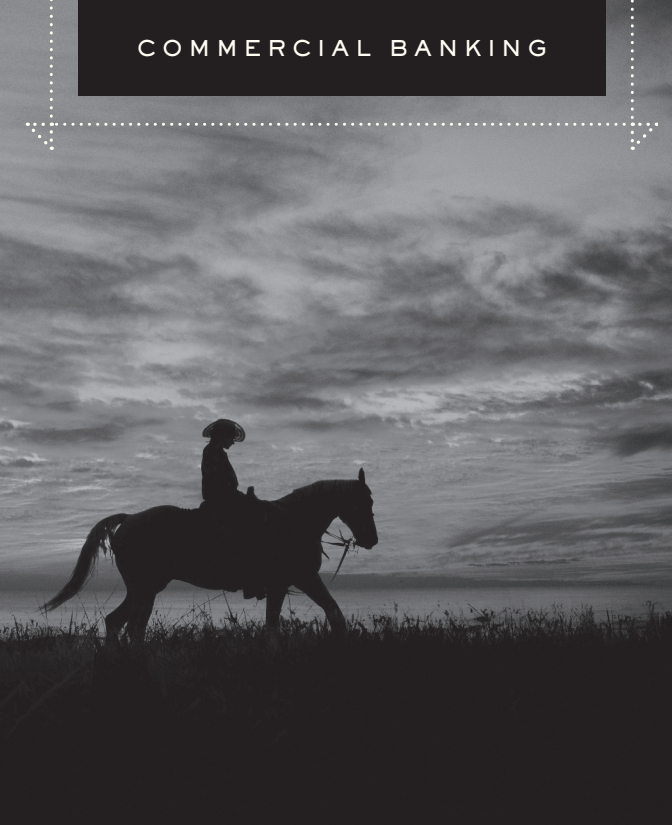


COMMERCIAL BANKING



COMMERCIAL DEPOSIT  
ACCOUNT AGREEMENT AND  
SERVICES DISCLOSURE

EFFECTIVE AS OF OCTOBER 1, 2022

**PlainsCapital** Bank 

# Table of Contents

Commercial Deposit Account and Services Agreement	6
Introduction	6
General Account Terms and Conditions	6
Business Purpose	6
Amendments and Changes to this Agreement	6
Definitions	7
Deposits; Cashed Items	9
Deposited and Cashed Items	9
Remotely Created Items	10
Endorsements	10
Final Payment and Returned Items	11
Collection Items	11
Checks and Our Approved Forms	11
Cashing Your Checks	12
Material Appearing on Back of Paper Items	12
Withdrawal Rules	12
Examination of Items	12
Facsimile Signatures	12
Multiple Signatures	13
Undated or Postdated Items	13
Stale Items	13
Incomplete Items	13
Third Party Debits	13
Demand Drafts	14
Stop Payments	14
Lost, Destroyed or Stolen Cashier's Checks, Teller's Checks or Certified Checks	15
Acts and Omissions of Other Financial Institutions	15
Order of Payment	15
Overdraft Items and Fees	16
Non-sufficient Funds Items and Fees	16
Optional Overdraft Protection Transfers	16
Insufficient Funds; Overdraft Items and NSF Items	17
Authority; Power of Attorney	17
Account Statements	18
Your Insurance Coverage	20
Account Type	21
Interest Calculation-Interest Bearing Accounts, Accrual and Payment	21
Authorized Persons; Beneficial Owners	21
Signatures to Come	21
Your Address and Changes of Account Related Information	22
Date of Notices	22
Deposit Reclassification of Account	22
Special Rules for Sweep Arrangements	22
Dormant and Unclaimed Accounts or Safe Deposit Boxes	22
Recording and Monitoring Telephone Calls	24

Customer Authentication Requirements	24
Credit Reports	24
Cash Bonus	24
Other Services	24
Safe Deposit	24
Additional Terms for Time Deposit Accounts	25
Presentment of Time Certificate of Deposit	25
Date of Issue	25
Interest Calculation – Interest Bearing Accounts, Accrual and Payment	25
Renewals	25
Early Withdrawal Penalty	25
Exceptions	26
Identification	26
Severability	26
Limitation of Liability; Indemnification; Statute of Limitations	27
Headings	27
Force Majeure	27
Laws and Regulations	28
No Waiver	28
Rights are Cumulative	28
Account Closing	28
Setoff	28
Disputed Authority; Conflicting Claims	29
Freezing Your Account	30
Standard of Care	30
Legal Process	30
Expenses	31
No Assignment	31
Governing Law, Jurisdiction and Venue	31
Waiver of Jury Trial	31
Arbitration	32
Substitute Checks (Check 21)	34
Substitute Checks and Your Rights	34
What is a Substitute Check?	34
What are my rights regarding substitute checks?	34
How do I make a claim for a refund?	35
Funds Availability Disclosure	35
Your Ability to Withdraw Funds	35
Longer Delays May Apply	36
Case-by-Case Hold	36
Exception Hold	37
Special Rules for New Accounts	37
Holds on Other Funds (Check Cashing)	37
Holds on Other Funds (Other Accounts)	37
Suggested Fraud Protection Measures; Unauthorized Items	37
Claims of Unauthorized Transactions	39

Unauthorized Claims Investigation	39
Lost or Stolen Paper Items; Unauthorized Items	39
Cyber Risk and Security	40
Equipment	40
Third-Party Providers and Services	40
Access Information	40
Electronic Banking	40
Electronic and Internet Banking System	40
General Terms	40
Compliance with Law	41
Access	41
Your Credentials; Security	42
Internet Scams	43
Hours of Access	43
Fees and Charges	43
Posting of Transfers	43
Overdrafts	44
Limits on Amounts and Frequency of	
System Transactions	44
Bill Payment Service	44
Mobile Banking Service	45
Mobile Deposit Services	45
Fees, Costs and Expenses	45
Communications with You and Other Account	
Signatories	45
Additional Equipment and Access Requirements;	
Security	45
Stop Payment Requests	46
Disclaimer of Warranty and Limitation of Liability	46
Indemnification	47
E-Sign Disclosure	
(Electronic Records Disclosure)	47
E-Sign Disclosure	
(Electronic Signature Disclosure)	48
Contact Information for Changes and Termination	
of Internet Banking, E-Statements	48
Hardware and Software Requirements	48
Our Data and Records	48
Your Right to Terminate	48
Our Right to Terminate	49
Fund Transfers	49
Automated Clearing House (ACH) Transactions	49
Commercial ACH Credit Entries	49
Commercial ACH Debit Entries	50
Returning Unauthorized Commercial ACH Entries	50
Stop Payment of a Preauthorized Transaction	51
Wire Transfers	52
Routing/Deadlines	52
Payment Orders	53

Notice of Wire Transfers	54
Liability for Unauthorized Wire Transfers;	
Security Procedures	55
International Wire Transfers	57
Wire Transfer Numbers	58
Reverse Wire Transfers	58
Provisional Credit	59
Disclaimer of Warranties	59
Business Debit Card Services	59
Business Debit Cards	59
Business Debit Card Transactions	60
Recurring Purchases with a Business Debit Card	61
Recurring Preauthorized Payments	61
Card Transactions at Non-PlainsCapital Bank ATMs	61
Foreign Transactions	61
Our Right to Cancel or Block Your Card	61
Protecting Your Card and PIN	62
Account Linkage and Designation of Accounts	62
Dollar Amount Limits on Transactions	63
Documentation of Transfers and Transactions	63
Debit Card Holds	63
Stop Payments on Purchases and Refunds	64
ATM and POS Malfunction	64
Liability for Unauthorized Card Transactions	64
Card Fees	66
Mastercard Debit Card Transactions	66
ATM Security Disclosure	66
Security at Walk-up and Drive-up ATMs	66
Keeping Your Card Secure	67
eStatements	67
eStatements Specifications	68
eStatement Termination	69
Unlawful Internet Gambling Enforcement Act Disclosure	70
Fees and Charges	70
Schedule of Fees	71
Overdrawn Account Fees	71
ATM/Mastercard Debit Card Fees	71
External Transfer Fees	71
Money Orders and Official Checks	71
Wire Transfer Fees	71
Collection Fees	71
Incoming/outgoing Domestic	
Collection Item	71
Trust Receipt Fee	71
Non-U.S. Items	71
Safe Deposit Box Fees	72
Miscellaneous Fees	72

# Commercial Deposit Account and Services Agreement

## Introduction

This Commercial Deposit Account and Services Agreement (the "Agreement" as further defined below) contains the general terms and conditions and other disclosures for the account(s) and services that you have established at PlainsCapital Bank solely for business purposes, and other important information about your commercial account(s). Some of our printed documents may refer to this Agreement as either a "Deposit Agreement" or "Commercial Deposit Agreement." We urge you to read this Agreement and all other PlainsCapital Bank documents and disclosures carefully, and save them for reference. By signing a deposit account Signature Card, a services application, or by otherwise opening or maintaining a commercial deposit account with PlainsCapital Bank, you acknowledge that you have received and reviewed this Agreement, and accept and agree to be bound by its terms and conditions, including as amended from time to time. This Agreement, together with any specific terms and conditions governing your commercial account(s) provided separately, establishes and details our relationship with you with respect to all of your commercial accounts with us. Additional copies of this Agreement are made available to you, and you may obtain additional copies of this Agreement (the most current version) at a branch location, at [www.plainscapital.com](http://www.plainscapital.com), or by calling the telephone number on the back of this Agreement.

## General Account Terms and Conditions

### Business Purpose

You agree to use your account solely for business or commercial purposes, and not to use, authorize or make any transactions on the account for personal, family or household purposes.

You understand and agree that any card issued in relation to your account will not be subject to the Consumer Financial Protection Bureau Regulation E, the Electronic Fund Transfer Act governing funds transfers for consumer transactions, or other regulation or law concerning consumer transactions.

### Amendments and Changes to This Agreement

We may supplement, amend or change this Agreement at any time including, without limitation, through existing or future agreements, terms and conditions, notices, new Signature Cards or account applications. We may add new terms and conditions and we may delete or amend existing terms and conditions. We may add new accounts and services and discontinue existing accounts or services. We may convert your existing accounts and services into new accounts and services. We generally send you advance notice of an adverse change. However, we may change this Agreement without prior notice unless otherwise required by law. No such amendment or change will apply to any dispute with you arising, or arising out of events occurring, prior to such amendment or change, as to which we receive actual notice. We do not have to notify you of changes that we believe are beneficial to you or of changes that we make for security reasons. If we change this Agreement, the newly updated (most current) version of this Agreement supersedes all prior versions and contains the terms and conditions governing your account as of the effective date of the newly updated Agreement. If you continue to use your account or keep it open after a supplement, amendment or change to the Agreement, you will be deemed to have accepted and agreed to the supplement, amendment or change and will be bound by all such supplements, amendments and changes.

## **Definitions**

In this Agreement, certain words have special meaning and are therefore defined. You will find certain terms and their definitions in this section and others in the text of this Agreement.

### ***“Account”***

The term “account” refers to each and every deposit account you have established with us solely for business purposes. As used in this Agreement, the term “account” does not include any deposit account that you have established with us for personal, family or household purposes.

### ***“ACH”***

The term “ACH” means automated clearing house. The ACH system is a batch processing, store-and-forward system that is governed by the NACHA Operating Rules for interbank clearing of electronic payments for participating depository financial institutions.

### ***“Agreement”***

Unless otherwise noted herein, “Agreement” means this document and all terms and conditions set forth herein, any addenda, and any related disclosures, supplements and/or amendments that we give you, or make available to you, including, without limitation, the Signature Card and any agreement for banking services connected with this account.

### ***“ATM”***

“ATM” means automated teller machine. The term ATM includes teller assisted transactions performed at interactive ATMs also known as Interactive Teller Machines (ITM) or Personal Teller Machines (PTM).

### ***“Authorized Signer”***

An “authorized signer” is a person whom you have authorized to conduct transactions on your account, whether or not such person has signed the Signature Card or other documentation for your account. We may continue to recognize your authorization or the record of it until we have received and have had a reasonable time to act upon your written modification or revocation of it.

### ***“Available Balance”***

The Available Balance is the Ledger Balance plus any pending credit transactions less any pending debit transactions that we are legally obligated to pay or have already paid. Pending transactions may include, but are not limited to cash deposits, internal transfers, Card transactions, checks presented for cash, withdrawals and electronic transactions such as wire transfers, ATM, ACH and digital payments. Additionally holds or freezes on the account such as, but not limited to, liens, levies, and writs of garnishment will lower the available balance. The available balance in an account may change between the time a transaction is authorized at the time of purchase or order and the time the transaction is posted to your account, and the available balance thus does not include transactions you may have initiated but that have not been posted to your account.

### ***“Business Day”***

A “business day” is every Monday through Friday or any day that we are open for banking business. Saturdays, Sundays and Federal holidays are excluded.

### ***“Card”***

“Card” includes every type of debit card, check card or ATM card that we may issue to the owner(s) of an account (“Cardholder”) including: PlainsCapital Mastercard® Debit Card and any Gift Card that we may issue.

### ***“Clearing House”***

“Clearing house” means an association of banks or other payors regularly clearing items.

### ***“Customer”***

A “customer” is a natural person corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association who establishes a deposit account, loan or other account with us primarily for business or commercial purposes.

### ***“Demand Drafts/Remotely Created Items”***

An item that does not bear the maker’s signature, but purports to be authorized by the maker.

### ***“Depositor”***

A “depositor” is an authorized signer, signatory, or other person or entity who has an ownership interest in your account.

### ***“Item”***

An “item” is any instrument or a promise or order to pay money handled by a bank for collection or payment in the broadest sense of the definition set forth in Chapter 4 of the Texas Business and Commerce Code, whether in paper, electronic or other form. Examples of an item include, but are not limited to, a paper check, substitute check, remotely created item, bill of exchange, note or order for the payment of money, whether written or oral, draft, withdrawal slip, bill payment instruction, funds transfer, ACH transfer, ATM or debit card/ POS transaction, any re-submission of a previously rejected funds transfer or ACH transfer or other transfer, written document created or authorized in your name that would be a check or draft but for the fact that it has not been signed, and a photocopy or an image of any of the foregoing.

### ***“Ledger Balance”***

“Ledger balance” is the balance in the account that reflects posted transactions, which include deposits, credits, withdrawals, and other debits posted to the account.

### ***“Non-Sufficient Funds”***

“Non-sufficient funds” (sometimes referred to as NSF or insufficient funds) refers to the circumstances where we do not pay a check or other item or permit a withdrawal or debit transaction for an amount that exceeds the available balance in the account at the time such check, other item, withdrawal or debit transaction posts to the account.

### ***“Overdraft”***

Overdraft refers to the circumstances where we pay a check or other item or permit a withdrawal or debit transaction for an amount which exceeds the available balance in the account at the time such check, other item, withdrawal or debit transaction posts to the account.



### ***“PIN”***

“PIN” means the unique personal identification number assigned with a card or for PIN Wire services.

### ***“PIN Wire”***

“PIN Wire” means a wire transfer conducted via telephone through Bank’s PIN Wire Service, by use of the assigned PIN and caller identification.

### ***“POD”***

The term “POD” means payable on death.

### ***“POS”***

The term “POS” means point-of-sale.

### ***“Schedule”***

Except as may otherwise be stated in this Agreement, the term “Schedule” refers to any document setting forth rates, fees or transaction limits relating to the specified account including, but not limited to, a Truth in Savings disclosure document or any schedule setting forth PlainsCapital Bank fees and/or limits.

### ***“Signatory”***

A “signatory” is a person who signs a Signature Card to become an authorized signer on an account.

### ***“Signature Card”***

The “Signature Card” is the document signed by a customer to become an authorized signer on an account, providing a customer’s authorized signature for transactions on the account, and establishing the contract expressly entered into between the customer and the Bank.

“

### ***“We”, “Our”, “Ours”, “Us”, and “Bank”***

The terms “we”, “our”, “ours”, “us” and “Bank” refer to PlainsCapital Bank.

### ***“You”, “Your”, and “Yours”***

The terms “you”, “your” and “yours” refer to each and every Depositor.

## **Deposits; Cashed Items**

### **Deposited and Cashed Items**

You understand that all deposits and cashed items may be subject to verification and corrections. We can accept an item for deposit or collection, refuse it or return it. Even if we verify a deposited or cashed item and tell you that it has been paid, doing so will not release your liability as an endorser. In receiving items, we are acting only as your agent. We have no responsibility beyond ordinary care.

You will not hold us responsible for default or negligence of our correspondents or loss of items in transit. Each correspondent we use will be liable only for its own negligence. You further understand and agree that if a deposited item is lost, destroyed or misrouted during the collection process (either at the Bank or at another point in the payments system): (i) we shall have no responsibility to you for the actions or inactions of any collecting bank; (ii) we may charge your account for the amount of the deposited

item (and reverse any interest that may have accrued to your account in connection with the deposited item); and (iii) you will cooperate fully with us to locate, reconstruct or recreate the deposited item by promptly (a) providing us with a copy of the front and back of the deposited item from your or the issuer's records; (b) asking the issuer to place a stop payment on it (at the Bank's expense) and issue a replacement item to you (if the deposited item has not been paid); or (c) reviewing your records and other information and conducting any additional research as may be reasonable to determine the issuer's identity (if you do not know the identity of the issuer of the deposited item). If we give you credit for an item, we can revoke it if the item is not paid. Items deposited by mail may not be considered received by us until we actually receive them. You will not hold us responsible for loss of any item until we have received it. You will reimburse us for any loss or expense we incur because of any missing endorsement, whether yours or another's, on a deposited item. You will not attempt to create a substitute check for deposit. You will not deposit any check that was written in such ink or that has any other features that would prevent it from being imaged or copied clearly and completely. We do not have to notify you of any nonrecurring ACH credits or wire transfers to the account. We may refuse to accept for deposit or collection an item that is payable in currency other than U.S. dollars or an item that is not drawn on a financial institution chartered in the United States (each, a "non-U.S. item"). If we accept a non-U.S. item for deposit or collection to your account, you accept all risks associated with foreign currency fluctuation (exchange rate risk) and any late return of the non-U.S. item. You agree that we may use our current buying and selling rate, as applicable, when processing a non-U.S. item and may recover from your account any loss we incur as a result of processing such an item for you. We may place longer holds than specified in the Funds Availability Disclosure on non-U.S. deposited items.

