Authorized Transactions**

Our system supporting our Online Banking Services is designed so that it may be operated only upon (a) entry of valid login information and passwords and (b) compliance with any other Security Devices and Procedures we have

## e-Banking Services Agreement

established. You are liable for all transactions that you make or authorize, even if the person you authorize exceeds your authority. If you have given someone access to the login information, passwords, or other Security Devices and Procedures we provided to you and you want to terminate that person's authority, you must notify us that transactions by such person are no longer authorized. We may have to change your access codes, login information, passwords, or other Security Devices and Procedures or take additional steps to prevent further access by such person. We will comply with any such request after having a reasonable time to process such request.

YOU UNDERSTAND AND AGREE THAT WE ARE UNABLE TO DETECT ANY ERRORS BY YOU THAT RESULT FROM YOUR INCORRECTLY ENTERING IN ANY ACCOUNT NUMBER OR AMOUNT IN CONNECTION WITH A FUNDS TRANSFER REQUEST. YOU UNDERSTAND AND AGREE THAT WE AND ANY OTHER PARTY PROCESSING A FUNDS TRANSFER REQUEST FROM YOU MAY RELY ON THE NUMBER IN YOUR REQUEST THAT IDENTIFIES THE AMOUNT OF FUNDS TO BE TRANSFERRED, THE BENEFICIARY, AND ANY BENEFICIARY'S BANK OR INTERMEDIATE FINANCIAL INSTITUTIONS IDENTIFIED IN YOUR REQUEST, EVEN IF SUCH NUMBERS ARE INCORRECT OR DO NOT CORRESPOND TO THE NAME OF THE BENEFICIARY OR THE FINANCIAL INSTITUTION. WE AND ANY OTHER RECEIVING FINANCIAL INSTITUTION HAVE NO OBLIGATION TO DETERMINE WHETHER A NAME AND NUMBER IDENTIFY THE SAME PERSON OR INSTITUTION. YOU ACKNOWLEDGE THAT PAYMENT OF A FUNDS TRANSFER REQUEST INITIATED BY YOU MIGHT BE MADE BY US OR THE BENEFICIARY'S BANK ON THE BASIS OF AN IDENTIFYING OR BANK ACCOUNT NUMBER EVEN IF IT IDENTIFIES A PERSON DIFFERENT FROM THE NAMED BENEFICIARY. WITH RESPECT TO INCOMING TRANSFERS THAT DO NOT INCLUDE AN ACCOUNT NUMBER RECOGNIZABLE TO US; WE MAY RETURN THE TRANSFERRED FUNDS TO THE SENDING FINANCIAL INSTITUTION WITHOUT INCURRING ANY LIABILITY TO YOU.

#### **14. Notify us IMMEDIATELY for Unauthorized Transactions**

Tell us AT ONCE if you believe your login information, passwords, or other Security Devices and Procedures we provided to you have been lost, stolen or otherwise compromised or used without your authorization. Quickly telephoning us is the best way of reducing your possible losses.

You may call us at 870-735-8700 or write to us at FIDELITY NATIONAL BANK, P.O. Box 2288 WEST MEMPHIS, AR 72301. If we provide you with another electronic means of notifying us for this specific purpose, you may use that means. However, DO NOT use a general e-mail service or other electronic means that we have not specifically authorized for this purpose.

#### **15. Unauthorized Use.**

This Section shall apply to both Business Accounts and Consumer Accounts, except to the extent your liability regarding a Consumer Account may be limited by Applicable Law, including but not limited to the Electronic Funds Transfer Act and related federal regulations.

YOU SHALL NOT PERMIT ANY UNAUTHORIZED USE. YOU ARE REQUIRED TO PROMPTLY NOTIFY BANK IN WRITING IF YOU HAVE ACTUAL KNOWLEDGE THAT THE SECURITY OF THE WEB SITE OR THE ONLINE BANKING SERVICES HAS BEEN COMPROMISED OR THAT THERE HAS BEEN ANY UNAUTHORIZED USE. YOU, THE MASTER USER, AND EACH SUB-USER, AND ANY OF YOUR OTHER AGENTS OR EMPLOYEES SHALL MAINTAIN THE HIGHEST POSSIBLE LEVEL OF CONFIDENTIALITY WITH REGARD TO ALL SECURITY DEVICES AND PROCEDURES. YOU ARE REQUIRED TO TAKE ALL STEPS NECESSARY TO PREVENT ACCESS TO SECURITY DEVICES AND PROCEDURES BY UNAUTHORIZED PERSONS. WE SHALL HAVE NO LIABILITY FOR YOUR INTERNAL SECURITY DEVICES AND PROCEDURES, AND YOU ASSUME FULL RESPONSIBILITY FOR (A) MAINTAINING THE CONFIDENTIALITY OF THE SECURITY DEVICES AND PROCEDURES; (B) THE ACTIONS OF ALL PERSONS USING THE SECURITY DEVICES AND PROCEDURES ISSUED TO YOU; AND (C) ALL UNAUTHORIZED USE. YOU AGREE TO HOLD US HARMLESS AND INDEMNIFY US AGAINST ANY AND ALL LIABILITIES ARISING OUT OF ANY UNAUTHORIZED USE. YOU SHALL BE BOUND BY ANY USE OF THE ONLINE BANKING SERVICES THAT IS PROCESSED BY US IN COMPLIANCE WITH OUR REQUIRED SECURITY DEVICES AND PROCEDURES WHETHER AUTHORIZED OR RESULTING

## e-Banking Services Agreement

FROM UNAUTHORIZED USE, INCLUDING BUT NOT LIMITED TO ANY PAYMENT ORDER SENT IN THE NAME OF CUSTOMER.

Notwithstanding the foregoing, we agree that you will not be responsible for transactions which occur after you have notified us to block the login information, passwords, or other Security Devices and Procedures that were used to perform the transaction, and we have had a reasonable opportunity to do so. Thus, the sooner you notify us of a problem, the better you can minimize your losses. You may notify us at the telephone number and addresses listed in the Section titled "Notice".

### **16. In Case of Errors or Questions About Transactions Involving Consumer Accounts.**

Your liability regarding unauthorized transfers and errors involving Consumer Accounts may be limited by the Electronic Funds Transfer Act and related federal regulations, as further set forth in the Electronic Funds Transfer Initial Disclosure provided to you when you opened your Consumer Accounts. You may request a copy of such notice by contacting us pursuant to the methods listed in the Section titled "Notice".

Call us at 870-735-8700 or write us at FIDELITY NATIONAL BANK, PO BOX 2288, WEST MEMPHIS, AR 72301 as soon as you can, if you think your periodic statement is wrong or if you need more information about a transfer covered by this Agreement which is listed on the statement.

We must hear from you within the time periods set forth in the Electronic Funds Transfer Initial Disclosure or your liability may be increased. Your notice should include the following: (a) your name and account number (if any); (b) a description of the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error and why you need more information; and (c) the dollar amount of the suspected error. If you tell us orally, we may require that you send us your complaint or question in writing so that we receive it within ten (10) Business Days.

After receiving such notice from you we will conduct an investigation, notify you of the results of our investigation, and make any necessary or appropriate adjustments to your Consumer Account as required by Applicable Law and as further set forth in the Electronic Funds Transfer Initial Disclosure.

### **17. In Case of Errors or Questions About Transactions Involving Business Accounts.**

Call us at 870-735-8700 or write us at FIDELITY NATIONAL BANK, 330 W. BROADWAY, WEST MEMPHIS, AR 72301 as soon as you can, if you think your periodic statement is wrong or if you need more information about a transfer covered by this Agreement which is listed on the statement.

### **18. Final Settlement and Reversal of Transactions.**

Notwithstanding any other provision of this Agreement, the crediting of any and all funds to a Connected Account shall be a provisional settlement until such time as we receive final settlement from any and all parties involved in such transaction. You agree that we may reverse or chargeback for any pending or completed transaction for any reason to the extent required or not prohibited by Applicable Law, including but not limited to insufficient funds, Unauthorized Use, and service of legal process or orders of any governmental authority.

### **19. Limitation or Suspension of Online Banking Services.**

For security reasons, we may implement limits from time to time on the number or amount of transactions you can make using our Online Banking Services. You also agree that we may, at any time, temporarily or permanently suspend the availability of the Online Banking Services if required by Applicable Law, any governmental authority, or if we believe such suspension of Online Banking Services to be necessary for security purposes (for example if you input incorrect login information, passwords, or otherwise fail to comply with established Security Devices and Procedures), or to prevent Unauthorized Use, loss, theft, fraud, or any other liability or damage to you, us, or any other Person. In the event of such suspension, we may refuse to process or complete any scheduled or recurring transactions initiated through Online Banking Services. In the event of suspension of Online Banking Services, we will attempt to provide you reasonable notice. However, you understand and agree that the circumstances regarding any Unauthorized Use, loss, theft, or fraud, may dictate that notice is reasonable if given at the time of suspension or

# e-Banking Services Agreement

in some cases after suspension of Online Banking Services. We may also limit access from countries other than the United States of America.

## **20. Required Technology.**

You shall at all times be responsible for purchasing, installing, and maintaining the Required Technology. You may be required to purchase Required Technology from us. You are solely responsible for maintaining the Required Technology with the necessary compatibility and format to interface with our systems, including without limitation, the ability to support the Security Devices and Procedures required by us or established by you. You are required to comply with the minimum compatibility requirements for all Required Technology used in connection with Online Banking Services, including but not limited to those for any Required Technology that we subsequently allow to be used with Online Banking Services.