### **Remotely Created Items**

Unless we have otherwise agreed in writing to you, we also may refuse to accept for deposit remotely created items such as, without limitation, remotely created checks (as defined in Regulation CC). If we agree in writing to accept remotely created items for deposit, and you deposit a remotely created item, you agree and warrant that any such remotely created item has been authorized by the person identified as the drawer or maker of the item or otherwise on whose account the remotely created item is drawn, in the amount and in accordance with the terms stated on the face of the item. You further agree to indemnify and hold us harmless from any and all loss, cost, expenses, damages or liability, including, without limitation, reasonable attorney's fees, in relation to or arising from a claim that any such remotely created item was not authorized by the person(s) on whose account the item is drawn.

### **Endorsements**

If an item requiring your endorsement is presented to us for deposit or cashed without it, you authorize but do not require us to supply it, and any such item presented for deposit to your account or cashed that lacks an endorsement may be deemed to be endorsed by us on your behalf. However, we may, in our sole discretion, require your endorsement on any such item. You also authorize the Bank to collect any unendorsed item that is made payable to you without first supplying your endorsement, provided the item was deposited to or cashed against your account. If an item is deposited to or cashed against your account bearing your stamped or facsimile

endorsement, we may deem such endorsement to have been made or supplied by you whether or not such endorsement was made or supplied by you or someone acting without your authority. With respect to an Unauthorized Endorsement item, please refer to the Account Statements section of this agreement.

### **Final Payment and Returned Items**

All non-cash items (such as checks) deposited to or cashed against your account are subject to our receipt of final payment by the payor bank (as that term is defined in Chapter 4 of the Texas Business and Commerce Code) or other payor upon whom the item is drawn. All such transactions are provisional until final payment by the payor. We can charge you or your account for the amount of any deposited or cashed item, any returned item fee, any interest paid on the item and any other fee or charge that we pay or incur in relation to the item, without further notice to you, if we do not receive final payment or the item is returned unpaid or charged back to us for any reason. An item is not considered to be collected until receipt of final payment. We may reprocess the item, but you may not require it. We can process and rely upon a copy, electronic entry or any other generally accepted notification or evidence of the returned item. You understand and acknowledge that our making funds "available" to you following a deposit or the cashing of an item, and your withdrawing funds following a deposit or cashing of an item, does not signify or confirm that final payment has been made on the item. You further understand and acknowledge that no employee or representative of ours is able to confirm that an item will be finally paid or will not be returned, and you may not rely on any such statement by any employee or representative. You waive presentment, notice of dishonor and protest. We may refuse to accept all or any part of any item for deposit or credit to your account, and will not be liable to you even if doing so causes outstanding items to be dishonored or returned.

### **Collection Items**

At our discretion, we may process a paper item as a collection item instead of as a deposit by sending it to the issuer's bank for payment and crediting your account after we have received payment for the item.

### **Checks and Our Approved Forms**

You will use only our approved checks, withdrawal forms and deposit slips. We are not responsible for any loss in relation to or due to improper printing on, or otherwise your use of forms not provided by or approved by us. You will not use ink of a color or type that is not legible when imaged or copied to write a check, complete a withdrawal form or complete a deposit slip. You will verify your name, address, telephone number and the numbers in the magnetic ink character line across the bottom of the face of each document in each order of checks and deposit slips. If there is an error, you will not use the affected documents, and you will notify us and the printer immediately. You will not hold us responsible for any amount beyond the replacement cost of the order, provided the checks were ordered through us. You will maintain adequate safeguards to protect against unauthorized use of the forms in your possession, and agree that you will notify us immediately if you suspect or become aware that any checks or other forms are lost or stolen.

## **Cashing Your Checks**

Before we allow a person to cash an item, we can, but are not obligated to, require identification, such as a driver's license or passport. We may also require further identification by methods such as photography, fingerprinting and other technological means. If the person does not provide or permit such identification, we can decline to cash the item and you will not claim that we wrongfully dishonored it.

## **Material Appearing on the Back of Paper Items; Legends on Paper Items**

You are responsible for losses incurred by any person that cashes or accepts your checks or other paper items for deposit if: (i) the loss is due to a delay in the return of the item; and (ii) the delay is caused by material appearing on the back of the item when it was issued or transferred by you. This material may include, but is not limited to, carbon bands, blacked out areas and printed or written text or numbers. You are responsible for all losses, claims, damages or expenses that result from a restrictive legend or notation on your paper items.

## **Withdrawal Rules**

### **Examination of Items**

You may not and do not require us to comply with a conditional or restrictive legend on any item, such as "void if not cashed within 90 days," "paid in full," "Void over \$100," or any other impermissible marking. Permissible markings include the following: drawee bank name and location, payee name, endorser name, the dollar amount (either numeric or amount in words if contradictory), drawer signature and the magnetic ink characters across the bottom front of the item (the MICR encoded information).

To the extent permitted under Texas law, we have no duty to honor, are not bound by and may disregard any other information on a check presented for payment. You will not hold us responsible for any item's late return caused by an endorsement stamp or other marking outside the area allowed for it by law. You agree that we do not fail to exercise ordinary care because our procedures do not require sight examination of each item including, without limitation, in relation to an amount below a set figure as determined by us from time to time.

You understand that we have adopted commercially reasonable automated processing procedures for the processing of items for collection and payment to assist in processing the largest volume of items at reduced cost to our customers, and that we have no duty to visually inspect signatures.

You also understand and agree that we have no duty to review endorsements on items presented to us for payment by depository or collecting banks (as those terms are defined in the Texas Business and Commerce Code) or other third parties who make a presentment warranty to us. While we have no duty to review endorsements on such items, we may, in our sole discretion, refuse to pay or accept any item for deposit or collection unless we are able to verify to our satisfaction that all necessary endorsements are present on the item. For example, we may require that all endorsers be present at the time that an item is presented to us for payment or accepted for deposit or collection.

### **Facsimile Signatures**

You agree that if you utilize an automated or electronic check writing process, or a machine, software, mechanism, stamp,

tool or device (such as, without limitation, a personal computer or desktop publishing) to supply a facsimile signature on your checks, or otherwise supply a mark, notation, symbol or other form of signature that is not your personal signature appearing on the signature card that you signed when you opened your account (collectively, "Facsimile Signature"), you authorize us to pay any check that bears a signature, mark, notation or symbol that reasonably resembles the Facsimile Signature, and you shall be solely responsible for any unauthorized use of the Facsimile Signature. You also agree to indemnify, defend and hold us harmless from and against all claims, costs, losses, damages, liability and expenses (including without limitation attorney's fees and costs) that we may incur as a result of any unauthorized use of the Facsimile Signature or any signature, mark, notation or symbol that reasonably resembles the Facsimile Signature. You further agree to assume any and all responsibility for any and all payments we make in good faith reliance upon the Facsimile Signature or a signature mark, notation or symbol reasonably resembling the Facsimile Signature.

### **Multiple Signatures**

You understand and agree that if you establish an account requiring two or more authorized signatures on any item drawn on or paid against the account, any such multiple-signature requirement is solely for your own internal control or accounting purposes, and we will not be responsible or liable for paying any item with one (1) authorized signature or less than the number of authorized signatures specified by you.

### **Undated or Postdated Items**

You agree that when you write a check, you will date it on the date it is written, and you will not write a check for payment on a date in the future. If you do write a check and it is presented for payment before the date stated on the check, or without a date stated on the check, we may, without inquiry or liability and in our sole discretion, pay it when it reaches us regardless of the date on the check, or return it unpaid. If we are required by law not to honor a postdated or undated check following notice from you, you agree to provide us written notice sufficiently in advance of presentment, and to identify the check by check number, date and dollar amount, to allow us reasonably sufficient time and information to act upon your notice.

### **Stale Items**

We can, in our sole discretion, either pay or dishonor an item presented to us more than six (6) months after the date on the item, without prior notice to you. If you do not want us to pay such an item, you will place a stop payment on it in a dated, authenticated record, and, to renew any such stop payment order after six (6) months, in a new authenticated record given to us within the period during which the stop payment order is effective.

### **Incomplete Items**

You agree that you will not issue or present for payment any item that is not completed. If you do, you will not hold us responsible for paying it as completed by anyone unless we actually know that it was completed in an unauthorized way.

### **Third Party Debits**

Telemarketers and others trying to sell you goods or services may ask for information about your account, such as your account number, next unused check number or our routing

number. If you give any such information about your account to such a person, you agree that we may treat any debit to your account initiated by that person as having been authorized by you.

## **Demand Drafts**

You may not deposit demand drafts (items not bearing the maker's signature, but purporting to be authorized by the maker) to an Account with us without our prior, express written consent. If you make such a deposit you are liable for any loss or cost we incur as a result.

## **Stop Payments**

You or any person authorized to draw on your account may order us to stop payment on your checks and other items payable from your account, subject to certain limitations set forth in this Agreement and applicable law. If the signature of more than one person is required to draw on your account, any such person individually may make the stop payment. If you want us to stop payment on a check or other item, we will require you to provide a dated, authenticated writing describing the check or other item by number, date, payee name and exact dollar amount. At our sole discretion, without waiving our requirement that you provide such a dated, authenticated writing, we may choose to honor your stop payment request made orally by telephone or in person and describing the check or item by number, date, payee name and exact dollar amount. You understand that if any such information that you provide is not correct, our processing equipment may not catch the check or other item in time or we may otherwise not be able to stop payment on the item, and you will not hold us responsible. Your stop payment request will be effective if we receive your instruction sufficiently in advance of payment, acceptance, certification, settlement without a right to revoke, or we become accountable for the item, and in such a manner to afford us a reasonable opportunity to act on the stop payment request. You understand that a stop payment expires in six months from the date of your stop payment request. You will place a new stop payment in writing within the period during which the original stop payment request is effective if you do not want us to pay the check or other item after the stop payment expires. If you use Internet Banking to process a stop payment, stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop the bill payment. You also understand and agree that you cannot stop payment of a certified, cashier's or teller's check that we issue, or other official check that we issue, and you generally may not stop payment of checks or other items after we have accepted the same, except as otherwise set forth in the Stop Payment of a Preauthorized Transaction section of this Agreement or as expressly permitted under NACHA Rules with respect to ACH transactions. You may initiate a stop payment request online through your bank account (not system bill payer).

You will incur stop payment charges as disclosed in the current Schedule of Fees for the applicable account.

You may place a stop payment on an item in any of the following ways, subject to our requirement that you provide us with a dated, authenticated writing:

- Telephone:** By calling PlainsCapital Bank Customer Service at 1-866-762-8392.
- Internet Banking:** By logging into Internet Banking.
- In Person:** By visiting any of our branch locations.
- Mail:** By mailing request to PlainsCapital Bank,

Attn: Deposit Support  
5010 University Avenue  
Lubbock, TX 79413

For further confirmation, we may, at our sole discretion, mail you a stop payment verification notice. Should we mail you a stop payment verification notice and the information in said notice is NOT correct you must notify us immediately. If you did not request that the stop payment be placed on your account you must notify us immediately. Otherwise the stop payment will be valid for six (6) months.

Please see the Stop Payment of a Preauthorized Transaction section of this Agreement for stop payments on regularly scheduled or preauthorized ACH payments.

## **Lost, Destroyed or Stolen Cashier's Checks, Teller's Checks or Certified Checks**

You understand and agree that, if you intend to claim the right to receive the amount of a cashier's check, teller's check or certified check that has been lost, destroyed or stolen, your and our rights and obligations with respect to such a lost, destroyed or stolen cashier's check, teller's check or certified check will be governed by Article 3 of the Uniform Commercial Code (the "UCC") as adopted in the State of Texas, including, without limitation, UCC Section 3.312.

## **Acts and Omissions of Other Financial Institutions**

You understand and agree that we are not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person, or for a notice of nonpayment relating to the loss or destruction of a deposited item.

## **Order of Payment**

You understand that we will post deposits and credits to your account before we pay items presented for payment. When two or more items are presented for payment against your account on the same day, applicable law allows us to pay or charge them in any order and before or after our regular banking hours. The order in which items are paid is important if there is not enough money in your account to pay all of the items that are presented. You also understand that we are not obligated to determine the time of day an item is received and, without liability, may withhold the amount thereof pending a determination of the effect, consequence or priority of any knowledge, notice, stop-payment order, or legal process concerning the item, or may interplead such amount and the claimants thereto. For now, we have chosen the following order of payment:

1. Bank service fees, maintenance fees and payments you have pre-authorized us to establish on your behalf, such as automatic loan payments and account-to-account transfers, will post to your account in an order of smallest dollar amount to largest dollar amount. These items may overdraw your account if sufficient funds are not available; however, we will not assess a per item overdraft fee in such cases.
2. Next, payments we have authorized for you at time of purchase or order, such as wire transfers, ATM withdrawals, debit card transactions, online banking transfers, telephone banking transfers, and withdrawals at our teller counters, will be presented to post against your account in an order of smallest dollar amount to largest dollar amount. These are all non-returnable items that must be paid as they were authorized at the time of purchase; therefore, we post these items before

ACH debits, drafts and checks (excluding checks used to withdraw funds at our teller counters). These items may overdraw your account if sufficient funds are not available when the item posts to your account.

Debit card transactions that were authorized on a sufficient available balance at time of purchase or order may overdraw your account when the item posts to your account. We will not assess a per item overdraft fee for transactions that were authorized on a sufficient available balance at time of purchase or order that overdraw your account when posted to your account.

If the available balance at time of authorization was insufficient, a per item overdraft fee may be assessed for each item authorized against insufficient funds.

At any given time, if you review your account, you may see that we show some transactions as "in process".

These transactions impact your available balance but have not yet posted to your account.

3. Finally, payments you have initiated that did not require an authorization by us at the time of purchase or order, such as ACH debits, drafts, bill payments and checks (excluding checks used to withdraw funds at our teller counters) will be presented to post against your account in an order of largest dollar amount to smallest dollar amount. We, in good faith, have chosen to present these items for payment against your account in an order that prioritizes important payments, such as your rent, payroll or insurance payments before other smaller items. If the available balance in your account is not sufficient to pay these items when presented to post to your account, in our discretion, we may choose to pay or return the item unpaid. In cases where we pay the item against insufficient funds you may incur a per item overdraft fee.

**Note: This order of payment could possibly cause multiple per item overdraft fees.**

We can, in good faith, choose a different order of payment after giving you any legally required notice.

Your account statement does not necessarily report debits and credits in the order that we posted them to your account.

## **Overdraft Items and Fees**

An overdraft item fee will be assessed for the payment of an overdraft item. You will be charged a fee each time we pay an overdraft item. Please refer to the Schedule of Fees within this Agreement for our current Overdraft fee amount.

## **Non-Sufficient Funds Items and Fees**

A non-sufficient funds (NSF) item fee will be assessed when an item is returned unpaid to the payee due to an insufficient available balance in the account to pay the item at the time the item is presented for posting to the account. You will be charged an NSF item fee each time an item is presented and returned as NSF due to insufficient funds. This means that you may be charged an NSF item fee each time the same item is re-presented for payment against insufficient funds in the account and may result in you incurring multiple NSF item fees for the same item. Please refer to the Schedule of Fees within this Agreement for our current NSF fee amounts.

You may also incur fees from the person or entity to whom you made the item payable or their collection agencies for having the item returned to them unpaid.

## **Optional Overdraft Protection Transfers**

You may request overdraft protection via overdraft protection



transfers from a personal line of credit, savings account or another checking account that you have with us. In Texas, overdraft protection is not available on a home equity line of credit. If you utilize overdraft protection transfers, you will be notified on your monthly account statement of the amount of transfer(s) and any applicable fees.

## **Insufficient Funds; Overdraft Items and NSF Items**

Items presented to an account with an insufficient available balance will be processed as either an overdraft item or a non-sufficient funds (NSF) item. An overdraft occurs when you do not have enough money in your account to cover

a transaction, but we pay it anyway, resulting in a negative account balance. A NSF item occurs when you do not have enough money in your account to cover an item, and we return the item due to an insufficient available balance in the account to pay the item.

If the Bank receives an item (or an authorization request) against your account and there are insufficient funds in your account to cover the item, we may, in our discretion and without prior notice to you, return the item (a NSF item) or pay the item (an overdraft item). You will be notified by mail of any insufficient funds items that were paid or returned. It is possible that a NSF item may be re-presented for payment again before our notice of NSF reaches you.

Our payment of any checks, transfers, withdrawals or other items which exceed the available balance in your account in no way obligates us to continue the practice at a later time. We may discontinue this practice at any time without notice to you unless we have agreed otherwise. You should not consistently overdraw your account to pay ordinary or routine expenses, as these items may be returned.

The amount of any overdrafts including our fees that you owe us shall be due and payable immediately. We may use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us.

If there is an overdraft paid by us on an account with more than one (1) owner on the signature card, each owner, and agent if applicable, drawing/presenting the item creating the overdraft, shall be jointly and severally liable for such overdrafts including our fees.

You agree to pay the Bank's fees for any action taken in accordance with the Schedule of Fees. Any negative balance on your account is immediately due and payable, and you agree to reimburse the Bank for the costs and expenses (including without limitation, attorneys' fees and expenses) it incurs in recovering the negative balance.

You can avoid fees for overdrafts and NSF items and the possibility of returned items by ensuring that your account contains sufficient available funds for all of your transactions. We offer tools and services to help you avoid overdrafts, returned items, Overdraft and NSF fees on your account, such as Internet Banking, Mobile Banking and Voice Banking. You may talk to a PlainsCapital Bank representative to learn more about these services as well as overdraft protection.