The following are the recommended minimum user hardware and software standards for use of Online Banking Systems with a personal computer:

- 1) Standard PC or Mac (Pentium IV/1 GHz processor or higher/500 MB RAM or greater).
- 2) Microsoft Windows 7 or later or Mac OS-X or later.
- 3) Cable, DSL, or ISDN Internet connection (dial-up supported for basic consumer users only). Satellite connections have difficulty supporting encrypted applications. Because Online Banking Services are encrypted for the safety of your financial information, some satellite connections may exhibit slow response.
- 4) One of the following supported browsers:

For Microsoft Operating Systems: most current version of (a) Internet Explorer; (b) Firefox; (c) Safari; (d) Chrome

For Mac Operating Systems: most current version of (a) Firefox; (b) Safari; (c) Chrome

We are not responsible for your failure to use Required Technology in compliance with the above minimum recommendations. We are not responsible for any liability caused or in any way arising out of the installation, use or maintenance of your personal computer hardware or software or other Required Technology, including any software provided by us or one of our suppliers or vendors.

Any Required Technology provided by you, prior to use in connection with the Online Banking Services, shall meet any and all requirements established by us from time to time, including but not limited to those set forth in this Section. You agree (a) to comply with any license agreement related to any Required Technology and (b) that a failure to comply with any such licensing agreement shall be a default under this Agreement. To the extent applicable, we hereby grant you a limited, non-exclusive sublicense to use any software or other Required Technology made available by us. Such sublicense shall automatically terminate upon termination of this Agreement for any reason, and upon termination of this Agreement, you are required to immediately remove from your systems any Required Technology made available to you by us. You are also responsible for ensuring that your use of Required Technology is in compliance with all applicable requirements of telecommunications companies, government authorities, and otherwise, including but not limited to your communications connection to the Online Banking Services,.

## **21. Rejected, Returned, and Incomplete Transactions.**

We may reject or refuse to process any transaction that is not initiated in accordance with this Agreement or Applicable Law. If a transaction is rejected by a third party due to improper processing or delays by us, we shall reinitiate such transaction. In the event that a transaction is rejected or returned by us or any third party for any other reason whatsoever, it shall be your responsibility to re-initiate such transaction. We will give you notice of any rejected or returned transaction. We are authorized to debit or credit the Connected Accounts or any other Customer Account for transactions that are rejected or returned to us. You shall promptly provide immediately available funds to reimburse us if any transaction is rejected after we have permitted you to withdraw immediately available funds in the amount thereof or if any adjustment memorandum that relates to any such transaction is



## e-Banking Services Agreement

received by us. Unless required by Applicable Law, we have no obligation to pay you interest on the amount of any returned or rejected transaction debited from the Connected Accounts or other Customer Account. A third party receiving an order as a result of a Customer-initiated transaction may, in some cases, have the right to have an unauthorized or erroneous transaction credited to its account. You agree that we may deduct any amount owing to such third party from any Customer Account upon our receipt of proper notice of such crediting from such third party's bank. We may charge back against you any transaction that is returned or reversed by any third party receiving an order related to such transaction.

You are required to retain all tracking and confirmation numbers provided to you by us in connection a transaction. If you contact us inquiring about a transaction, we may require you to provide the tracking or confirmation numbers to us to verify that the transaction was initiated. If a tracking and confirmation number is not provided to you in connection with your attempted initiation of a transaction, such transaction has not been initiated. Please note that a screen shot or other information regarding a transaction that has not been posted to a Connected Account will never be deemed evidence that such transaction was properly initiated, processed, or completed unless you can provide a confirmation number issued by us for such transaction.

### **22. Transfers Involving Insufficient Funds.**

If you instruct us to make a transfer and you do not have a sufficient balance in the Connected Account from which you are making the transfer, we may refuse to complete the transaction. We may do this even if there are sufficient funds in accounts other than the one you were using to make the transfer. If we complete a transfer that you make or authorize and we subsequently learn that you have insufficient funds for the transaction in the account from which the transfer is made, you agree that we may reverse the transaction or offset the shortage with funds from any other account you have with us. In any case, you are fully obligated to us to provide sufficient funds for any transfers you make or authorize.

Notwithstanding any other provision of this Agreement, if we do not make a transfer, or if we reverse a transfer because of insufficient funds, we are not required to make any further attempt to process the transfer or to notify you that the transfer has not been completed. You may be liable for a non-sufficient funds fee under the terms governing the account from which you made, or attempted to make, the transfer.