## **Authority; Power of Attorney**

You understand and agree that you will not grant anyone authority to conduct business with us on your behalf until we have reviewed and accepted the proposed terms of authorization. This includes authority such as under power of attorney, bill-paying arrangement or other method. If you wish to grant someone a power of attorney over your account, or designate someone your attorney-in-fact with authority over

your account, or otherwise grant someone authority to act with respect to your account in the capacity of agent for you as principal, you agree to provide us the terms of authorization in the form of a completed power of attorney form that has been recognized as legally binding under Texas law, and also to provide on our request an agent's certification pursuant to Section 751.203 of the Texas Estates Code (as may be amended from time to time), or an opinion of counsel under Section 751.204 of the Texas Estates Code (as may be amended from time to time). We may in our sole discretion, however, accept and act upon any power of attorney form or terms of authorization in other form that we believe you to have executed. You agree to indemnify and reimburse us for any and all claims, costs, losses, damages and liability that we incur in accepting or acting upon any power of attorney form or terms of authorization in other form that we believe you to have executed. You will not claim that we wrongfully dishonored items presented to us before we accepted the authorization. If you have not given us the proposed authorization for advance review, we may, in good faith and in our sole discretion, honor items and instructions from the person you purportedly authorized. You will not hold us responsible if someone you authorized to conduct transactions on your account on your behalf misapplies your money. You assume all risk of improper acts by such person. We can consider an authorization valid until we receive written revocation of it from you and have had reasonable time to review and act upon any such revocation.

If we accept an authorization, we may revoke our acceptance of that authorization at any time at our discretion. Please note that the power of attorney or other form of authorization must be acceptable to us in our sole discretion and, unless prohibited by law, we reserve the right, in our sole discretion, to refuse to honor or follow the instruction of any power of attorney or terms of authorization in other form presented to us. We also reserve the right, in our sole discretion, to refuse to accept or act upon a power of attorney when an agent purporting to act under the power of attorney seeks to expand your existing customer relationship with us, seeks to acquire a service under the power of attorney that we do not offer, or asks us to perform any act that we believe would violate the terms of any agreement in place between you and us, and we further reserve our right not to accept or act upon a power of attorney for any of the reasons stated in Section 751.206 of the Texas Estates Code. We also reserve our right, in our sole discretion, to require you or any proposed agent to provide additional information or documentation that we believe, in our sole discretion, sufficient to satisfy any question or concern we may have. Unless a power of attorney executed by you expressly so states, an agent that you appoint cannot appoint another agent. If you disclose information about the account that would permit someone to initiate a debit to the account (such as the account number, bank routing number and next unused check number), then you will be deemed to have authorized us to pay any debit to your account that person initiates.

## **Account Statements**

You agree to examine your periodic account statements and any accompanying items (front and back sides) promptly upon receipt or when the statements and any accompanying items are otherwise made available to you, whichever occurs first, and to promptly report any error, irregularity, discrepancy, unauthorized transaction or fraudulent transaction, including without limitation any forged signature, unauthorized signature, unauthorized debit, unauthorized transfer or alteration (collectively for purposes of this section, "Error") or any unauthorized, fraudulent, improper or missing endorsement (collectively, for purposes of this section,

“Unauthorized Endorsement”) to us.

You also agree to notify us promptly if you do not receive any periodic account statement or any accompanying items.

Statements and any accompanying items that we send to your statement mailing address as maintained in our records shall be deemed to be received by you within five (5) business days of the date of mailing. Internet account statements and any accompanying items shall be deemed to be made available to you when the account statements or their electronic equivalent are posted on the Internet and we send or transmit to you an electronic mail notification of availability, and account statements and any accompanying items otherwise transmitted to you electronically shall be deemed to be made available to you when we send or transmit the electronic account statement to you. By making your periodic statement with check images available to you, it is as though we have included cancelled checks and other items with your statement. Account statements that we hold at your request or because you fail to provide us with a current address shall be deemed made available to you as of the date the statement is prepared. For checking and money market accounts, we will send or otherwise make available your account statement on a monthly basis, or at the frequency and in the manner advised to you from time to time. For savings accounts, we will send or otherwise make available your account statement on a quarterly basis, or at the frequency and in the manner advised to you from time to time. If you have an electronic fund transfer (such as an electronic direct deposit or ATM withdrawal) to or from your account during any month, we will send or otherwise make available a statement for that month. Additionally, you understand and agree that we make your account statements and any accompanying items available to you by making them available to you to access or obtain at any of our bank branch locations.

You must notify us in writing of any Unauthorized Endorsement. This notification should be made as soon as you are aware of the Unauthorized Endorsement, and must be made to us in writing within 3 years of the date when the item(s) or your account statement identifying or detailing the item(s) containing the Unauthorized Endorsement is sent, transmitted or otherwise made available to you. Except as otherwise expressly stated in this Agreement, you must notify us in writing of any other Error within thirty (30) calendar days of the date when the item(s) or your account statement identifying or detailing the item(s) containing the Error(s) is sent, transmitted or otherwise made available to you. You agree that if you do not so notify us of Unauthorized Endorsement(s) or Error(s) within the time frames set forth above, such Unauthorized Endorsement(s) or Error(s) shall be fully enforceable against you, we will not be liable for any such Unauthorized Endorsement(s) or Error(s), and you shall not have and will not bring any claim against us in relation to any such Unauthorized Endorsement(s) or Error(s).

You also agree to provide in writing (complete Fraud Affidavit) all relevant facts, including a description of the Unauthorized Endorsement or Error, and to identify any suspected wrongdoer. Additionally, if you fail to notify us in writing within a reasonable time (not to exceed 30 days from the date you discover the problem or have access to an account statement or notice reflecting the first Error or Unauthorized Endorsement, whichever occurs first), we will not be responsible for subsequent Errors or Unauthorized Transactions on any of your accounts by the same wrongdoer. Note: Different notification and liability rules apply to certain electronic funds transfers and wire transfers. At your request, we will provide you with copies of your paper transactions. However, your request for such items will not extend the time within which you must notify us of the discrepancies shown on

your account statement.

You are responsible for monitoring and reviewing the activity of your account and, if applicable, the work of your employees, agents and accountants. Toward that end, we expect that you will have a reasonable process in place with a separation of duties to inspect statements on a regular basis to look for improper and unauthorized signatures, alterations, forged endorsements, overpayments or any other irregularities, and to ensure that the accounts are being handled in a proper manner. To the fullest extent permissible under applicable law, we may deny any claim for loss due to forged or unauthorized checks if you fail to have such a process in place to locate this activity.

The Substitute Checks and Your Rights section of this Agreement provides further information concerning substitute checks and your rights with respect to substitute checks, and governs the reporting of Errors with respect to substitute checks. Additionally, in the event that an item was fraudulently altered or drawn without authorization in such way that a reasonable person could not detect the fraud and we were not grossly negligent in any way, you will not hold us responsible for any loss resulting from such fraud, unless we have otherwise agreed with you in writing.

Written notice that you send or otherwise provide to us regarding your account statements shall be deemed effective when actually received by us. Written notice should be sent to PlainsCapital Bank, ATTN: Research Department, 5010 University Avenue, Lubbock, Texas 79413. Written notice that we send or otherwise provide to you regarding your account statements shall be deemed effective upon deposit in the U.S. Mail, postage prepaid and addressed to you at your statement mailing address or, in the case of hand delivery, upon hand delivery to you.

If we are safekeeping or truncating your checks or deposit slips, you understand and agree that we will not return your original cancelled checks, substitute checks or deposit slips with your account statement, and that they may be retained or destroyed in accordance with our applicable record retention policy or schedules. You further understand and agree that our retention of checks does not alter or waive your responsibility to examine your account statements and report to us any Unauthorized Endorsements or Errors within the time periods set forth above.

Account statements that we send or make available to any account holder shall be deemed to be received or made available to all account holders.

As a commercial account holder, you understand and agree that you have inquired of, and conducted due diligence to determine if any of your employees or applicants to employment with you who act with responsibility with respect to your checks and other items or accounts, or who are or become responsible for the handling of your financial affairs (including, without limitation, handling or reconciliation of your account statements), have ever been charged with or convicted of a felony, and that you have implemented a system of reasonable financial controls and procedures, including, without limitation, to avoid and detect employee embezzlement and the unauthorized completion or use of your negotiable instruments and/or accounts.

## **Your Insurance Coverage**

Many businesses carry special insurance for employee fraud/ embezzlement. We recommend that you carry such insurance to help protect you from employee theft, fraud and embezzlement. If you do, we reserve the right to require that you file any such claim with your insurance company before making any claim against us. In such event, we will consider

your claim only after we have reviewed your insurance company's decision. In any event, our liability to you, if any, will be reduced by the amount your insurance company pays you.

## **Account Type**

Commercial and business accounts include, without limitation, accounts held by a corporation, limited liability company, partnership, unincorporated association, or sole proprietorship. The account type is noted on the Signature Card. If the account is a savings account, or to the extent we may offer a negotiable order of withdrawal (NOW) account, a NOW account, we reserve the right to require seven (7) days' written notice before any withdrawal. We have given you disclosures explaining applicable transaction limits, fees, interest rates and balance requirements. You agree that our fees and charges need not be based upon the cost of providing the service or administering the event to which the fee or charge is associated, but may be based on other considerations such as the expense of providing account services, similar charges of other financial institutions with which we compete, revenues to the Bank and the deterrence of abuse of an account.

## **Interest Calculation – Interest Bearing Accounts, Accrual and Payment**

We use the daily collected balance method to calculate interest. For accounts that earn interest, interest is calculated at the annual rate and in the manner specified in the applicable Schedule using a 365-day-year (366 days in a leap year). The daily collected balance method applies a daily periodic rate to the collected balance each day. If you deposit a non-cash item, such as a check, interest begins to accrue no later than the business day we receive credit for its deposit. This may not be the same day that you deposit the non-cash item to your account. Interest is typically credited to checking accounts monthly and savings accounts quarterly. The Schedule may specify a minimum balance requirement for the payment of interest.

## **Authorized Persons; Beneficial Owners**

You understand and agree that in opening any such commercial or business account, with respect to any and all transactions on the account you authorize us to act on the instruction or direction of each and every person authorized in the resolutions, certificate of authority or banking agreement to act on behalf of the entity or business for whom the account is established.

You also understand that for certain types of legal entities, on and at any point after the commencement of our account relationship with you, we may require you to identify, verify and certify each individual who, directly or indirectly, holds an ownership interest of twenty five percent (25%) or more in the entity, and an individual who has significant responsibility to control, manage, or direct the entity ("Beneficial Owners" as defined in Title 31 of the Code of Federal Regulations). If you are obligated to identify and/or certify Beneficial Owners at account opening, you are responsible for notifying us of any subsequent change in identified and/or certified Beneficial Owners as soon as practicable in a form and manner acceptable to us.

## **Signatures to Come**

If you ask us to create an account for multiple owners or

authorized signers, we can limit the use of the account until all owners and authorized signers have signed the Signature Card.

## **Your Address and Changes of Account Related Information**

We may send notices, statements and other communications regarding your account to you at the most recent electronic and/or street address we have in our records for your account. You agree to notify us immediately if you change your street or electronic address. You may send us communications, such as change of address requests (street or electronic) at the address on the back cover of this Agreement or you may make the request over the telephone. If you request to update your information over the telephone we may take appropriate measures to authenticate your identity.

We may act on any such instruction made on your behalf within a reasonable time after our receipt. We may destroy all articles that are sent to you and returned to us as undeliverable items. We may also stop sending communications to you until you provide us with a new street or electronic address. You further agree to notify us immediately of any change in your name, telephone number, taxpayer identification number or other pertinent account information which allows us to service your account.

## **Date of Notices**

Except where this Agreement requires that something be "actually received," the date on which communication occurred is determined by the postmark or postage meter date for postal mail and by the email sent date for electronic communications.

## **Deposit Reclassification of Account**

This account consists of a checking sub account and a savings sub account. The Bank may periodically transfer funds between these two sub accounts. On a sixth (6th) transfer during a calendar month, any funds in the savings sub account will be transferred back to the checking sub account. If your account is a plan on which interest is paid, your interest calculation will remain the same. Otherwise, the savings sub account will be non-interest bearing. The savings sub account will be governed by the rules governing our other savings accounts. This process will not affect your available balance, the interest you earn, FDIC insurance protection or your monthly statement.

## **Special Rules for Sweep Arrangements**

As an insured depository institution, we are required to disclose whether swept funds are deposits within the meaning of 12 U.S.C. 1813(l), a U.S. Code statute describing those deposits eligible for FDIC Insurance. If the funds are not deposits under this statute, we must further disclose the status of such funds should the institution fail. If the Bank were to fail, the swept funds under this Agreement do not meet the FDIC deposit definition and, therefore, would not be guaranteed by the FDIC nor be eligible for FDIC insurance.

## **Dormant and Unclaimed Accounts or Safe Deposit Boxes**

### **Checking, Savings, Money Market and Time Deposit**

When the funds in your checking, savings, money market or time deposit accounts are considered to be abandoned for three (3) years, we are required to escheat the account to the state comptroller.

When the funds in your account are delivered to the state, your account is closed, no interest accrues, and we will have no further liability to you for such funds.

To recover the funds delivered to the state, you must file a claim with the state.

You can prevent the escheatment of checking, savings, money market or time deposit accounts by making contact with us or communicating with us in ways which may include, without limitation: depositing or withdrawing funds, updating your account address, signing into your account on our website, writing or calling us concerning your dormant account.

### **Checking, Savings or Money Market Accounts**

- Your checking, savings or money market accounts are considered inactive and dormant if there is no customer-initiated debit or credit activity for more than one (1) year, and you have not communicated with us during that time.
- If your checking, savings or money market account is considered inactive and dormant, we may hold all statements for your account.
- If your checking, savings or money market account is considered inactive and dormant, card privileges (including ATM and Point-of Sale access) may be blocked or terminated, and we may refuse to honor other transactions.
- If your checking, savings or money market account remains inactive and dormant for at least three (3) years, we may presume it to be abandoned.

### **Time Deposit Accounts**

- Your time deposit accounts are considered inactive and dormant if there is no customer-initiated contact for more than one (1) year after the first maturity date.
- If your time deposit account is considered inactive and dormant, we may hold all statements for your account.
- If your time deposit account remains inactive and dormant for at least three (3) years (after the first maturity date), we may presume it to be abandoned.

### **Safe Deposit Boxes**

When your safe deposit box is considered to be abandoned for five (5) years, we are required to escheat the property; that is, to deliver the property in your safe deposit box (the contents) to the state comptroller.

When the property (contents) from your safe deposit box is delivered to the state, your box is closed, and we will have no further liability to you for such property.

You can prevent escheatment of your contents by paying your safe deposit box rent.

### **Safe Deposit Boxes**

- Your safe deposit box is considered inactive and dormant if the rent on the box is delinquent. Safe deposit box rent becomes delinquent nine (9) months after the last rental payment expired.
- If your safe deposit box remains inactive or dormant for

at least (5) years, we may presume it to be abandoned.

## **Recording and Monitoring Telephone Calls**

To provide you better service and for quality assurance and our mutual protection, we may record and/or monitor any of our telephone and electronic communications with you.

You consent to the recording or monitoring of telephone calls and electronic communications between you and us. We will remind you of this practice before each call only as required by law. If you authorize someone such as an attorney to do business with us on your behalf, you will be responsible for obtaining their permission to allow us to record their communications with us, and we may assume they have given you such consent by virtue of their doing business with us on your behalf.

## **Customer Authentication Requirements**

You may contact us by telephone to request account maintenance, updates and/or account transactions be performed on your account. Maintenance and/or transactions will only be processed if we are able to authenticate your identity. We may take the appropriate measures to authenticate your identity.

## **Credit Reports**

You authorize us to request and obtain one or more reports about you periodically from organizations such as consumer reporting agencies, check reporting services and other credit reporting entities for purposes of considering your account or loan application(s), reviewing and collecting on any of your accounts or for other permissible business purposes, and to provide them information about your accounts. You understand that late payments, missing payments and other defaults may be reflected in your credit reports.

## **Cash Bonus**

A cash bonus in excess of \$9.99 will be reported on a 1099 INT Form as Interest Income.

## **Other Services**

Certain services offered by the Bank may be governed by terms covered outside of this Agreement. Should you elect to use other services offered by the Bank, you agree to be bound by the terms applicable to each such service, as well as the terms of this Agreement.

## **Safe Deposit**

We will mail you a Safe Deposit Box Billing Notice ten (10) days prior to your annual rental payment due date. If you do not pay your safe deposit box rent within nine (9) months after the due date, your box rent is delinquent. If your box rent is delinquent for at least six (6) months, at our option, we may send notice to you that we will drill your Safe Deposit Box and remove its contents if the delinquent rent is not paid within sixty (60) days after the date such notice is sent. If the delinquent rent is not paid within such 60-day period, we may drill your Safe Deposit Box and remove its contents in accordance with the Texas Finance Code. At such time, your box will be officially closed. The box contents will be inventoried pursuant to the Texas Unclaimed Property Division's written instructions and stored at our Bank under dual control access. In order to claim the contents, you must pay the delinquent rent and fees; pay



the drilling expenses; provide valid identification; and sign the inventory sheet.

## **Additional Terms for Time Deposit Accounts**

We may refer to a time deposit account as a "Time Certificate of Deposit", "Certificate of Deposit" or a "CD".

Time Deposit accounts include deposits which are payable, either on a specified date or at the expiration of a specified time, no less than seven (7) calendar days after the date of deposit. Time Deposit accounts require a minimum balance of \$1,000. If your Time Deposit account balance falls below the minimum balance of \$1,000, we may close the Time Deposit account. You agree to keep your funds on deposit until the maturity date. You may make withdrawals from your Time Deposit account on the maturity date or within the grace period after the maturity date without penalty. Your Time Deposit account will mature at the end of the term stated on your Certificate of Deposit, Time Deposit or Receipt of Time Deposit, as applicable. If you make a withdrawal of all or part of the funds prior to the maturity date, early withdrawal penalties may apply as discussed below.

## **Presentment of Time Certificate of Deposit**

You are not required to present your Certificate of Deposit, Time Deposit or Receipt of Time Deposit to withdraw funds from your Time Deposit. You will comply with our Time Deposit withdrawal procedures which may include, but may not be limited to, signing a Time Deposit Withdrawal Agreement.

## **Date of Issue**

The date of issue will be the day that you opened your account.

## **Interest Calculation – Interest Bearing Accounts, Accrual and Payment**

We use the daily collected balance method to calculate interest. Interest is calculated at the annual rate and in the manner specified in the applicable Schedule using a 365-day-year (366 days in a leap year). The daily collected balance method applies a daily periodic rate to the collected balance each day. If you deposit a non-cash item, such as a check, interest begins to accrue no later than the business day we receive credit for its deposit. This may not be the same day that you deposit the non-cash item to your account. If you elected a payment of interest other than a credit to your time deposit account, we may, at our sole discretion, terminate it in favor of crediting your time deposit account. Ordinarily, we exercise such discretion when an interest payment is returned undelivered or because the account to which your interest payments are automatically credited is closed.

## **Renewals**

If noted on the Receipt of Time Deposit that your Time Deposit account is automatically renewing, we will renew the time deposit at each maturity date for the same term. The interest rate will be the one we offer on that renewal date for deposits of the same term and amount. You will have a grace period of ten (10) days after renewal in which you may withdraw funds without penalty. We can decline to renew at any renewal date by notifying you beforehand.

## **Early Withdrawal Penalty**

We do not have to permit early withdrawals. For each one, we

can charge a penalty calculated as follows: for Time Deposit accounts with a maturity date of seven (7) days or less, seven (7) days interest on the amount withdrawn; for Time Deposit accounts with a maturity date of eight (8) days to three hundred sixty-four (364) days, thirty (30) days interest on the amount withdrawn; for Time Deposit accounts three hundred sixty-five (365) days and over, ninety (90) days interest on the amount withdrawn. If there is enough accrued interest to cover the penalty, we deduct the penalty from the accrued interest.

If not, we deduct the remainder of the penalty from principal. If a variable-rate account, we calculate the penalty using the interest rate applicable at withdrawal. You understand the law requires us to charge at least seven (7) days simple interest on any amount withdrawn (a) within the first six (6) days after the account is opened, or (b) within six (6) days after a partial early withdrawal.

## **Exceptions**

We may permit you to withdraw funds prior to maturity without incurring an early withdrawal penalty under the following circumstances:

- The death or judicial determination of incompetence of a Time Deposit account owner
- The disability of a Time Deposit account owner
- The re-titling of a Time Deposit due to transfer of ownership into a living trust held within the Bank
- Capitalized (not accrued) interest withdrawals

## **Identification**

Federal law, including the USA Patriot Act, requires all financial institutions to obtain, verify and record information that identifies any business entity, along with its owners, that opens an account with that financial institution. In addition, financial institutions are required to know and record the primary business function and/or purpose of their commercial customers. When you apply for a commercial account, we will ask for the legal name of the business entity, the address, the taxpayer identification number (TIN) and applicable documentation. We may require a TIN confirmation letter or income tax return if we are unable to verify the tax identification number. We may validate the information you provide to us to ensure we have a reasonable assurance of your identity. We may contact you for additional information. If your account is funded before we verify the information you provided, you may not have access to the funds. If we are not able to verify the identity of the business entity to our satisfaction, we will not open the account or we may close the account if it was previously funded.

## **Severability**

If a court, arbitrator, or other decisional authority determines or finds any part or provision of this Agreement illegal, invalid or unenforceable, you understand and agree that such determination or finding shall not render the remainder of the Agreement illegal, invalid or unenforceable, and that the remainder will be enforced and, if reasonably feasible, the offending provision shall be modified to make it valid and enforceable. If it is not reasonably feasible to so modify the offending provision, then such provision shall be stricken and the remainder of the Agreement shall in all other respects remain valid and enforceable.

## **Limitation of Liability; Indemnification; Statute of Limitations**

**TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER IN CONNECTION WITH YOUR ACCOUNT OR A SERVICE, IN NO EVENT OR CIRCUMSTANCE WILL EITHER PARTY TO THIS AGREEMENT OR ITS RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, OR AGENTS BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FOR ANY ACTION THAT EITHER PARTY TAKES OR FAILS TO TAKE, WHETHER ANY SUCH CLAIM IS BASED ON CONTRACT OR TORT OR OTHER DUTY IMPOSED AT LAW, OR WHETHER THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO EITHER PARTY.**

The foregoing limitation of liability will not apply where expressly prohibited by the laws governing your account, and is not intended to and will not avoid or limit your liability or responsibility for payment of attorney's fees, costs and court costs or other costs or expenses for which you are liable or responsible under other provisions of this Agreement. The Bank will not have any liability to you if there are not sufficient available funds in your account to pay your items due to actions taken by the Bank in accordance with this Agreement or any authorized third party instruction or activity.

In addition to our rights of indemnity set forth in other provisions of this Agreement, except to the extent that the Bank fails to exercise ordinary care or breaches this Agreement, you understand and agree that you will indemnify us against and hold us and our directors, officers, shareholders, employees, and agents harmless from all claims, demands, losses, liabilities, judgments, costs and expenses (including without limitation attorney's fees and legal expenses) arising out of or in any way connected with the Bank's performance under this Agreement. You agree that this indemnification will survive the closing of your account and the termination of any service.

You further understand and agree that, to the extent permitted by law and unless a different time period is stated in this Agreement, any action, claim, suit or proceeding for damages against the Bank, resulting in any respect from the Bank's acts or omissions in its performance under or non-performance with this Agreement, must be brought within two (2) years of the date of the Bank's alleged act or omission.

## **Headings**

Section headings within this Agreement are for convenience only and shall not affect the meaning of any terms or conditions of the Agreement.

## **Force Majeure**

You understand and agree that we will not be deemed to be in default of any of our obligations under this Agreement, and will not be held responsible or liable for loss or damages or failure to complete a transaction or if our performance is delayed, hindered, or becomes impossible because of an event or circumstances beyond our control, such as any act of God or of any public enemy, hostilities, war (declared or undeclared), guerilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, tremor, ground movement, hurricane, storm or natural disaster, explosion, fire, labor disturbance, riot, insurrection, strike, accident, civil commotion, epidemic, act of government or its agencies or officers, power interruption or transmission failure, computer or server problem, communication or transport problem, or any cause beyond our control.

## **Laws and Regulations**

We are subject to federal and state laws and regulations. You will not hold us liable for anything we do or decline to do based on a good faith belief that it is required or prohibited by law or regulation. Some laws and regulations allow parties to contract out of their provisions and establish rules by contract. You understand and agree that whenever a term or provision of this Agreement conflicts with any applicable law, regulation or rule, the terms and provisions of this Agreement shall govern to the extent any such law, regulation or rule may be modified by agreement. You will abide by the rules of any clearinghouse or automated clearinghouse that handles any part of a transaction.

## **No Waiver**

Failure to insist upon your strict performance of any obligation under this Agreement will not create any duty on our part to continue to do so, and our failure to exercise any right will not waive that right or any other right. You will not claim that we waived our right to insist on proper performance, or to exercise or enforce any of our rights in the future. To be effective, any waiver of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach.

## **Rights are Cumulative**

You agree that our rights under this Agreement are cumulative, not exclusive, and that we may exercise any of them without giving up the right to exercise others.

## **Account Closing**

Either you or we may close your account at any time with or without cause. If we close your account we will send you written notice by mail to your statement mailing address on the date that we close the account, except that if we reasonably believe that closing the account will prevent loss to us, or that you have violated this Agreement or abused your account relationship with us, we may provide notice of the account closure by mail or by electronic transmission on the business day of the closure or, if closure occurs on a Saturday, Sunday or federal holiday, on the next business day.

You may close your account by notifying us in writing. You understand and agree that, absent your written request, we have no obligation to close your account on your behalf. You understand and agree that you must pay any fees and costs incurred prior to the closing of your account and any fees and costs incurred in relation to closing the account, as well as any outstanding items and obligations. Our rights and your obligations survive any closing of the account or cancellation of this Agreement. After your account is closed we will have no obligation to pay any outstanding items or to accept any deposit to the account. You will not claim we wrongfully dishonored items we return unpaid on or after the day the account was closed, and you agree to hold us harmless for any check or other item drawn on or otherwise presented for payment against a closed account.

## **Setoff**

To the fullest extent permitted by law including, without limitation, the Texas Finance Code, the Texas Business and Commerce Code, and Texas common law, you grant us the right to apply or set off the funds in any of your accounts, whether held individually or jointly, up to and including your account balance(s) to or for payment of any debt that you

or any owner of the account(s) owes us, whether jointly or individually, without prior notice to you, including, without limitation, direct obligations such as promissory notes and agreements (including this one), and indirect or contingent obligations such as guarantees, assigned debt, endorsements, garnishments, levies or attachments, and/or any fees or service charges owed to us, and you expressly grant us a security interest in all of your accounts to secure any and all such debts, as they may arise. You expressly agree that, to the fullest extent permitted by law, this right of setoff also applies to any federal or state benefits payments, including without limitation Social Security benefits payments, deposited or transferred into your account, and that you may change your deposit instructions to the payor at any time if you wish to avoid having your benefits payments so applied. If your account is a multiple-party or joint account, you understand and agree that each of the account owners or signatories authorizes us to exercise this right of setoff against each and every account of each of the account owners or signatories. Our right of setoff does not apply to your account if it is an IRA Keogh plan or other tax-deferred retirement account, a Health Savings Account, or certain trust accounts, and we may not exercise the right of setoff against your account for liability arising from a home equity loan secured by a Texas Homestead Property.

## **Disputed Authority; Conflicting Claims**

If we are presented with, become subject to, or have reasonable grounds to anticipate conflicting claims or demands, rival claims or demands, or competing claims or demands to an account or funds held in an account, or if we have any reason to believe there is a dispute over signatory authority or the authorized signatories to your account, then, irrespective of whether the person making such claim or demand is a depositor, co-owner or a third party claiming an interest in your account or funds, or if the Bank believes that conflict exists between or among the authorized signers on your account, we may, without any liability to you, take one or more of the following actions:

- Continue to rely on our records to determine the ownership of or the identity of the authorized signer(s) for your account;
- Honor the claim upon receipt of evidence satisfactory to the Bank, in our sole discretion, to justify such claim;
- Place a hold on (or "Freeze") all or part of the funds in your account until the dispute is resolved to our sole satisfaction;
- Close your account and send a check for the available balance in your account payable to you at the statement address for your account, or to you and each claimant; or
- Pay all or part of the account balance into an appropriate court or arbitration authority in an interpleader or other action to determine ownership of the account and/or the funds held in the account.

You will not claim that we wrongfully dishonored or refused to pay any items previously presented to us or requested to be paid after we hold or freeze some or all of the account balance, or while any such dispute is pending. You agree that you will be responsible and liable to us for any and all loss, costs and expenses (including without limitation attorney's fees and costs) that we may incur as a result of any such dispute, conflicting, rival or competing claim or demand or legal proceeding involving your account or the funds held in your account and we may deduct any such costs and expenses from your account without prior notice to you.

## Freezing Your Account

In addition to the reasons discussed in the “Disputed Authority; Conflicting Claims” section of this Agreement, when irregular, unauthorized or unlawful activities are suspected with your account, we may place a hold on (or “freeze”) the balance in your account and in other accounts you maintain with us, without any liability to you, pending an investigation of such suspected activities. We will, if required by the laws governing your account, give you notice if a hold is placed on the balance in your account. We may also block suspected illegal transactions.

## Standard of Care

The Bank will meet its standard of care for your account by exercising ordinary care (as defined in Chapter 3 of the Texas Business and Commerce Code where applicable, except as otherwise modified herein or otherwise in this Agreement) in the transaction at issue. When the Bank takes an item for processing for collection or payment by automated means, “ordinary care” does not require the Bank to examine the item. You understand that we have adopted commercially reasonable automated processing procedures for the processing of items for collection and payment to assist in processing the largest volume of items at reduced cost to our customers, and that we have no duty to visually inspect signatures. You also understand and agree that we have no duty to review endorsements on items presented to us for payment by depository or collecting banks (as those terms are defined in Chapter 4 of the Texas Business and Commerce Code) or other third parties who make a presentment warranty to us. While we have no duty to review endorsements on such items, we may, in our sole discretion, refuse to pay or accept any item for deposit or collection unless we are able to verify to our satisfaction that all of the necessary endorsements are present on the item. We also may, in our sole discretion, refuse to pay or accept any item presented to us by other means unless we are able to verify to our satisfaction that all of the necessary endorsements are present on the item. For example, we may require that all endorsers be present at the time that an item is presented to us for payment or accepted for deposit or collection.

In all other cases, except to the extent modified by this Agreement, “ordinary care” requires only that the Bank follow commercial standards that do not vary unreasonably from the general standards followed by similarly situated banks in the area in which the Bank is located. The Bank’s policies and procedures are general internal guidelines for the Bank’s use and do not impose on us or in any way establish a higher standard of care for the Bank than is otherwise established by the laws governing your account. A mere clerical error or an honest mistake will not be considered a failure of the Bank to perform any of its obligations.

## Legal Process

We may accept, rely upon and act on any legal process served upon us that we believe to be valid, effective or binding, regardless of how or where we are served, and you will not hold us responsible for any loss or damages you suffer from our actions in reliance on any order or other legal process. “Legal process” includes, but is not limited to, a levy, garnishment or attachment, withholding order, injunction, restraining order, subpoena, search warrant, government agency request for information, forfeiture, seizure, or other legal process relating to your account. The entire balance or a portion of the balance in an account may be subject to a hold or frozen, or subject to such encumbrances as, among others, garnishments, levies or attachments. Any fees or expenses that

we incur in responding to any such legal process may be charged against any account you maintain with the Bank, without prior notice to you.

## **Expenses**

In addition to expenses covered in other provisions of this Agreement, you agree to pay any expenses we incur in good faith related to this Agreement, such as fees on items sent for collection, foreign exchange charges and non-reimbursed research and copying fees incurred when a third party requests records about your account or our relationship. You agree to pay any and all attorneys' fees and court costs we incur in good faith due to concerns about the account, whether or not litigation has been filed, and through the trial and all appeals. You also agree to pay any expense that we incur, including without limitation attorney's fees, in response to any subpoena, writ, government agency or judicial order, search warrant or other order, demand or request to which we may be required to respond regarding your account or your relationship with us.

## **No Assignment**

You understand and agree that neither the account nor your rights under this Agreement may be assigned without our written permission. You further understand and agree that you may not pledge the account without our written permission, and that any pledge to which we agree shall remain subject to our rights under this Agreement and at law. Your permitted successors and assignees are bound by this Agreement.

## **Governing Law, Jurisdiction and Venue**

The laws of the State of Texas shall govern this Agreement, and all disputes that arise out of or from or are related to your account. Additionally, certain federal regulations and national and/or local clearing house rules may apply. You understand and agree that the courts in the State of Texas (state or federal) shall have jurisdiction of any dispute in connection with this Agreement or your account. You agree that venue will be proper in the courts in the county and city of our office in Texas where you signed the Signature Card(s) for your account(s), or, if you signed your Signature Card(s) outside the State of Texas, in the courts in the county and city of our office in Texas to which your Signature Card(s) was or were sent or otherwise delivered. You further agree that in any dispute concerning an item or items paid by us or deposited in your account(s) in a Texas county different than the county where you signed the Signature Card(s) for your account(s), in our sole discretion venue will be proper in the county where the item(s) was or were paid or deposited.

## **Waiver of Jury Trial**

**THIS PROVISION LIMITS YOUR RIGHTS TO A JURY TRIAL. YOU SHOULD REVIEW THIS SECTION CAREFULLY. TO THE FULLEST EXTENT PERMITTED UNDER THE LAW OF THE STATE OF TEXAS, YOU KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY AGREE TO WAIVE YOUR RIGHT TO A TRIAL BY JURY OF EACH AND EVERY ISSUE, CLAIM, COUNTERCLAIM, ACTION, CAUSE OR DISPUTE WITH US ARISING, IN WHOLE OR IN PART, FROM OR IN ANY WAY RELATING TO YOUR ACCOUNT(S) OR THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY ADDENDA, SCHEDULES OR APPENDICES ATTACHED TO THIS AGREEMENT.**

**SUBJECT ONLY TO THE RIGHT OF ARBITRATION SET FORTH IN THE ARBITRATION SECTION OF THIS AGREEMENT, ANY**

AND ALL SUCH DISPUTES MAY BE TRIED BEFORE A JUDGE ONLY. TO THE FULLEST EXTENT PERMITTED UNDER THE LAWS OF THE STATE OF TEXAS, THIS WAIVER OF RIGHT TO TRIAL BY JURY IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH AND EVERY INSTANCE AND ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE.

## **Arbitration**

YOU UNDERSTAND AND AGREE THAT TRANSACTIONS PROCESSED IN, THROUGH, OR TO YOUR ACCOUNT OR PURSUANT TO THIS AGREEMENT INVOLVE "COMMERCE" UNDER THE FEDERAL ARBITRATION ACT (THE "FAA").