### **23. Availability of Online Banking Services.**

We intend to make Online Banking Services available at all times. However, we only process transactions and update information on Business Days and in some instances, only those transactions initiated prior to certain cut off times on Business Days. We do not guarantee a specific delivery time with respect to any information or document or the Online Banking Services. We reserve the right to modify any cut off time or deadline set forth in this Agreement by publishing notice of such modification on the Web Site or otherwise providing notice to you by any means set forth in this Agreement. We will use reasonable efforts to provide the information requested through the Web Site and the Online Banking Services in a prompt fashion, but shall have no liability for failure to provide timely information or services. You acknowledge and agree that access to Online Banking Services may be affected by local market telecommunication network activity, capacity and compatibility with third party communications equipment, Internet access, software, servers, and browsers. We disclaim and any and all responsibility for any defect or service interruption in connection with local market telecommunication network activity, capacity and compatibility with third party communication equipment, Internet access, software, browsers and servers. You acknowledge and agree that there are no assurances that information transmitted over the Internet or other computer or wireless networks will be secure or confidential, and you waive any and all claims against us in connection with any such transmissions. You further acknowledge that the Internet is known to be unpredictable in its performance and may from time to time impede access to Online Banking Services. You agree that we are in no way responsible for any such difficulties you may experience as a result of attempting to transmit data over the Internet or through any computer network while using Online Banking Services, and you waive any and all claims against us in connection with such use. In such event, you shall be responsible for carrying out banking business through alternative delivery channels. Transactions will only be processed in the ordinary course of our business on the Business Day initiated. Transactions initiated after such time period may be processed on the next Business Day. The following transactions made by you on any non-Business Day may be recorded as having been initiated on a Business Day: entries to accounts at Bank (i.e. transfers between accounts at Bank, including scheduled loan payments), stop payment requests, and requests for coin or currency or both. We reserve the right not to provide

## e-Banking Services Agreement

Online Banking Services in the event any default exists under any loan agreement, promissory note, guaranty, deposit agreement, or other agreement, instrument, or document between you and us.

### **24. Delivery and Use of Information; Privacy Policy.**

You may elect to receive data through one or more delivery mechanisms, including, without limitation, the internet, computer dial-up, telephonic delivery, text message, facsimile or secured email. Balance and related information for your non-FIDELITY NATIONAL BANK accounts may be made available by other financial institutions or providers that input information into our systems. You hereby authorize any other financial institutions at which you maintain Connected Accounts to release all of such account information to us for release through the Web Site and the Online Banking Services. Such other financial institutions shall not be liable to you for providing such information to you and to us through the Web Site and the Online Banking Services. All of the provisions of this Agreement shall apply to such external Connected Accounts. You are required to retain data adequate to permit you to remake or restore any documentation, file, or other information submitted to us for at least ten (10) Business Days following the date such information is sent to us, and shall provide such data to us upon request. We and our suppliers provide Online Banking Services from our own sites and make no representation or warranty that any information, material or functions included in Online Banking Services are appropriate for use by you in your jurisdiction. If you choose to use Online Banking Services, you do so, on your own initiative and are solely responsible for compliance with applicable local laws and regulations.

The policy of Bank is to protect your confidential information in accordance with Applicable Law. The purpose of this policy is to inform you about types of information gathered through the Web Site, how the information may be used, and whether the information should be disclosed. We may store, process, transmit, and make available through our systems and through third party data processing providers information regarding Connected Accounts. E-mail messages that contain personally identifying information and electronic forms filled with information may be used to respond to your requests and to analyze results. We automatically collect electronically generated information about your use of the Web Site, such as the date, type of browser used, and technical Internet protocol data. We may use "persistent" cookies (which would reside on the computer used to access the Web Site or the Online Banking Services) to increase the ease of use. Such a cookie might contain user IDs, thereby relieving the user of having to enter user IDs each time the Web Site or the Online Banking Services are accessed. Under this circumstance Bank will only use a "persistent" cookie when authorized during the login process for the Web Site or Online Banking Services.

We may disclose information about your accounts, and you authorize us to disclose such information, as follows: (a) to consumer reporting agencies; (b) for fraud, security or risk control; (c) to help complete a transaction you initiate, including information requested to verify the existence or condition of an account; (d) to resolve disputes or inquiries you may have about your accounts; (e) with your consent or at your direction, which may be oral, in writing, by telephone, electronic or other means we recognize; (f) when disclosure is required by Applicable Law, such as pursuant to court order, subpoena, legal process or government agency examination or investigation, or to protect or enforce our rights; (g) to companies that perform services for us in connection with your accounts and Online Banking Services, such as data processing and software companies and collection agencies; (h) as otherwise necessary to service your account, or as permitted or required by law.

See our separate "Consumer Information Privacy Notice" for more information about how we use customer information and your choices.

### **25. Electronic Disclosures.**

In order for you to receive Online Banking Services, you must consent to our providing required disclosures in electronic format. You hereby consent to receive any and all disclosure that we may provide regarding Customer Accounts in electronic format through Online Banking Services. Your consent applies to all of the documents we provide to you electronically in connection with applying for and opening an account and in using Online Banking Services. You also consent to receive in electronic format at our Web Site any communication normally provided in periodic statements, including amendments to this Agreement, the Customer Information Privacy Notice, and other notices that may be required by Applicable Law. The consent in this Section does not apply to periodic statements. We may allow you to receive electronic periodic statements as set forth in the Section titled "Online Statement Services".