PLEASE REVIEW THIS PROVISION CAREFULLY. IF YOU HAVE A DISPUTE WITH US, WE PREFER AND HOPE THAT THE DISPUTE MAY BE RESOLVED BY AGREEMENT AND IN A TIMELY MANNER. WE BELIEVE THAT ARBITRATION MAY BE A BENEFICIAL MEANS TO RESOLVE DISPUTES WHEN AGREEMENT MAY NOT BE QUICKLY OBTAINABLE, AS A MEANS TO OBTAIN A LEGALLY BINDING DECISION IN A COST EFFECTIVE MANNER OUTSIDE THE JUDICIAL PROCESS OF COURT PROCEEDINGS. ACCORDINGLY, EITHER YOU OR WE MAY, WITHOUT THE OTHER'S CONSENT, ELECT TO SEEK BINDING ARBITRATION OF ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO YOUR ACCOUNT (INCLUDING WITHOUT LIMITATION ANY APPLICATION FOR OR APPROVAL OF YOUR ACCOUNT) OR THIS AGREEMENT (THE "CLAIM" OR "CLAIMS") EXCEPT AS OTHERWISE STATED HEREIN, BY WRITTEN REQUEST TO THE OTHER, PROVIDED THAT THE PARTY SEEKING ARBITRATION HAS NOT SUBSTANTIALLY INVOKED THE JUDICIAL PROCESS WITH RESPECT TO ANY SUCH CLAIM TO THE DETRIMENT OR PREJUDICE OF THE OTHER PARTY. IF SO ELECTED, ARBITRATION REPLACES THE RIGHT TO GO TO COURT. ALL SUCH CLAIMS ARE SUBJECT TO ARBITRATION REGARDLESS OF THE THEORY THEY ARE BASED ON OR THE REMEDY SOUGHT, WITH THE EXCEPTION OF INTERPLEADER AND OUR RIGHTS SET FORTH IN THE "DISPUTED AUTHORITY; CONFLICTING CLAIMS" AND "FREEZING YOUR ACCOUNT" SECTIONS OF THIS AGREEMENT, AND ANY CLAIM THAT IS WITHIN THE JURISDICTIONAL LIMITS OF AND IS FILED IN A SMALL CLAIMS COURT, AND PROCEEDS ON AN INDIVIDUAL BASIS. YOU UNDERSTAND AND AGREE THAT IF EITHER PARTY TO THIS AGREEMENT REFUSES TO COMPLY WITH A TIMELY AND LAWFUL REQUEST PURSUANT TO THIS AGREEMENT TO SUBMIT TO ARBITRATION, THE OTHER PARTY SHALL BE RESPONSIBLE FOR ALL COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND COSTS, INCURRED BY THE PARTY REQUESTING ARBITRATION IN SUCCESSFULLY COMPELLING ARBITRATION. EXCEPT AS OTHERWISE MODIFIED HEREIN, THE ARBITRATION WILL BE CONDUCTED AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") UNDER ITS COMMERCIAL ARBITRATION RULES, AND THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE). THIS AGREEMENT WILL CONTROL AND GOVERN ANY CONFLICTS BETWEEN THE AAA COMMERCIAL ARBITRATION RULES AND THIS AGREEMENT. JUDGMENT ON ANY AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION.

TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOT WITHSTANDING ANY RULE TO THE CONTRARY, THE ARBITRATION WILL BE CONDUCTED AND WILL PROCEED ONLY AS AN INDIVIDUAL ACTION; THE ARBITRATORS SHALL HAVE NO POWER OR AUTHORITY TO ARBITRATE ANY CLAIM ON A CLASS-WIDE OR REPRESENTATIVE BASIS, OR TO CONSOLIDATE CLAIMS OR OTHER ACTIONS OR CAUSES ASSERTED BY DIFFERENT CLAIMANTS OR COUNTER-CLAIMANTS, WHETHER PRIVATE OR PUBLIC, OR TO AWARD ANY RELIEF ON A CLASS-WIDE OR REPRESENTATIVE BASIS.



**THIS ARBITRATION PROVISION EXPRESSLY APPLIES TO AND COVERS ANY CLAIM OR OTHER CAUSE OR ACTION BROUGHT OR MADE AND ANY REMEDIES SOUGHT AS PART OF ANY CLASS ACTION PROCEEDING OR REPRESENTATIVE ACTION (WHETHER BY PRIVATE ATTORNEY GENERAL OR OTHERWISE). THEREFORE, ANY CLAIM BETWEEN YOU AND US THAT IS RAISED OR OTHERWISE INCLUDED IN ANY CLASS ACTION LAWSUIT OR REPRESENTATIVE ACTION IS AND WILL BE SUBJECT TO AN INDIVIDUAL ARBITRATION CLAIM PURSUANT TO THIS ARBITRATION PROVISION SHOULD EITHER YOU OR WE SO ELECT.**

**THE ARBITRATION AND ARBITRATION HEARINGS WILL BE HELD IN AND TAKE PLACE IN THE TEXAS CITY CLOSEST TO YOUR PRIMARY PLACE OF BUSINESS IN TEXAS OR, IF YOUR PRIMARY PLACE OF BUSINESS IS LOCATED OUTSIDE THE STATE OF TEXAS, IN DALLAS, TEXAS.**

**FOR CLAIMS OF MONETARY DAMAGES TOTALING \$100,000.00 OR MORE, EXCLUSIVE OF ATTORNEY'S FEES AND COSTS, THE ARBITRATION SHALL BE CONDUCTED BEFORE A PANEL OF THREE (3) ARBITRATORS, SELECTED AND APPOINTED AS FOLLOWS. WE AND YOU SHALL EACH APPOINT ONE**

**(1) ARBITRATOR, AND THE THIRD ARBITRATOR WILL BE APPOINTED BY MUTUAL AGREEMENT OF THE PARTIES. TO BE ELIGIBLE FOR SELECTION AND APPOINTMENT, EACH OF SUCH THREE (3) ARBITRATORS MUST BE LISTED BY AAA ON ITS NATIONAL ROSTER OF ARBITRATORS AS OF THE TIME OF SELECTION AND APPOINTMENT, UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES. IF THE PARTIES ARE UNABLE TO REACH AGREEMENT ON THE APPOINTMENT OF THE THIRD ARBITRATOR WITHIN A REASONABLE PERIOD OF TIME, OUR AND YOUR APPOINTED ARBITRATORS SHALL JOINTLY SELECT THE THIRD ARBITRATOR FOR THE PANEL, PROVIDED THAT SUCH ARBITRATOR ALSO MUST BE LISTED BY AAA ON ITS NATIONAL ROSTER OF ARBITRATORS AS OF THE TIME OF SELECTION. FOR CLAIMS OF MONETARY DAMAGES TOTALING LESS THAN \$100,000.00 OR FOR INJUNCTIVE OR OTHER NON-MONETARY RELIEF, THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR, SELECTED BY THE AAA PURSUANT TO ITS COMMERCIAL ARBITRATION RULES. YOU UNDERSTAND AND AGREE THAT NO COURT OR OTHER JUDICIAL BODY WILL HAVE ANY AUTHORITY TO APPOINT AN ARBITRATOR, OR OTHERWISE TO DETERMINE WHETHER OR NOT ANY ARBITRATOR MAY BE SELECTED OR APPOINTED.**

**THE ARBITRATOR(S) WILL CONSIDER AND APPLY APPLICABLE SUBSTANTIVE LAW, INCLUDING WITHOUT LIMITATION THE APPLICABLE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE STATUTE OF LIMITATIONS OR STATUTE OF REPOSE, INCLUDING WITHOUT LIMITATION ANY STATUTE OF LIMITATIONS OR STATUTE OF REPOSE SET FORTH IN THIS AGREEMENT AND/OR CONTRACTUAL CONDITION PRECEDENT, AND WILL HONOR ALL CLAIMS OF PRIVILEGE RECOGNIZED UNDER TEXAS LAW. EITHER YOU OR WE MAY FILE A MOTION FOR DISPOSITIVE RELIEF OR FOR SUMMARY JUDGMENT IN THE ARBITRATION, SEEKING DISPOSITIVE OR SUMMARY JUDGMENT IN WHOLE OR IN PART, IDENTIFYING EACH CLAIM OR DEFENSE ON WHICH DISPOSITIVE RELIEF OR SUMMARY JUDGMENT IS SOUGHT. THE MOTION MAY BE SUPPORTED BY AFFIDAVIT(S) OR DECLARATION(S) MADE ON PERSONAL KNOWLEDGE, INCLUDING IN THE CAPACITY OF A RECORDS CUSTODIAN, AND SHOWING THAT THE AFFIANT OR DECLARANT IS COMPETENT TO TESTIFY ON THE MATTERS STATED. THE ARBITRATOR(S) SHALL GIVE FULL CONSIDERATION TO ANY SUCH MOTION, SHALL BE BOUND TO APPLY APPLICABLE LAW, AND SHALL GRANT DISPOSITIVE RELIEF OR SUMMARY JUDGMENT IF THE MOVANT SHOWS THAT THERE IS NO GENUINE DISPUTE AS TO ANY MATERIAL FACT AND THE MOVANT IS ENTITLED TO JUDGMENT**

UNDER APPLICABLE LAW. THE ARBITRATOR(S) SHALL HAVE NO AUTHORITY TO AWARD OR GRANT CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES OR ANY OTHER DAMAGES NOT MEASURED BY THE PREVAILING PARTY'S ACTUAL DAMAGES. THE ARBITRATOR'S OR ARBITRATION PANEL'S DECISION SHALL BE EXPRESSED IN A WRITTEN ARBITRATION AWARD SUPPORTED BY ANY FINDINGS MADE BY THE ARBITRATORS, WILL BE FINAL AND BINDING ON THE PARTIES, AND A JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT HAVING JURISDICTION. YOU UNDERSTAND AND AGREE, HOWEVER, THAT THE ARBITRATORS' DECISION AND FINDINGS, AND ALL ARBITRATION SUBMISSIONS AND PROCEEDINGS SHALL REMAIN CONFIDENTIAL BETWEEN YOU AND PLAINSCAPITAL BANK, EXCEPT TO THE EXTENT NECESSARY TO OBTAIN JUDICIAL REVIEW OR CONFIRMATION, FOR TAX OR ACCOUNTING PURPOSES, OR AS OTHERWISE REQUIRED BY LAW.

## **SUBSTITUTE CHECKS (CHECK 21)**

The Check Clearing for the 21st Century Act and regulations established by the Federal Reserve Board pursuant to that Act require that we provide the following disclosure entitled "Substitute Checks and Your Rights." A substitute check is the legal equivalent of an original check.

### **Substitute Checks and Your Rights What is a Substitute Check?**

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of the substitute check states, "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or electronic debits to your account. However, you have rights under other law with respect to those transactions.

### **What are my rights regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (i.e., NSF or Overdraft fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within ten (10) business days after we received your claim and the remainder of your refund (plus interest if your account earns

interest) not later than forty-five (45) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### **How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us in writing at PlainsCapital Bank, Attn: Research Department, 5010 University Avenue, Lubbock, TX 79413.

You must contact us within forty (40) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include all of the following:

- A description of why you have suffered a loss (for example, you think the charge to your account was incorrect);
- An estimate of the amount of your loss due to the substitute check, including any fees charged and interest you may have lost;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss, and include why you believe the original or a better version of the substitute check is needed to determine whether the substitute check should have been deducted from your account, and
- A copy of the substitute check and the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check and the amount of the check.

## **FUNDS AVAILABILITY DISCLOSURE**

### **Your Ability to Withdraw Funds**

Our policy is to make funds from your cash and check deposits available to you on the first (1st) business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use the funds to pay checks that you have written.

#### **When your deposit is received:**

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays and Federal holidays.

#### **Deposits made with a teller at a branch location:**

If you make a deposit with a teller at one of our branches before close of business on a business day we are open, we will consider that to be the day of your deposit. However, if you make a deposit after close of business on a business day we are open, or on a non-business day we are open (i.e., Saturdays, Sundays, Federal Holidays), we will consider the deposit to have been made on the next business day we are open.

- Please note, some of our branches have a different closing time. Contact the branch where you transact business to verify the closing time. We may change our closing times whenever we determine it to be a necessary

business decision.

Deposits and Transfer made through a PlainsCapital ATM:

### ***Self-Service Deposits***

Deposits made through a PlainsCapital Bank ATM prior to 7:00 p.m. Central Time on a Business Day will post to the account the same day.

Deposits made through a PlainsCapital Bank ATM after 7:00 p.m. Central Time on a Business Day will post to the account the next Business Day.

### ***Self-Service Transfers***

Transfers made through a PlainsCapital Bank ATM prior to 6:00 p.m. Central Time on a Business Day will post to the account the same day.

Transfers made through a PlainsCapital Bank ATM after 6:00 p.m. Central Time on a Business Day will post to the account the next Business Day.

### ***Teller-Assisted Deposits***

Deposits and transfers made via a virtual teller (assisted transaction) through a PlainsCapital Bank ATM prior to 7:00 p.m. Central Time on a Business Day will post to the account the same day.

Deposits and transfers made via a virtual teller (assisted transaction) through a PlainsCapital Bank ATM after 7:00 p.m. Central Time on a Business Day will post to the account the next Business Day.

Deposits made through (placed in) a Night Depository at a branch location:

If you make a deposit through (placed in) a night depository at a PlainsCapital Bank branch location, we remove deposits from the night depository no later than the next business day. Your deposit is considered received when we remove the deposit from the night depository.

- It is possible that branches in some locations may be closed on business days because of an emergency. Deposits made through a night depository when the branch is closed will be considered received on the next business day when the branch is open.

Deposits made by mail:

If you mail your deposit to a PlainsCapital Bank branch, your deposit will be considered received on the date the deposit is received by the location.

### **Longer Delays May Apply**

If we are not going to make all of the funds from your deposit available on the first (1st) business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the end of the business day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

### **Case-by-Case Hold**

In some cases, we will not make all of the funds that you deposit by check available to you on the first (1st) business day after the day of your deposit. Depending on the type of check that you deposit, your funds may not be available until the second (2nd) business day after the day of your deposit. The first \$225 of your deposits, however, may be available on the first (1st) business day.

### **Exception Hold**

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,525 on any one (1) day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six (6) months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you at the time you make your deposit if we delay your ability to withdraw funds for any of these reasons. Funds will not be available, including the first \$225, up to the seventh (7th) business day after the day of your deposit.

### **Special Rules for New Accounts**

If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open.

Funds from deposits of cash, wire transfer and electronic direct deposits to your account will be available on the day we receive the deposit.

The first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's, federal, state and local government checks and United States Postal Service (USPS) money orders will be available on the first (1st) business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,525 will be available on the ninth (9th) business day after the day of your deposit.

If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second (2nd) business day after the day of your deposit.

Funds from all other check deposits will be available on the ninth (9th) business day after the day of your deposit.

### **Holds on Other Funds (Check Cashing)**

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

### **Holds on Other Funds (Other Account)**

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us.

The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

## **SUGGESTED FRAUD PROTECTION MEASURES; UNAUTHORIZED ITEMS**

You should be aware of and acknowledge the ongoing risk of losses resulting from unauthorized items. We offer services that provide an effective means for controlling the risk from unauthorized items. These recommended services include:

- Positive Pay
- Positive Pay with Payee Validation

- ACH Positive Pay
- ACH Block Services

These recommended services are covered by our Treasury Management Services Terms and Conditions and are available to you upon request. You acknowledge the availability of these Services and their effectiveness for controlling the risk of unauthorized items. If you decide not to use the recommended services, or fail to use them in accordance with their applicable terms, you understand and agree that you will have assumed the risk of any losses that could have been prevented if you had used the recommended service, or if you had used the recommended service, as applicable, in accordance with the applicable terms.

It is important for you to do your part to help prevent fraud with respect to your account. You agree to take reasonable steps to ensure the integrity of your internal procedures with respect to your account and items drawn on your account or deposited into it. To help prevent embezzlement and protect your business assets, the Bank recommends that you:

- Assign responsibilities for your account to multiple individuals. Those who reconcile statements for your account should be different from those who issue items drawn on your account.
- Reconcile statements for your account as received and notify the Bank immediately of any problem.
- Contact the Bank immediately if you do not receive the statement for your account when you would normally expect to receive it.
- Watch for paper items cashed out of sequence or made out to cash. These are classic red flags for embezzlement.
- Secure your supply of paper items at all times. Stolen paper items are a common method of embezzlement.
- Periodically reassign accounting duties such as reconciling your account or making a deposit.
- Review transaction activity on your account for unexpected fluctuations. For example, compare the percentage of cash deposits to total deposit size. Most businesses will maintain a constant average. A large fluctuation might indicate embezzlement.
- Destroy any paper item that you do not intend to use.
- Use tamper-resistant paper items at all times.
- Notify Bank immediately when an authorized signer's authority ends so that his/her name can be removed from all signature cards and online banking access, and any cards that the Bank has issued to him/her can be cancelled.
- Do not sign blank paper items.
- Frequently update your computer and other device security software, and protect yourself against malware and computer viruses.
- Obtain insurance coverage for these risks.

Use caution if you receive any email requesting a wire or ACH transfer from your account, even if the request appears to be from someone you know. You should always verbally verify the request with the sender of the email prior to conducting the transaction. There are several fraud scams where emails are hacked and fraudulent request are made. Once the transaction is conducted the chance of recovering the funds is very limited. For more information on this fraud please go to our website.

This is by no means a complete list of preventive measures, and additional actions may be necessary in order to help control your risk.

# **CLAIMS OF UNAUTHORIZED TRANSACTIONS**

## **Unauthorized Claims Investigation**

You should be aware of and acknowledge the ongoing risk of losses resulting from unauthorized items. We have tools and security procedures in place to ensure the integrity of our internal procedures with respect to your account and items drawn on your account or deposited to it. It is important for you to do your part to help prevent fraud with respect to your account and protect your assets. You are in the best position to discover and report any discrepancies including unauthorized debits to your Account. The Accounts Statements section of this Agreement sets forth the periods within which you must discover and report Errors and Unauthorized Endorsements as those terms are defined in the Account Statements section.

You agree to safeguard your blank checks and take reasonable steps to prevent their unauthorized use. You agree to notify us immediately if it appears that any blank checks are missing or otherwise unaccounted for, or if you become aware of the use of counterfeit checks purportedly drawn on your account. Further, to the extent that we have exercised ordinary care in paying or taking the checks, you agree to accept responsibility for any failure to safeguard your bank checks.

You also agree to make a report to the police if requested and to provide us with a copy of the report. We will have a reasonable period of time to investigate the circumstances surrounding any claimed loss. During our investigation we will have no obligation to provisionally credit your account, unless otherwise required by law (e.g. in connection with certain consumer electronic fund transfer transactions).

If we do provide provisional credit to your account we have the right to reverse the credit if you fail to (i) sign any required affidavits and/or other necessary documents, (ii) cooperate fully with the Bank's investigation of your claim of an unauthorized transaction, (iii) cooperate fully with the Bank's efforts to recover funds related to your claim of unauthorized transaction, (iv) if the Bank determines that the transaction was indeed authorized or (v) you failed to exercise ordinary care in the safeguarding of your blank check stock.

## **Lost or Stolen Paper Items; Unauthorized Items**

If any of your unissued paper items have been lost or stolen, you agree to notify us at once. In addition to the obligations stated in the Account Statements section and the Lost, Destroyed or Stolen Cashier's Checks, Teller's Checks or Certified Checks section of this Agreement, to the extent that your failure to so notify the Bank hampers our ability to prevent loss, we will be relieved of any liability for such items to the fullest extent permissible under applicable law. Upon receipt of any such notice, the Bank may at its sole discretion and without any liability to you take one or more of the following actions: (i) close your account and open a new account for you; (ii) dishonor any paper item you or an authorized signer has indicated may have been lost or stolen (unless you or an authorized signer subsequently has instructed the Bank to honor such an item); or (iii) pay any paper item presented for payment on your account, provided you have instructed the Bank to pay such paper item and given the Bank the number of that paper item. If we open a new account for you and you have authorized a third party to automatically make regular deposits to or withdrawals from your account (such as wire or ACH transfers), the Bank shall have no liability to you if you do not receive any regularly scheduled deposit or if a regularly scheduled payment is not made for you due to your failure to notify that third party in a timely fashion of the number of your new account.

## **CYBER RISK AND SECURITY**

We are committed to the safety and security of your assets, and to helping you protect yourself from cyber-based attacks. However, you remain responsible for taking appropriate steps to ensure the security and protection of your information and account. You acknowledge that our online and mobile services and applications are provided without any warranty or representation of any kind, including, but not limited to, any warranty or representation regarding security or availability of service. You should notify us immediately if you suspect fraud has occurred on your account (e.g., a stolen password or an unauthorized transaction).

### **Equipment**

You agree that you are responsible for obtaining and maintaining any equipment used to allow you access to any of our services. You agree to assume all risks associated with potential errors or delays in completing transactions arising from such equipment. We shall not be responsible for any losses resulting from a failure of such equipment.

### **Third-Party Providers and Services**

You acknowledge security risks associated with online and mobile networks, and you agree that we shall not be liable for any losses or damages that arise as a result of your accessing our online services via an unencrypted or otherwise unsecure method (e.g., use of a publicly provided Wi-Fi connection).

You agree to assume all risks associated with accessing third-party websites, and agree to follow our rules and assume all risks associated with transacting on our systems via the internet, including mobile applications. You agree that you are responsible for obtaining and maintaining any third-party services and communication media that you use to access our services electronically, and that we are not responsible for any potential errors or delays in completing transactions arising from any third-party services that you use to access our online services. You further agree that you are responsible for any fees charged by third-party service providers.

### **Access Information**

You agree that you are responsible for safeguarding your access information (e.g., user name and password). You agree to ensure (i) the security of the information (e.g., by changing your passwords regularly, not sharing passwords with others, and complying with pin procedures); (ii) that you will only enter your login credentials and password on our official sites and not in response to emails that do not come from us; and (iii) that your devices are used only by persons for whom you are willing to accept financial responsibility. You acknowledge that we may monitor access to, or data stored on, our systems at any time without notice and that we may monitor, limit or terminate access to our systems.

## **ELECTRONIC BANKING**

### **Electronic and Internet Banking System**

#### **General Terms**

The following provisions establish the rules governing your electronic access to your account(s) at the Bank through Internet Banking and via Mobile Banking (hereafter the "System"). By using the System, you agree to and accept all of the terms and conditions contained herein. We urge you to read these provisions carefully before using the System to access any of your accounts.

The terms and conditions of the applicable deposit



agreement(s), including this Agreement, and other disclosures for each of your bank accounts as well as other disclosures that the Bank has provided or made available to you, such as in relation to your loans, continue to apply notwithstanding anything to the contrary in this Agreement, unless this Agreement expressly states otherwise. Certain of the following provisions apply only to consumer customers who establish an account primarily for personal, family or household purposes. We may supplement, amend or change these provisions at any time, without giving you prior notice except as specified under "Fees and Charges" below, by updating the provisions on the System or through other notice provided or made available to you.

These provisions are also subject to applicable federal and state laws, rules and regulations (except to the extent the provisions can vary such laws, rules and regulations). We make no representation that any particular content or use of the System is permissible or available outside of the United States, and you accept and agree that your use of the System outside of the United States may be subject to foreign laws, rules and regulations. If any of the following provisions is found to be unenforceable, all remaining provisions will continue in full force and effect.

### **Compliance with Law**

You consent and agree not to access or use the System to initiate or conduct any transaction that violates any law or regulation of the State of Texas or of the United States. You are solely responsible for ensuring that your use of the System complies with any and all applicable laws, regulations and rules.

### **Access**

To access and use the System from a personal computer or other device, you must have at least one (1) account at the Bank, access to the Internet through an Internet Service Provider ("ISP"), with appropriate and compatible hardware, software and web browser or other equipment, and an email address or telephone number that can accept voice calls or text messages. You are solely responsible for maintaining your computer, device and equipment in good working order, with the necessary compatibility and format to communicate with the System. You are also responsible to install, run and regularly update a virus protection program and operating system patches on your computer, device or other equipment, and we strongly recommend that you perform safe email and other electronic communication practices and visit our Fraud Resource Center page at [www.plainscapital.com](http://www.plainscapital.com) to learn more about online fraud and ways to protect yourself. You understand and agree that you are solely responsible for, and Bank has no responsibility for, any computer viruses, malware, computer or other device inoperability or failure, or similar problems experienced through your use of the Internet or the System. It is also your responsibility to follow all guidelines set forth by your cellular carrier including fees and service charges related to data, email and text usage. License agreements for our necessary software shall either be embedded in the System software or separately documented. You agree to comply with all applicable software license agreements, whether or not such agreements have been executed by you. You have no rights to or ownership in any software provided by or through us and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software.

You may visit any branch location for assistance with enrollment. The System can be used to access only the accounts on which you are an owner. You can request that an

account be added or deleted by contacting PlainsCapital Bank Customer Service at 1-866-762-8392 or by visiting any branch location. We undertake no obligation to monitor transactions through the System to determine that they are made on behalf of you or other depositor or authorized account holder. You can use the System to check the balance of your accounts, view account histories, transfer funds between your accounts and perform other services as provided.

## **Your Credentials; Security**

For security purposes, you are required to choose and establish a password upon your initial login. In order to establish your password, the System must first authenticate you by using the information that was gathered through the account opening process and any authentication procedures that the Bank may utilize. Authentication procedures that the Bank may utilize may include, without limitation, security questions, proof of identification, and software-based and hardware-based authentication programs. Once this authentication occurs, you will then be prompted to select a password that will meet the Bank's security requirements.

Your password and login ID, and any additional authentication information that the Bank may require you to provide, in our sole discretion, are intended to provide security against unauthorized entry and access to your accounts. You understand and agree that we are authorized to act on instructions received under your password, whether or not such instructions are made by you. You understand and accept that you are solely responsible for the confidentiality and security of your user ID and password and agree to change your password periodically. You understand and agree that your password should not be associated with any commonly known personal identification information, such as social security number, address, date of birth or names of children. We strongly recommend that you memorize your login ID and password rather than write it down. You understand and agree that you should log out completely after using the System, and that you should not leave your personal computer or other device unattended when using the System. After three (3) unsuccessful attempts to use your password, your access to the System will be suspended.

You understand the importance of your role in preventing misuse of your accounts through the System and you agree to promptly examine your statement for each of your bank accounts as soon as you receive it or it is otherwise made available to you. You agree to protect the confidentiality of your account and account number and your personal identification information. You understand that personal identification information by itself or together with information related to your account may allow unauthorized access to your account.

Data transferred via the System is encrypted in an effort to provide transmission security and the System utilizes identification technology to verify that the sender and receiver of system transmissions can be appropriately identified by each other. Notwithstanding our efforts to ensure that the System is secure, however, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. If you use wireless Internet access via a personal computer or other device, such as a mobile phone, to conduct transactions through our Internet Banking or Mobile Banking services, we strongly encourage you to conduct all such transactions only over a secured wireless network. Although we employ security and authentication procedures including, without limitation, the procedures described herein, information transmitted over a non-secured wireless network may be intercepted without your knowledge. You agree to defend, hold harmless and indemnify the Bank from and against any and all claims of any

nature arising out of any electronic access by a person, third party or third party service you have authorized, permitted or enabled to have access to your bank accounts via the System.

You will contact us AT ONCE at our Customer Service number, 1-866-762-8392, if you believe your user ID or password has been lost, stolen, used without your authorization or otherwise compromised or if someone has accessed your account or transferred or may transfer money from your accounts without your permission. An immediate telephone call to us is the best way to reduce your potential losses.

If your device allows access to anyone other than you via fingerprint, facial recognition or other biometric recognition, that person will also be able to access your downloadable applications on the same device when enabled, and any transaction(s) that person initiates will be considered authorized.

## **Internet Scams**

You are aware of and recognize that there are various types of Internet-based and/or email based scams, such as the scam commonly referred to as "phishing," through which a third-party email, web site or link purporting to be from or affiliated with the customer's bank may request personal or private information in order to perpetrate identity theft, bank fraud, or otherwise gain unauthorized access to a customer's account. You understand and agree that the Bank does not and will not send you emails or text messages requesting you to respond with your PIN, password, complete account number, social security number or other private or personal information. You understand that when communicating with you by e-mail or text message in relation to retrieving, updating or transmitting private or personal information, the Bank will request that you log into the System.

## **Hours of Access**

You can use the System seven (7) days a week, twenty-four (24) hours a day, although some or all System services may occasionally not be available due to emergency or scheduled system maintenance.

## **Fees and Charges**

You agree to pay the System services monthly fees, if applicable. You agree that all such fees and charges, if any, will be automatically deducted from your account.

You agree to pay any additional reasonable charges for services you request which are not covered by this Agreement. You are also responsible for telephone and ISP fees and costs that you incur in connection with your use of the System, and the costs of any communication lines and any data processing charges payable to third parties.

If an amendment or change to this Agreement would result in increased fees, increased liability for you, fewer types of available electronic fund transfers or stricter limitations on the frequency or dollar amount of transfers, we agree to give you notice at least thirty (30) days before the effective date of any such change unless such notice is otherwise excused by law, or unless an immediate change is necessary to maintain the security of an account or our electronic funds transfer system. We reserve the right to waive, reduce or reverse charges or fees in individual situations.

## **Posting of Transfers**

Transfers completed through Internet Banking and Mobile Banking

- Transfers completed through Internet Banking or Mobile Banking prior to 9:45 p.m. Central Time on a Business Day will post to the account the same day.
- Transfers completed through Internet Banking or Mobile Banking after 9:45 p.m. Central Time on a Business Day will post to the account the next Business Day.

## **Overdrafts**

In the event that electronic funds transfers initiated through the System that would result in an overdraft of your account are not cancelled, overdraft charges may be assessed pursuant to the Schedule of Fees within this Agreement. The Overdrafts section of the General Account Terms and Conditions of this Agreement provides further information on our overdraft services.

## **Limits on Amounts and Frequency of System Transactions**

The number of transfers from bank accounts and the amounts which may be transferred are limited pursuant to the terms and conditions for those accounts. If a hold has been placed on deposits made to an account from which you wish to transfer funds, you cannot transfer the portion of the funds held until the hold expires.

## **Bill Payment Service**

PlainsCapital Bank offers Bill Payment service through Internet Banking for your convenience. PlainsCapital Bank may also offer, from time to time and at our sole discretion, Bill Payment service via Mobile Bill Pay. Information regarding our Bill Payment service is described in our Bill Payment Services Terms and Conditions disclosure, which can be accessed at <https://www.plainscapital.com/privacy-disclosures/>. The Bill Payment Services Terms and Conditions disclosure is incorporated herein by reference and made a part of this Agreement.

## **Mobile Banking Service**

PlainsCapital Bank offers Mobile Banking service as part of its Internet Banking services, accessible via a web-enabled cell phone or smart phone or other mobile device capable of accessing the Internet and sending SMS text messages ("Mobile Device"). Mobile Banking allows you to:

- Check the balance of your accounts
- View your account history
- Transfer funds between your accounts
- Receive alerts and messages from the Bank
- Make bill payments under our Bill Payment Services – Terms and Conditions (if you are enrolled in Bill Payment Services)
- Make deposits into your account through your mobile device under our Mobile Deposit User Agreement, which can be accessed at <https://www.plainscapital.com/privacy-disclosures/>. The Mobile Deposit User Agreement is incorporated herein by reference and made a part of this Agreement,

We may, in our sole discretion, determine which services are available via Mobile Banking. You must be enrolled in Internet Banking and complete the first time login process before you can use Mobile Banking. The same login ID and password used for Internet Banking, as discussed in the "Your Password; Security" subsection of the Electronic and Internet Banking System section, are used to access Mobile Banking. To obtain further information and details concerning available products

and services offered through Mobile Banking, you may visit and access the information found at [www.plainscapital.com](http://www.plainscapital.com).

### **Mobile Deposit Service**

PlainsCapital Bank offers Mobile Deposit service through Internet Banking for your convenience. This Mobile Deposit service is available for eligible accounts and allows you to make deposits through your mobile device. Information regarding our Mobile Deposit service is described in our Mobile Deposit User Agreement, which can be accessed at <https://www.plainscapital.com/privacy-disclosures/>. The Mobile Deposit User Agreement is incorporated herein by reference and made a part of this Agreement.

### **Fees, Costs and Expenses**

While the Bank may choose not to charge a fee to use the Mobile Banking Service, you understand and agree that if you activate Mobile Banking, you are responsible for all fees, costs and expenses associated with your Mobile Device including, without limitation, all fees, costs and expenses associated with the Mobile Device hardware and software, all fees, costs and expenses associated with the wireless service plan for the Mobile Device including, without limitation, charges for accessing the Internet, and all fees, costs and expenses associated with data transfers and your sending or receiving of SMS text messages to or from us or third parties. You also understand and agree that your Mobile Banking transactions may be subject to fees, costs and expenses imposed by third parties under your agreements with them, and to any applicable fees, costs and expenses that we may charge as set forth in other agreements that you have with us.

### **Communications With You and Other Account Signatories**

You understand and agree that by enrolling in Mobile Banking, you consent to our contacting you, transmitting to you and communicating with you via email and/or SMS text messages directed to or accessed on your Mobile Device, including without limitation to provide alerts and information concerning your account(s). You understand and agree that we may send account alerts, data and information via email and/or SMS text messages to any or all other signatories on your account(s) who have enrolled in Mobile Banking. All email, SMS text messages and other communications transmitted to us via Mobile Banking are our property and, to the fullest extent permitted by applicable Texas law and federal law, you agree that such communications are not confidential. In conformity with applicable Texas law and federal law, we may provide or otherwise make available to you via Mobile Banking advertising, offers, links or other information offered or maintained by third parties. You understand and agree that your accessing, use or purchase of third-party content, data, information, products or services is at your own risk, and that we do not endorse, validate or control any content, data, information, products or services offered or maintained by third parties.

### **Additional Equipment and Access Requirements; Security**

In order to activate and utilize Mobile Banking, you must acquire and maintain a Mobile Device, any wireless hardware and software needed to operate and maintain the Mobile Device in proper working order, and a wireless service plan for the Mobile Device with a service provider of your choosing.

You understand that your Mobile Device, all associated hardware and software and wireless service, including without limitation your wireless service data plan, are your responsibility and not part of our Mobile Banking service or

otherwise the services that we provide to you. You understand and agree that you are solely responsible for ensuring the operability and functionality of your Mobile Device and its hardware, software and wireless plan services.

In addition to your agreement to the terms and conditions set forth in the "Your Password; Security" subsection of the Electronic and Internet Banking System section, you understand and acknowledge that we will never transmit or send your complete account number, Social Security number, or complete card number or PIN in any email or SMS text message to your Mobile Device, and that we will never ask you to send or transmit to us an email or text message containing your password, complete account number, Social Security number, or complete card number or PIN. You understand and agree that you are responsible for safeguarding and protecting your login ID and password including in relation to your use of your Mobile Device and Mobile Banking. You understand and agree that the Bank may and will rely on the use of your login ID and password in providing Mobile Banking services to you and as proof of your agreement to and authorization of any and all activity conducted on your enrolled account(s) via Mobile Banking. Upon authenticating into Mobile Banking, you expressly authorize us to transmit or send to you, via SMS text message or email communication to or accessed via your Mobile Device, information concerning your account(s) including, without limitation, specific dollar amounts, balance and payee information, an incomplete version of your account number(s) made up of certain digits of the account number(s), and account transaction information.

### **Stop Payment Requests**

You may initiate a stop payment request online via the System only for paper checks you have written on your bank account. You will incur stop payment charges as disclosed in the current schedule of fees.

### **Disclaimer of Warranty and Limitation of Liability**

We and our service providers do not and cannot warrant that the System will operate without errors, or that any or all System services will be available and operational continuously and without interruption at all times.

**WE AND OUR SERVICE PROVIDERS PROVIDE INTERNET BANKING AND MOBILE BANKING SERVICES "AS IS" AND "AS AVAILABLE" WITHOUT MAKING ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ON BEHALF OF THE BANK AND OUR SERVICE PROVIDERS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND THAT THE LAWS OF SOME STATES DO NOT PERMIT THE WAIVER OR EXCLUSION OF CERTAIN WARRANTIES, AND THAT THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.**

**TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, YOU AGREE THAT PLAINSCAPITAL BANK, ITS AFFILIATES, AND OUR AND EACH OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR CONTRACTORS ARE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES UNDER OR BY REASON OF ANY SERVICES, EQUIPMENT OR PRODUCTS PROVIDED UNDER OR IN RELATION TO THIS AGREEMENT OR BY REASON OF YOUR USE OF OR ACCESS TO THE SYSTEM, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, DATA OR USE BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION**

**IN CONTRACT OR BASED ON A WARRANTY. FURTHER, IN NO EVENT SHALL THE LIABILITY OF THE BANK AND ITS AFFILIATES EXCEED THE AMOUNT OF YOUR ACTUAL LOSSES OR DAMAGES INCURRED BY YOU IN RELATION TO THE SERVICES PROVIDED TO YOU.**

### **Indemnification**

**IN ADDITION TO OTHER INDEMNIFICATION PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS PLAINSCAPITAL BANK AND ITS AFFILIATES, AND OUR AND EACH OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR CONTRACTORS, FROM AND AGAINST ALL CLAIMS, SUITS, CAUSES, ACTIONS, LOSSES, COSTS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES) OF ANY SORT: (A) BY THIRD PARTIES OR OTHERS ARISING FROM OR RELATING TO YOUR ACCESS TO OR USE OF ANY SERVICES, EQUIPMENT OR PRODUCTS PROVIDED UNDER OR IN RELATION TO ELECTRONIC BANKING OR THE SYSTEM, INCLUDING WITHOUT LIMITATION ANY CLAIM ALLEGING FACTS THAT IF PROVED TRUE WOULD CONSTITUTE A BREACH OF THIS AGREEMENT, OR INFRINGEMENT, MISUSE OR MISAPPROPRIATION BY YOU OF DATA, INFORMATION, PERSONAL PROPERTY OR MATERIALS; (B) BY ANYONE, INCLUDING YOU, ARISING FROM OR RELATING TO THE ACTIVITIES OF SYSTEM USERS DESIGNATED AND/OR ASSIGNED BY YOU, WHICH ACTIVITIES MAY INCLUDE, BUT MAY NOT BE LIMITED TO, ACTIONS AND/OR TRANSACTIONS INVOLVING BILL PAYMENT, MOBILE BANKING AND/OR OTHER SERVICES OFFERED FROM TIME TO TIME THROUGH THE SYSTEM.**

### **E-Sign Disclosure (Electronic Records Disclosure)**

You understand and agree that in order to register for and use Internet Banking or Mobile Banking, including without limitation to establish any new or additional account online via the System, you agree to electronic delivery of disclosures, notices, account statements (if you select eStatement delivery), communications and agreements relating to such services, and to electronic delivery of any disclosure, notice, account statement (if you select eStatement delivery) communication and agreement applicable to your existing or future deposit accounts at PlainsCapital Bank.