# e-Banking Services Agreement

If you consent to electronic delivery of documents, we may also provide you with paper copies, but we are not required to do so. If we do not provide you with paper copies, you may obtain these documents in paper form without charge by printing them yourself or by calling us and requesting us to mail paper copies of these documents to you if they are available. You may contact us at the number listed in the Section titled "Notice".

In no event will withdrawal of consent be effective for documents that we have already provided to you electronically. As stated above your consent to receive electronic disclosures is required to use Online Banking Services. In the event you withdraw such consent we may terminate this Agreement or your ability to use Online Banking Services.

## **26. E-Mail.**

Sending e-mail is a very good way to communicate with us regarding the Connected Accounts or the Online Banking Services. However, unless you use the "Messages" feature available through Online Banking Services AFTER YOU HAVE SECURLY LOGGED INTO THE ONLINE BANKING SITE, your e-mail is sent via your own software and, as a result, may not be secure. Because of this, you should not include confidential information, such as account numbers and balances in any e-mail to us. You cannot use e-mail to initiate Online Banking Services transactions. All such transactions must be initiated using the appropriate functions within the Online Banking Services. We will not be liable for any errors, omissions, claims, or problems of any kind involving your e-mail.

## **27. Links to Other Sites**

Information that we publish on the Internet, through the Web Site, or through Online Banking Services may contain links to other sites, and third parties may establish links to our site. We make no representations about any other web site that you may access to, from or through the Web Site. Unless expressly stated in writing, we neither endorse the products or services offered by any company or person linked to the Web Site or through Online Banking Services nor are we responsible for any software or the content of any information published on the site of any third party. You should take precautions to protect your computer software and data from viruses and other destructive programs when downloading files through the Internet or any third party site.

## **28. Indemnification and Liability.**

We will provide the Online Banking Services as an accommodation to you. You acknowledge that without the limitation of damages and our liability contained in this Agreement, we would not enter into this Agreement or provide the Online Banking Services. We do not undertake any fiduciary obligation to you. The provisions of this Agreement shall not be deemed to indicate that we are in control of you or that we are otherwise closely connected to you. If you shall develop a perception that we shall have taken any action or shall have engaged in any conduct in a wrongful or unlawful manner, you are required to notify us in writing no later than three (3) days of developing such perception.

## **29. Indemnification of Bank by Customer.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU SHALL HOLD HARMLESS, INDEMNIFY, AND DEFEND US, OUR SHAREHOLDERS, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS, ARISING FROM OR RELATED IN ANY MANNER TO: (A) YOUR NEGLIGENCE; (B) YOUR FAILURE TO COMPLY WITH APPLICABLE LAW; (C) ANY TRANSACTIONS OR ATTEMPTED TRANSACTIONS COVERED BY THIS AGREEMENT FROM A BUSINESS ACCOUNT; OR (D) YOUR FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. If any of the Connected Accounts are Consumer Accounts, the foregoing provision may be limited to the extent required by Applicable Law, including the Electronic Funds Transfer Act and related federal regulations.

## **30. Accuracy and Timeliness of Information Provided by Customer or Third Parties.**

Our performance is dependent upon our receiving timely, accurate, and complete data for each Online Banking Service and each transaction initiated by you, in the agreed upon form which can be processed on our system. If any of these requirements are not met by you, any of your other financial institutions, or any third party, we shall (1) no

## e-Banking Services Agreement

longer be expected to maintain the normal delivery schedule; (2) be empowered to charge appropriate fees and expenses for the cost of converting non-standard data into standard format or completing missing data; (3) be authorized to deliver, as complete and finished, whatever portion of the Online Banking Service that can be performed with available data; and (4) be authorized to return any incomplete or improper data and decline to proceed until accurate and complete data shall be provided.

We shall have no liability for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted prior to being made available. In no event shall we be obligated to verify the accuracy or completeness of any information provided to us by you or any other financial institution. We shall have no liability for any loss or damage arising directly or indirectly from any inaccuracy or incompleteness in the input of an order or instruction from you; any failure by you to obtain a confirmation of an order or instruction; or any cancellation or attempted cancellation by you of an order or instruction. Information with respect to all transactions is provided solely for your convenience, and you shall have no recourse against us as to use of such information. You acknowledge that, except to the extent required by Applicable Law, we have no obligation to maintain back-up copies of any document, file, or other information delivered by you to us. We assume no responsibility for the accuracy or timeliness of information and other financial data supplied by other financial institutions or providers.