If you are an Electronic Banking user, disclosures, notices, account statements (if you select eStatement delivery), communications and agreements for the deposit accounts you have with PlainsCapital Bank may, at our discretion, be presented to you in electronic form at the email address you provided us or they may be made available for you to view, download and/or print by logging into the System.

Disclosures, notices, account statements, communications and agreements regarding your account provided in electronic form may not be distributed in paper form. After consenting, if you wish to obtain a paper or non-electronic copy of the disclosures, notices, account statements, communications or agreements, you can do so by calling us or writing us at the number or address listed at the end of this disclosure. See Miscellaneous Fees section within this Agreement for applicable research fees.

By consenting to receive disclosures, notices, account statements, communications and agreements regarding your account electronically, you agree to provide us with the information (such as current email address) necessary to communicate with you electronically. You are required to update us with any changes in or to such information by calling or writing us at the number or address listed at the end of this disclosure.

You have the right to withdraw your consent to electronic delivery of all such materials or items at any time, at no cost to you, by calling or writing us at the number or address listed below. You understand that withdrawing your consent will not in any way affect the enforceability, legal effect or validity of electronic records, disclosures, notices, account statements, communications or agreements made available to you prior to implementation of the withdrawal of your consent.

### **E-Sign Disclosure (Electronic Signature Disclosure)**

You agree that we may use your electronic signature in lieu of and/or, in addition to, your handwritten signature. You agree that your electronic signature will be treated exactly the same as your handwritten signature. You agree that your electronic signature is binding.

### **Contact Information for Changes and Termination of Internet Banking, E-Statements:**

PlainsCapital Bank

ATTN: Deposit Support Department

5010 University Avenue

Lubbock, TX 79413

Tel: 1-866-762-8392 (Customer Service) Fax: 1-877-450-3985

### **Hardware and Software Requirements**

In order to receive electronic delivery of disclosures, notices, account statements (if you select eStatement delivery), communications and agreements, and otherwise to receive electronic copies of any and all disclosures concerning Internet Banking, Mobile Banking or the System, you must have, at minimum, the hardware and software listed below:

- A personal computer or other device capable of accessing the internet
- A web browser which supports 128-bit SSL encrypted communications
- Software that permits you to receive and access Portable Document Format (PDF) files, such as up to date Adobe Acrobat Reader
- For Mobile Banking users, the additional hardware and software listed in the Mobile Banking section above.

### **Our Data and Records**

You consent and agree that we may record, or otherwise document and store information electronically transmitted, entered or received in the System for our record-keeping purposes. You also consent and agree that our records and stored information shall be presumed to be an accurate representation of your requests or instructions to us.

### **Your Right to Terminate**

You may contact us to terminate your System service at any time through the System or you may mail or fax your request to the address and fax number above. Your access to the System will be cancelled within a reasonable time after our receipt of your instructions to cancel the Service. You will be responsible for all outstanding fees, charges and other obligations incurred prior to the date and time of cancellation and any fees and charges assessed during the process of termination, and you shall remain responsible to maintain sufficient funds in your account(s) to cover any outstanding items originated via the System or that you have authorized to be paid through the System.



## **Our Right to Terminate**

You agree that we can terminate or limit your System services for any of the following reasons:

- Without prior notice, if you have insufficient funds in any one of your Bank accounts. System service may be reinstated, in our sole discretion, once sufficient funds are available to cover any fees, pending transfers and debits.
- Without prior notice if you abuse or make fraudulent use of any System service, or to prevent a loss.
- Upon three (3) business days' notice, if you do not contact us to designate a new primary checking account immediately after you close your primary checking account.
- Upon reasonable notice, for any other reason, with or without cause, at our sole discretion.

## **Funds Transfers**

As used in this Agreement, the terms "funds transfer", "wire transfer", "ACH transaction" and "entry" do not include any transaction made for personal, family or household purposes, and are not transactions subject to the Consumer Financial Protection Bureau Regulation E, the federal Electronic Fund Transfer Act governing funds transfers for consumer transactions, or other regulation or law concerning consumer transactions. We offer a variety of funds transfer services for your use of funds in your accounts for business purposes. The following terms, conditions and disclosures for automated clearinghouse transactions and wire transfers are in addition to, and not in place of, any other agreements you have entered into with us regarding funds transfers to or from your accounts for your business purposes.

### **Automated Clearing House (ACH) Transactions**

The ACH system is a batch processing, store-and-forward system that is primarily governed by the NACHA Operating Rules ("NACHA Rules") for interbank clearing of electronic payments for participating depository financial institutions. To the fullest extent permissible under the NACHA Rules and the laws of the State of Texas, your rights and obligations with respect to ACH entries shall be governed by the NACHA Rules, as published annually and amended from time to time, the laws of the State of Texas, this section, and any other agreement that you have entered into with us for ACH services. You understand that a copy of the NACHA Rules is available through NACHA at current NACHA prices. You agree not to initiate any ACH entry in violation of the NACHA Rules, the laws of the United States or the State of Texas, or, to the extent applicable, other state or international law, regulation, or clearinghouse rules. You acknowledge and agree that we may rely on the representations and warranties contained in the NACHA Rules, as amended from time to time, and may credit or debit your account in accordance with those Rules as instructed by the originator of an ACH entry or the originating depository financial institution ("ODFI"). You further understand and acknowledge that we may only provide ACH services to you pursuant to our role either as an ODFI or a Receiving Depository Financial Institution ("RDFI"), as may be applicable with respect to ACH entries under the NACHA Rules, and that we must comply with the NACHA Rules, to the extent not permissibly modified by this Agreement, when providing ACH services.

### **Commercial ACH Credit Entries**

Credit given by us to you with respect to an ACH credit is provisional until we receive final settlement through a Federal Reserve Bank or otherwise receive final payment. In the event

we do not receive final settlement or otherwise final payment, you acknowledge and agree that we are entitled to a refund from you in the amount of the ACH credit and may debit your account in the amount of the ACH credit, and the originator that initiated the ACH credit shall be deemed not to have made payment to you.

You further acknowledge and agree that we are not required to provide you with next day notice of an ACH credit we accept on your behalf. However, we shall continue to notify you of the receipt of such payments in the periodic statement we provide to you. You may access your account details by way of Internet Banking, Mobile Banking and/or by telephoning customer service. You also acknowledge and agree that no ACH credit that we accept will cause us to be in violation of sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the Bank Secrecy Act, USA-PATRIOT Act or any other anti-money laundering statute, and that as required now or at any time by OFAC and the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), the originator and receiver of international ACH credit entries will be subject to increased scrutiny.

### **Commercial ACH Debit Entries**

You acknowledge and agree that we may rely on the representations of the ODFI including, without limitation, that an ACH debit entry is properly authorized. You acknowledge and agree that you have authorized any ODFI to initiate ACH debit entries to your account in the presentment or re-presentation of entries that you have authorized. Furthermore, we may accept an ACH debit on your behalf which is not subject to Regulation E, and, unless otherwise modified herein to the fullest extent permissible under the NACHA Rules and Texas law, your rights and responsibilities with respect to such ACH debit shall be construed in accordance with the NACHA Rules and the laws of the State of Texas.

Without limiting the foregoing, you acknowledge and agree that upon receipt of an ACH debit, except as otherwise may be stated in the NACHA Rules as amended from time to time, including, without limitation, for Account Receivable ("ARC"), Back Office Conversion ("BOC"), Point-of-Purchase ("POP"), International ACH ("IAT"), Re-presented Check ("RCK") and Destroyed Check ("XCK") entries, you have until the next business day to determine if such ACH debit is authorized or proper. In the event you do not recognize an ACH debit (or ACH credit), notify us AT ONCE of the relevant facts by calling the telephone number on the back of this Agreement. You may access your account details by way of Internet Banking, Mobile Banking and/or by telephoning customer service.

### **Returning Unauthorized Commercial ACH Entries**

Although all ACH entries (both credit and debit) may be returned in accordance with the NACHA Rules, those ACH entries that are unauthorized may warrant the most concern. In the event you discover (or reasonably should have discovered) unauthorized ACH activity on your account, notify us AT ONCE by calling the phone number listed on the back of this Agreement. Except as otherwise may be stated in the NACHA Rules as amended from time to time, such as, without limitation, certain ARC, BOC, POP, RCK, PPD, XCK or IAT entries for which extended return periods may apply, to meet our deadline under the NACHA Rules to return non-consumer ACH debit entries as unauthorized or improper, we require, and you acknowledge and agree that you must notify us of your intent to return such an entry by the next business day from the settlement date, by our cutoff deadline at 1:30 p.m., or any cutoff deadline that we disclose to you after the date of this

Agreement. The settlement date is the date on which the ACH entry posts to your account. In the event you receive an ARC, BOC, POP, RCK, PPD, XCK or IAT entry that you determine is unauthorized or improper, we require, and you acknowledge and agree that you must provide a written statement of unauthorized debit under penalty of perjury or, at our election, a notarized affidavit, to notify us of your intent to return such an entry by the sixtieth (60th) day from the settlement date.

Notwithstanding the foregoing, you acknowledge and agree that you lose your right to return or to obtain a recredit to your account under the NACHA Rules in the event you fail to notify us of your intent to return an unauthorized or improper ACH debit within the timeframes and in the manner set forth herein, or as may be set forth in the NACHA Rules as amended from time to time. Under such circumstances, we may act on your behalf to request a "permissible return" from the financial institution that sent the ACH debit, but such institution is not required to comply with our request. To the fullest extent permitted by the NACHA Rules and Texas law, you acknowledge and agree to hold us harmless from any loss you incur as a result of the unauthorized or improper ACH entry that is not returned within the timeframes set forth herein and in accordance with the NACHA Rules as amended from time to time. Without limiting the foregoing, you acknowledge and agree to hold us harmless in the event it is later determined that the ACH entry was authorized, including without limitation when the originator of such ACH entry seeks retribution. We strongly recommend that you review your account daily, utilize the tools described in the "Suggested Fraud Protection Measures; Unauthorized Items" section of this Agreement, and consider carefully those to whom you provide your account information to help minimize fraudulent activity on your account. You may access your account details by way of Internet Banking, Mobile Banking and/or by telephoning customer service.

### **Stop Payment of a Preauthorized Transaction**

Please see the Stop Payments section of this Agreement for a thorough overview on stop payments.

If you want us to stop payment on a regularly scheduled or preauthorized ACH payment that comes out of your account (excluding card transactions), you must contact us at least three (3) business days before the payment is scheduled to be made. You understand and acknowledge that such three (3) business day period is to provide us a reasonable opportunity to act upon your stop payment order. Stop payments are not permissible on card transactions.

You may place a stop payment on a regularly scheduled or preauthorized ACH payment in any of the following ways:

- Telephone:** By calling PlainsCapital Bank Customer Service at 1-866-762-8392.
- In Person:** By visiting any of our branch locations.
- Mail:** By mailing your request to PlainsCapital Bank, Attn: Deposit Support, 5010 University Avenue Lubbock, TX 79413.

If you call, we may also require you to put your request in writing and get it to us within fourteen (14) days after you call.

For further confirmation, we may mail you a stop payment verification notice. Should we mail you a stop payment verification notice and the information in said notice is NOT correct you must notify us immediately. If you did not request the stop payment be placed on your account you must notify us immediately. Otherwise the stop payment will be valid until the earliest of six (6) months from the date of the stop payment order unless renewed in writing, you withdraw the stop payment order, or the debit entry is returned. You will incur

stop payment charges as disclosed in the current fee schedule.

## **Wire Transfers**

As used in this section, a “wire transfer” or “funds transfer” means the series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order, as those terms are defined in Article 4A of the UCC as adopted in the State of Texas, and not governed by the Electronic Funds Transfer Act or Regulation E. We send outgoing and receive incoming wire transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks) or other third-party networks as we consider suitable. Our wire transfer services will be dependent upon the availability of such third-party network on conditions acceptable to us, in our sole discretion.

All wire transfers and wire transfer services made available to you pursuant to this Agreement are governed by this Agreement, Subpart B of Regulation J of the Federal Reserve Board, OFAC regulations, Article 4A of the UCC, the rules of any funds transfer system through which the wire transfer is made, including, without limitation, Fedwire. Except as otherwise expressly stated therein, wire transfers and wire transfer services made available to you pursuant to any separate wire transfer services agreement or addendum, or Treasury Management Services agreement, will be governed by such wire transfer services agreement, addendum or Treasury Management Services agreement, as applicable, together with Subpart B of Regulation J of the Federal Reserve Board, OFAC regulations, Article 4A of the UCC, the rules of any funds transfer system through which the wire transfer is made, including, without limitation, Fedwire. With respect to wire transfers and wire transfer services made available to you pursuant to such separate wire transfer services agreement, addendum, or Treasury Management Services agreement, in the event of a conflict between the terms of any such document, as applicable, and the terms of this Agreement, the terms of such other applicable agreement will prevail unless this Agreement specifically states otherwise.

You agree not to initiate or receive a wire transfer payment order in violation of applicable federal, state or local law. You will designate authorized signers, and you may also designate authorized agents by corporate resolution or in such format or medium as we may agree (each such person being an “authorized user”), who shall be authorized to act on your behalf in actions taken under this Agreement including entering into certain transactions. You will designate the authorized users to initiate payment orders and any or all authorizations and instructions that we may request. We may rely on any such authorization until it has been revoked in writing by you, and in all instances, we may act on instructions that we believe in good faith were provided by an authorized user. We shall have a reasonable time to process any revocation received pursuant to this Agreement or any other agreement that may be in place for the wire transfer.

## **Routing/Deadlines**

We may use means of transmission and routes, and intermediary and correspondent banks that we determine in our sole discretion are suitable for each outgoing wire transfer. We will establish deadlines after which we will not accept an incoming payment order to be processed on the day of receipt. We may establish different deadlines depending on the method of the payment order selected by you and all such

deadlines are subject to change at our sole discretion. Wire transfer payment orders received after the deadline or on non-Business Days will be processed on the next Business Day. A wire transfer payment order shall be considered accepted by us when executed by us.

## Payment Orders

**a. Content of Payment Orders.** You will supply to us any information we may reasonably request regarding any payment order (as that term is defined in the UCC as adopted in the State of Texas) initiated by you. Such information may include, without limitation, money amounts, affected accounts, dates of transfer, the beneficiary's name and account number, the routing number or bank identifier code ("BIC") of the beneficiary's financial institution, such additional information as we may reasonably request and, in conjunction with our security procedures set forth below, if we find it necessary in our sole discretion, further evidence of authority of any authorized signer, authorized agent or authorized user (or other agent) to transfer funds or to do any other act contemplated utilizing this Service. You agree to hold us harmless from any loss that occurs if your instructions are incomplete, ambiguous, or incorrect. You further understand and acknowledge that we are not required to detect any error by you contained in any payment order, or to seek clarification from you regarding ambiguous instructions.

**b. Execution of Payment Orders.** You authorize us to debit your account(s) for payment orders delivered to us in accordance with this Agreement. We have no obligation to execute a payment order if the account to be debited has insufficient collected funds to cover the order.

**c. Processing Payment Orders.** We determine the order in which we process wire transfer payment orders in our sole discretion.

**d. Retraction or Revocation of Payment Orders.** Except as otherwise indicated below with respect to standing payment orders or as we may separately notify you in writing, you do not have any right to reverse, adjust or revoke any payment order after it has been received by us; provided, however that we may, without obligation, make a reasonable effort to act on such a request by you. With respect to a payment order already transmitted to the beneficiary's financial institution, at your request we may (but are not obligated to) use our best efforts to retract or recover a payment from the beneficiary financial institution. You understand and agree that the receiving institution is under no legal obligation to comply with this request. **IN ADDITION TO ANY OTHER INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD US, OUR OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, COSTS, SUITS, DAMAGES, CLAIMS, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM OR RELATED IN ANY WAY TO ANY ATTEMPT BY USTO EFFECT SUCH RETRACTION OR RECOVER ANY SUCH PAYMENT.**

**e. Rejection of Payment Orders.** We may, but are not obligated to, reject any payment order from you, in whole or in part, if such payment order is not initiated in accordance with any applicable security procedure, if there is any inconsistency between a payment order and information previously supplied to us, if there are insufficient collected funds in your account to fund the payment order, if the payment order involves funds subject to a hold, dispute or legal process preventing withdrawal of the funds, or if we have other reasonable

grounds not to honor the payment order. We will notify you that we have rejected a payment order. We may also reject an incoming payment order if we have other reasonable grounds to do so.