### **31. Our Liability for Failure to Complete Transfers from Consumer Accounts.**

In addition to any other applicable limitations on our liability, we will NOT be liable for the following: (a) if, through no fault of ours, you do not have enough available money in the account from which a transfer is to be made, or if the account has been closed or frozen or is not in good standing, or if we reverse a transfer because of insufficient funds; (b) if any transfer would go over the credit limit of any account; (c) if your equipment or ours was not working properly; (d) if you have not given us complete, correct or current account numbers or other identifying information so that we can properly credit your account or otherwise complete the transaction; (e) if you do not properly follow our instructions or if you provide us with wrong or inaccurate information or fail to correct or tell us about any inaccuracy of which you are aware; (f) if you do not instruct us soon enough for your transfer to be received and credited; (g) if the money in the account from which a transfer is to be made is subject to legal process or other claim restricting the transaction; (h) if circumstances or persons beyond our control prevent, delay, intercept, or alter the transaction, despite reasonable precautions that we have taken; (i) if you do not print out or write down the transfer reference, confirmation or tracking number for research purposes; and (j) if other events occur beyond our reasonable control.

### **32. Limitation of Damages.**

Our sole responsibility for any error with respect to the Online Banking Services shall be to make reasonable efforts to correct that error.

WE SHALL HAVE NO LIABILITY TO YOU OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES CAUSED BY ANY ERROR, ACT, DELAY OR OMISSION BY US, INCLUDING BUT NOT LIMITED TO DISHONOR OF CHECKS OR OTHER ITEMS OR EXPENSES WHICH YOU MAY INCUR OR SUFFER BY REASON OF THIS AGREEMENT OR THE SERVICES WE PROVIDE, WHETHER OR NOT THE POSSIBILITY OR LIKELIHOOD OF SUCH LOSS OR DAMAGE, OR EXPENSE IS KNOWN TO US.

In the event you incur any loss due to our fault, our liability to you shall be limited to general money damages not to exceed the lesser of the actual damages sustained and proven by you. You are required to notify us immediately if you experience errors, acts, delays, or omissions with respect to the Online Banking Services. We shall not be liable for any liability arising from any use or disclosure of any images of documents or items by any Person to whom you shall have directed us to provide any of such images. We shall have no liability for failing to transmit or delay in transmitting an order or transaction initiated by you if such transmittal would result in our violating any Applicable Law, including but not limited to exceeding any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines, or any present or future risk control program of the Federal Reserve or any rule or regulation of any other regulatory authority of the United States government.

### **33. Disclaimer of Warranties.**



## e-Banking Services Agreement

NEITHER WE NOR OUR SUPPLIERS WARRANT THE ADEQUACY, ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED AS A PART OF ONLINE BANKING SERVICES, OR CONTAINED IN ANY THIRD PARTY SITES LINKED TO OR FROM THE WEB SITE. THE ONLINE BANKING SERVICES ARE NOT GUARANTEED TO BE FREE FROM ERROR OR INTERRUPTION. ALL ONLINE BANKING SERVICES AND ANY REQUIRED TECHNOLOGY PROVIDED BY US ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS, AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE ONLINE BANKING SERVICES, THE WEB SITE, OR ANY REQUIRED TECHNOLOGY. WE DISCLAIM ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE SHALL HAVE NO LIABILITY FOR ANY CLAIM, LOSS, OR DAMAGE RELATING TO ANY REQUIRED TECHNOLOGY, INCLUDING BUT NOT LIMITED TO A FAILURE TO PERFORM IN THE MANNER FOR WHICH IT WAS INTENDED OR DESIGNED. YOU ARE RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO YOU WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF THE ONLINE BANKING SERVICES OR REQUIRED TECHNOLOGY, AND YOU ASSUME THE RISK OF SUCH OCCURRENCES.

### **34. Representations & Warranties of Customer.**

You hereby represent and warrant to Bank that (a) you and any representative entering into this Agreement on your behalf have full power and authority (including full corporate, limited liability company, or other entity power and authority) to enter into this Agreement and to perform your obligations pursuant to this Agreement; (c) the creation and performance of this Agreement have been duly authorized by you; (d) each Person who may enter into this Agreement on your behalf has all necessary legal capacity and authority; and (e) this Agreement constitutes the valid and legally binding obligation on you enforceable in accordance with its provisions, except to the extent enforcement may be limited by (i) bankruptcy, insolvency, moratorium, or other similar laws generally affecting the rights of creditors; (ii) general principles of equity; and (iii) the exercise of judicial discretion.

### **35. Recording.**

You agree that we may tape record any oral conversations you have with us regarding the services covered by this Agreement. However, we are not obligated to do so and may choose not to in our sole discretion.

### **36. Business Day.**

If any provision of this Agreement shall require the performance of an obligation on a date that shall be a legal holiday pursuant to Applicable Law, a Party may postpone the performance of such obligation until the next Business Day.

### **37. Currency.**

Any reference to dollars or money in this Agreement shall mean legal tender of the United States of America. Any amount required to be paid by a Party pursuant to this Agreement shall be paid by check, draft, or electronic transfer.

### **38. Force Majeure.**

Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, computer viruses, errors or lack of responsiveness of other organizations or entities, or other causes beyond that party's control. We cannot control and will have no liability for the loss, confidentiality or security of any data while in transit via the Internet, communication lines, postal system or ACH network. Either party may terminate this Agreement immediately on written notice if the other party is prevented from performing its obligations under this Agreement for a period of more than thirty (30) days due to the reasons set forth in this subsection.

### **39. Attorneys' Fees.**

In the event of litigation among the Parties regarding the provisions of this Agreement or the transactions contemplated by this Agreement to this Agreement, you shall reimburse us for all attorneys' fees and expenses paid

## e-Banking Services Agreement

or incurred by us in the course of such litigation or the enforcement or interpretation of any provision of this Agreement.

### **40. Performance by Bank.**

If you fail to perform any of your obligations under this Agreement, we may perform or cause the performance of such obligation, and the Fees and Expenses incurred by us in connection therewith, plus interest at the highest lawful rate, shall be paid by you. Notwithstanding the foregoing, nothing in this Agreement shall obligate us to perform any of the obligations on you under this Agreement.

### **41. Law That Applies.**

Regardless of where you live or work or where you access our Online Banking Services, this Agreement is subject to the internal law of the State of ARKANSAS and the federal law of the United States of America. If any of the terms of this Agreement cannot be legally enforced, they will be considered changed to the extent necessary to comply with Applicable Law. Any litigation among the Parties arising out of or relating to this Agreement or the transactions contemplated by this Agreement shall be brought in the courts of the State of ARKANSAS in the County of Washington. Each Party irrevocably, unconditionally, and absolutely submits to the jurisdiction of such courts, and each Party irrevocably, unconditionally, and absolutely waives any objection to venue or to convenience of forum.

### **42. Jury Trial.**

EACH PARTY IRREVOCABLY, UNCONDITIONALLY, AND ABSOLUTELY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION AMONG THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. A COPY OF THIS SECTION SHALL BE WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND NEGOTIATED CONTRACT OF THE PARTIES TO IRREVOCABLY, UNCONDITIONALLY, AND ABSOLUTELY WAIVE TRIAL BY JURY.

### **43. Remedies.**

Due to the likelihood of irreparable injury, we shall be entitled to an injunction prohibiting any breach of this Agreement by you. To the extent permitted under Applicable Law, the remedies provided to you in this Agreement shall be exclusive of any remedies otherwise available to you pursuant to Applicable Law.

### **44. Notice.**

Except as otherwise provided in this Agreement, all notices required to be sent to you will be effective when we mail or deliver them to the last known address that we have for you in our records or when we make such notices available to you through electronic means. Any notice, demand, request, or other communication permitted or required to be given by Customer to Bank pursuant to this Agreement shall be deemed effective when we have received them and have had a reasonable time to act on them. All notices, demands, requests, and other communications permitted or required by this Agreement shall be in writing and shall be delivered to Bank by either: (a) personal delivery; (b) overnight delivery service with delivery costs prepaid and receipt of delivery requested; (c) certified or registered mail with postage prepaid and return receipt requested; (d) secure email using our secure email system; or (e) using the "Messages" feature available through the Online Banking Services. We may give any notice, demand, request, or other communication required by this Agreement pursuant to the requirements of this Section or otherwise, including but not limited to notice given by placing such notice on the Web Site, by secure email using our secure email system, and by using the "Messages" feature available through the Online Banking Services. All notices, demands, requests, and other communications permitted or required by this Agreement to be delivered to a Party's physical address shall be delivered at the following addresses unless another address shall be designated by a Party by notice pursuant to the provisions of this Section:

If to Bank: FIDELITY NATIONAL BANK  
P. O. Box 2288  
WEST MEMPHIS, AR 72301  
Attn: \_\_\_\_\_

If to Customer: Any address provided by Customer with respect to a Connected Account

# e-Banking Services Agreement

Please call us at 870-735-8700 or write to us at FIDELITY NATIONAL BANK, PO BOX 2288, WEST MEMPHIS, AR 72301 in the event of any of the following: (a) Unauthorized Use; (b) if the security of any login, password, access codes, or other Security Devices and Procedures has been compromised (c) if a cell phone or other mobile access device that you use to access Online Banking Services has been lost or stolen; (d) to initiate a stop payment request; or (e) to request paper copies of periodic statements or this Agreement.

Please note that if you have enrolled in our Online Statements Service, you may be charged a fee for a request for a paper periodic statement. You may also be charged a fee for initiating a stop payment request according to the fee schedule we publish from time to time. Please note our telephone number listed above is available Monday through Friday from 8:00 a.m. to 4:30 p.m. Central time, and Saturday from 9:00 a.m. to noon Central time.

#### **45. Time.**

Time shall be of the essence. You understand and agree that any and all times referenced herein or related to this Agreement shall refer to the local time in WEST MEMPHIS, AR unless expressly stated otherwise.

#### **46. Review of Agreement.**

You represent, warrant, and covenant that you had an adequate opportunity to review this Agreement and to seek legal counsel prior to entering into this Agreement.

#### **47. Severability.**

Each provision of this Agreement shall be severable from all other provisions of this Agreement. If any provision of this Agreement shall be determined to be invalid or unenforceable in any litigation among the Parties, such provision shall be deemed to be amended to the extent necessary to render this Agreement valid and enforceable, and the remaining provisions of this Agreement shall be valid and enforceable.

#### **48. Interpretation.**

This Agreement shall be interpreted as follows: (a) equally against the parties regardless of who is more responsible for its preparation; (b) if there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law; (c) gender or lack of gender of any word shall include the masculine, feminine, and neuter; (d) singular shall include plural and plural shall include singular; (e) the words “include” and “including” mean, in addition to any regularly accepted meaning, “without limitation” and “including but not limited to”; (f) references to Sections refer to Sections of this Agreement; (g) subject headings, captions, and titles shall not affect the interpretation of this Agreement; (h) the definition of any term in this Agreement shall apply to all uses of such term whenever capitalized or the context requires; and (i) any exhibits or addendums to this Agreement shall be incorporated into this Agreement as though fully set forth word for word in this Agreement.

#### **49. Further Assurances.**

You are required to execute and deliver any other documents and take further actions as may be necessary to fulfill the your obligations pursuant to this Agreement.

#### **50. Transfer of Rights and Obligations Under This Agreement.**

This Agreement and your rights and obligations pursuant to this Agreement may not be assigned, delegated, or otherwise Transferred to any Person without our written consent in our sole and absolute discretion. Any assignment, delegation, or other Transfer of this Agreement or any of your rights or obligations pursuant to this Agreement shall not release you from any of the provisions of this Agreement. We may Transfer all or any part of this Agreement without notice to or consent from you. In connection with any Transfer by us, you hereby irrevocably consent to the disclosure of information pertaining to you and, this Agreement in connection with such Transfer. You acknowledge that we have not made any representation, warranty, or covenant to you with respect to the Transfer of all or any part of this Agreement. Any Transfer by us of this Agreement shall release us from any further liability to you whatsoever. You shall indemnify and hold us harmless from and against all liabilities arising out of any Transfer of all or any part of this Agreement.

# e-Banking Services Agreement

## **51. Third Party Beneficiary.**

The Parties do not intend to create any rights under this Agreement for the benefit of any third party beneficiary except as provided in this Agreement.

## **52. Binding Effect.**

The Parties executed and delivered this Agreement with the intent to be legally bound to its provisions. This Agreement shall inure to the benefit of, shall be binding on, and shall be enforceable by the heirs, successors, and assigns of the Parties.

## **53. Waiver.**

The provisions of this Agreement may be waived only by a subsequent written agreement executed by us. Any delay or inaction by us shall not be construed as a waiver of any of the provisions of this Agreement. A waiver of any provision of this Agreement by us: (a) shall not be construed as a waiver of any other provision of this Agreement; (b) shall be applicable only to the specific instance and for the specific period in which the waiver may be given; (c) shall not be construed as a permanent waiver of any provision of this Agreement unless otherwise agreed by us in a subsequent written agreement executed by us; (d) shall not affect any right or remedy available to us; and (e) shall be subject to such terms and conditions as provided in a subsequent agreement executed by us.

**54. Conflict Between This Agreement and Other Agreements.** In the event of an irreconcilable conflict between the provisions of this Agreement and the provisions of the written account agreement between you and us regarding a Connected Account, the provisions of the written account agreement shall control. In the event of an irreconcilable conflict between the provisions of this Agreement and the provisions of any Treasury Management Services Agreement and any applicable addendums between you and us, the provisions of this Agreement shall control.

## **55. Entire Agreement.**

This Agreement contains the entire agreement of the Parties on the subject matters of this Agreement, and any oral or prior written understanding on the subject matters of this Agreement shall not be binding on us. You represent, warrant, and covenant that you have not been influenced to enter into this Agreement by any Person and have not relied on any representation, warranty, or covenant of any Person other than as provided in this Agreement. You agree that: (a) it shall be unreasonable for you to have or rely on any expectation or perception not reflected in the provisions of this; (b) if you have or shall develop an expectation or perception (i) contrary to, (ii) in addition to, or (iii) that there is a conflict among the provisions of this Agreement, you shall have a duty to give written notice to us immediately; and (c) if you shall fail to obtain an amendment to this Agreement after having developed such expectation or perception, such failure shall be an admission for evidentiary purposes in any litigation that the expectation or perception was not reasonable and was not part of the final binding agreement of the Parties.

I HAVE READ AND UNDERSTAND THE FOREGOING AGREEMENT AND AGREE TO BE BOUND BY ALL ITS TERMS AND CONDITIONS.