**f. Standing Payment Orders.** If you request and we agree, you may establish a standing payment order (a standing wire transfer request), which is one where you provide specific and fixed payment instructions to us for a payment order that is to be executed on a recurring frequency. Standing payment orders must have a currency amount, beneficiary, beneficiary's financial institution, and accounts to be debited and credited. Such information remains constant for subsequent payment orders. You shall provide us with the necessary information to execute the standing payment order, as we determine in our sole discretion, including, without limitation, the dollar amount to be transferred, the frequency of the order and the day of week or month when the payment order is to be executed. You may reverse, adjust or revoke a particular standing payment order only if we receive any such request prior to our execution of the standing payment order and at a time that provides us with a reasonable opportunity to act upon such a request. You may terminate a standing payment order at any time upon receipt by us of a written notice, provided we are afforded a reasonable opportunity to act upon such a notice of termination.

**g. PIN Wire Transfers.** If you request and we agree, you may establish PIN Wire Transfer Service with us, pursuant to a PIN Wire Transfer Authorization Form, or such other form as we may provide. The PIN Wire Transfer Service allows wire transfers to be conducted via telephone on or against your account, with the use of an assigned PIN and caller identification. You shall provide us with the necessary information to execute a PIN Wire, as we may determine in our sole discretion.

#### **h. Batch Wire Transfers**

(i) **Service Specifications.** If you request and we agree, you may initiate payment orders in batch form to us, subject to the provisions of this Agreement. You will comply with interface specifications established by us, including, without limitation, file formats and means of data transmission (the "Specifications"). We may furnish you with modifications to the Specifications and you shall implement such modifications as soon as reasonably practicable.

(ii) **Wire Transfer Software.** You shall be solely responsible for creating the computer programs to implement the Specifications (as used in this section, "Wire Transfer Software"). You shall implement passwords and other security devices commensurate with the highest level of security afforded by you to other computer programs and confidential information of yours.

i. **Charge Backs and Returned Items.** You understand and agree that we post all non-cash items (such as checks) deposited to an account on a provisional credit basis subject to our receipt of final payment by the payor bank on which the non-cash item is drawn, that we have no obligation or duty to verify that you have sufficient collected funds in your account prior to our charging your account for and sending any wire transfer requested by you, and that we can charge you or your account for the amount of any deposited or cashed item if we do not receive final payment for the item or the item is returned unpaid or charged back to us for any reason.

#### **Notice of Wire Transfers**

We will notify you of wire transfers debited from or credited to your account through your periodic account statement for the account for the period in which the transaction occurred,

or through such online or electronic service that you have entered into with us. Unless you have entered into a separate agreement with us requiring separate notice or confirmation of wire transfers to or from your account, we will have no obligation to provide you with any other or additional notice or confirmation. We strongly recommend that you institute dual control over initiation and verification of your payment orders to confirm payment orders as part of your standard security. You understand and acknowledge that, unless we have entered into a separate agreement with you providing for next day notice, we will not give you next day notice of any wire transfer.

### **Liability for Unauthorized Wire Transfers; Security Procedures**

You understand and agree that we are not required to follow any instruction that violates this Agreement, or any security procedure agreed to between you and us, or as to which we do not receive notice at a time and in a manner affording us reasonable opportunity to act up on it prior to acceptance of a payment order.

**a. Security Procedure.** To the fullest extent permissible under Section 4A.202 of the UCC as adopted in the State of Texas, you and we agree that any security procedure selected will be deemed commercially reasonable if you chose the security procedure after we offered, and you refused, a security procedure that was commercially reasonable for you under applicable law. If you adopt any security procedure other than as set forth in this Agreement or any addendum or separate wire transfer service agreement offered to you in conjunction with this Agreement, you will be deemed to have refused our security procedure. You understand and acknowledge that pursuant to this Agreement, you agree to be bound by any payment order, whether or not authorized, issued in your name and accepted by us in compliance with such security procedure chosen by you.

The following security procedure will apply to wire transfer requests processed pursuant to this Agreement: Before processing any such wire transfer request, we will:

- (1) verify, from our records of your account, that the individual in whose name the wire transfer request is made is identified as authorized to initiate an outgoing wire transfer for the subject account; and
- (2) perform validation of the identity of the individual requesting the wire transfer:
  - (i) for wire transfers initiated in person through one of our bankers, in addition to validation of identity pursuant to subsection (ii) below, by review of eligible identification documentation (you may contact us to confirm eligible identification documentation), and
  - (ii) for wire transfers initiated in person by telephone, electronic mail or facsimile transmission, and not governed by a separate security procedure under an applicable Treasury Management Services agreement, applicable Service Descriptions or Bank form agreed to in writing by you, we will complete a call back, using contact information for any authorized signer, authorized user or signatory for your account contained in our records of the account (in our sole discretion, to the authorized signer, authorized user or signatory requesting the wire transfer or any other authorized signer, authorized user or signatory on the account); provided,
  - (iii) that for standing payment orders or otherwise previously authorized, recurring wire transfers to the same beneficiary and beneficiary account number as included in prior wire transfer requests, we may not conduct a call back, in our sole discretion.

If we cannot reach an authorized signer, authorized user or signatory on the account by telephone, processing of your wire transfer request may be delayed.

Without limiting the foregoing, in addition to the foregoing security procedure, we reserve the right in our sole discretion to require additional authentication of individual wire transfer requests, including, without limitation, that the wire transfer request be submitted in writing bearing the signature of an account signatory, authorized user or authorized signer, or confirmed via a code sent by SMS message to a mobile device number associated with the account, and we further reserve the right to apply our confidential, proprietary system for analysis of certain transactions based on various characteristics.

You understand and agree that our security procedures are intended to verify authenticity of wire transfer requests made to us on your behalf, and not to detect error in the transmission or content of the wire transfer request.

You understand and acknowledge that wire transfer requests initiated through Business Online Services are not processed pursuant to this Agreement, and shall be governed separately by the applicable agreement in place for such transactions.

You further understand and agree that you bear sole responsibility for establishing and implementing your own appropriate internal procedures and protocols to safeguard against unauthorized transmission of wire transfer requests and related instructions to us. You agree to establish and implement appropriate internal procedures and protocols to safeguard against unauthorized disclosure of or access to your systems and security-related information, such as user names, passwords, access credentials, and systems and equipment that access or interface with Bank and our systems or equipment, and that you will take reasonable steps to maintain the confidentiality of your internal procedures, protocols, user names, passwords, PIN's, access credentials, other personally identifying information, codes, security devices and systems and security-related information. You must immediately notify us of any loss or suspected compromise of any such information, systems or equipment. You agree to confirm any such notification to us promptly in writing.

**b. Unenforceability of Certain Verified Payment Orders.** If a payment order is not an authorized order of yours but is effective pursuant to this Agreement or the security procedures in effect between you and us, you understand and agree that we are entitled to enforce or retain payment of the order unless you prove that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for you or on your behalf with respect to payment orders or the security procedure(s), or (ii) who obtained access to your transmitting facilities or who obtained, from a source controlled by you and without authority of ours, information (including, without limitation, any access device or computer software) facilitating breach of the security procedure, regardless of how the information was obtained or whether you were at fault.

**c. Duty to Notify of Unauthorized Wire Transfers.** You must exercise ordinary care and due diligence to determine whether a wire transfer to or from your account was unauthorized or inaccurate. To the fullest extent permissible under applicable law, in no event will we be liable to pay you interest on any amount to be refunded in relation to an unauthorized wire transfer that is not effective under UCC Section 4A.202, or not enforceable in whole or in part under UCC Section 4.203, unless you notify us in writing of the relevant facts within thirty (30) days after the date you receive any notification from us that the payment order was accepted or that your account was debited with respect to the wire transfer. To the fullest



extent permissible under applicable law, in no event will we be liable to you with respect to any subsequent unauthorized wire transfer submitted or requested by the same person(s) who submitted or requested the first such unauthorized wire transfer unless you notify us in writing of the error or discrepancy in the wire transfer within thirty (30) days after the day that we mail, transmit or otherwise make available to you notification that the subsequent wire transfer was accepted or that your account was debited with respect to the subsequent wire transfer.

## **International Wire Transfers**

**a. General.** An "International Wire Transfer" means a wire transfer credited to an account located outside the borders of the United States, or that will be sent in currency other than U.S. Dollars. We customarily complete International Wire Transfers across country borders through a correspondent. Unless otherwise agreed upon in writing, any fee, commission or charges assessed by the correspondent shall be passed on to you or deducted from the wire transfer amount by the correspondent. Additionally, International Wire Transfers across country borders may incur additional fees or charges based on the routing of the wire through U.S. and foreign financial institutions. Payment to a foreign country is subject to the laws of the foreign country involved. We assume no liability for delays, non-delivery or other events resulting from causes beyond our control. In refunding unexecuted payment orders, we shall be liable to you only to the extent we receive payment from the correspondent financial institution processing the transfer. Cancellation of a wire transfer involving other than domestic currency is subject to any rate exchange loss as determined by us. You agree to sell any canceled payment order to us at the then current applicable foreign currency buy rate.

**b. Automatic Conversion.** International Wire Transfers denominated or expressed in U.S. Dollars but instructed by you to be sent to an account denominated in foreign currency may, in our sole discretion, be automatically converted by us or may be converted by an intermediary or correspondent bank, or by the receiving financial institution, at such entity's sole discretion, to the receiving financial institution's national currency prior to completion of transfer to such receiving financial institution, so long as the receiving financial institution is located in a country that, to our then-current knowledge, readily accepts such previously converted funds. When such a currency conversion is made, we, intermediary or correspondent bank, or the receiving bank will determine, at such entity's sole discretion, the applicable currency conversion rate. You understand and agree that we shall not have any liability to you for any loss or expense incurred by you arising from or relating to any such currency conversion. You must notify us prior to the transaction if the beneficiary of the International Wire Transfer requires that the payment be made in U.S. Dollars. If you have not so notified us, and should the receiving financial institution reject the incoming Wire Transfer due solely to our automatic conversion to that financial institution's national currency, we shall reimburse you the actual amount of any fees assessed by such financial institution that are related solely to the rejection of the Wire Transfer due to Bank's automatic conversion.

**c. Currency Conversion Requests.** You understand and agree that if you request an International Wire Transfer be made in currency other than U.S. Dollars, we may convert the U.S. Dollar amount at our applicable exchange rate in effect at the time of our execution of the order for the specified foreign currency. You also understand and agree that, should we not have an existing exchange rate in place for the specified foreign currency, then we will use reasonable efforts to convert

the currency through reasonably available commercial or banking channels. You further understand and agree that the exchange rate(s) used by us for such International Wire Transfers may vary from exchange rates established by governments or other financial institutions, and may not be the lowest available rate available to you.

If the financial institution designated by you to receive the International Wire Transfer does not pay the designated beneficiary or credit the beneficiary's account and the funds are returned to us, we shall not have any liability to you for any sum in excess of the amount of the payment order after we have converted the funds back from the foreign currency to U.S. Dollars using our applicable rate of exchange in effect at the time we confirm the cancellation of the payment order to you. We shall not have any liability to you for any loss or expense incurred by you arising from or relating to any currency conversion requested by you.

### **Wire Transfer Numbers**

You understand and agree that you bear sole responsibility to correctly identify beneficiary information for all wire transfers.

Your obligation to pay us the amount of the funds transfer is not excused in the event that the Fedwire message or otherwise the payment order or instruction does not identify the same account or financial institution of your intended recipient. When the intended recipient's identified name and account number is inconsistent, the payment may be made on the basis of the account number, as controlling, even if such account is not owned by the person or entity identified by name. With respect to incoming wire transfers that do not indicate an account number recognizable to us, we may return the wire transfer to the sending financial institution without incurring any liability.

### **Reverse Wire Transfers**

**a. Authorized Debits.** If requested by you and we agree, you authorize us to debit your account(s) upon receipt of a Fedwire drawdown request, and to send funds to the requesting bank. Each such transfer will be done on the Business Day we receive the incoming request from the requesting bank if the request is received within a reasonable time to determine whether your account has sufficient collected funds and to obtain access to the Federal Reserve network prior to the close of business.

**b. Reverse Wire Funding.** You agree not to transmit any reverse wire request in excess of available collected balances on deposit in the designated account(s). We may (but are not obligated to) reject any reverse wire request in excess of the collected and available balance. The requesting bank will be notified if we reject the request.

**c. Authorizations.** Your authorization for reverse wire requests shall remain in effect until you give us written notice to the contrary. We will have a reasonable time, as determined by us in our sole discretion, to act on any written notice received from you.

**d. Limitation on Our Liability.** In consideration of our compliance with this agreed authorization for reverse wire requests, you understand and agree that our treatment of any debit for a reverse wire transfer, and our rights with respect to it, shall be the same as if the entry were initiated personally by you. You further understand and agree that we shall have no liability if any such debit is dishonored.

**e. Request for Credit.** We may, in our sole and absolute discretion, submit a non-value, request for credit message (a "Drawdown") on your behalf through Fedwire. We shall have

no liability as to the results of any such Drawdown request.

### **Provisional Credit**

You understand and agree that when your account is credited for an incoming wire transfer, such credit shall be provisional until we receive final settlement for such wire transfer, and if final settlement is not received, we shall be entitled to a refund of the amount credited to your account.

### **Disclaimer of Warranties**

We do not and cannot warrant that our wire transfer services will operate without errors, or that any or all wire transfer services will be available and operational continuously and without interruption at all times. **WE PROVIDE WIRE TRANSFER SERVICES "AS IS" AND "AS AVAILABLE". IN ADDITION TO DISCLAIMERS OF WARRANTIES CONTAINED ELSEWHERE IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE WIRE TRANSFER SERVICES, WHETHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### **Business Debit Card Services**

This section describes our business debit card services and the additional terms applicable to these services. We may limit the availability of these services at any time, and all of these services may not be available at each Bank location. We may require you to sign a separate agreement to obtain these services. If there is a conflict between the separate agreement and this Agreement, the separate agreement will control.

### **Business Debit Cards**

As used in this Business Debit Card Services section, "Card" or "Check Card" means the Bank's Business Debit Card that the Bank may issue to you as a Mastercard Debit Card. "Cardholder" means the person to whom a Card is issued. Unless otherwise provided in this Agreement, you must be an account owner or an authorized signer to request a card for a Cardholder. You agree to provide a copy of this Agreement to each Cardholder. You may visit any of our Bank locations to request a Card. You will provide a PIN that will be used to perform withdrawal and debit (POS) transactions. You may also request a card by calling us. The card will be mailed to your address on file, and you will set your PIN when activating the card. If you or any Cardholder give the Card or PIN to another person, including without limitation an unauthorized individual, to use or otherwise allow another person or an unauthorized individual to use the Card or PIN, you will be responsible and liable for any and all Card transactions by such individual or anyone else to whom that person gives the Card and/or PIN, and we will have no liability for any such usage. You understand and agree that, except as otherwise indicated herein, you will be responsible and liable for the Card and any transactions initiated using the Card, including, without limitation, any and all Card transactions by your employees and agents.

You and each Cardholder agrees not to use the Card for any credit or deposit account linked to your Card (each a "linked account") for any transaction that is illegal under applicable law, including, but not limited to, "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG issued thereunder. You and

each Cardholder agree to use the Card only in the manner and for the purpose described within this Agreement. If you or a Cardholder should attempt to use the Card in any other manner or for any other purpose, we may decline the transaction or, at our sole discretion, the transaction may be completed without any obligation to honor the same type of transaction on future occasions. We reserve the right to deny transactions or authorizations from merchants apparently engaging in the Internet gambling business or identifying themselves through the Card transactions record or otherwise as engaged in such business.

### **Business Debit Card Transactions**

You agree to use your Card only for business purposes, and not for personal, family or household purposes. You further understand and agree that use of your Card is not subject to the Electronic Fund Transfer Act and the Consumer Financial Protection Bureau's Regulation E governing electronic funds transfers for consumer transactions. The Card enables the Cardholder to make the following types of transactions:

- Purchases at merchants that accept Mastercard credit cards and at merchants in participating regional proprietary POS networks. Business Debit Cards can be used to make POS purchases in the three (3) ways described below. The funds used for these purchases are deducted from your primary account.
- Mastercard POS Purchase. Purchases can be made at merchants or service providers that accept VISA/Mastercard credit cards in retail outlets, over the Internet, through mail orders, and on the phone. To do so, the Card is presented to the merchant and a receipt to authorize the purchase is signed. At merchants with PIN pads or terminals, the Card is swiped, the credit button is selected, and a receipt to authorize the purchase is signed. For Internet, phone, and mail orders, the Card number and the expiration date are provided. There is no cash back feature when making a Mastercard purchase.
- POS Network Purchase. Purchases can be made at merchants that accept payment through the POS networks in which the Bank participates, which include NYCE and Cirrus. To make a purchase; the Card is presented to the merchant. When prompted, the PIN is entered to authorize the purchase. Merchants participating in these POS networks may allow cash back with the purchase amount and may limit the dollar amount allowed with the cash back.
- PINless Debit Purchases. Purchases can be made at merchants that accept payment through the POS networks in which the Bank participates. To make a purchase the Card is presented to the merchant without requiring you to enter the PIN. These transactions are called "PINless debit transactions". PINless debit transactions are not considered debit transactions.
- Cash withdrawals from, balance inquiries on, and funds transfers between your checking, money market accounts and/or savings accounts, and to the extent we may offer them, NOW accounts, with the Bank using an ATM transaction.
- Cash withdrawals from the designated primary checking account and/or primary savings account at non-PlainsCapital Bank ATMs that participate in shared ATM networks to which the Bank belongs.

### **Recurring Purchases with a Business Debit Card**

### ***Recurring Preauthorized Payments***

If you give a merchant your debit card number for the purpose of billing you for recurring payments, you should notify the merchant if your card number and/or expiration date changes. We provide information to the Mastercard Automatic Biller service. Participating merchants may receive the updated card information. Not all merchants subscribe to the Mastercard Automatic Biller services, so we recommend that you notify each merchant of any changes to your card number and/or expiration date to ensure your automatic payments continue uninterrupted. In cases of reported fraud on your card, we will not provide your updated card information to the Mastercard Automatic Biller service. If you want to revoke authority for all future preauthorized payments from a particular merchant, or if your account linked to the card is closed, you should contact the merchant and tell the merchant to cancel the preauthorized payment.

### **Card Transactions at Non-PlainsCapital Bank ATMs**

If a Card is used at non-PlainsCapital Bank ATMs, transactions will be limited to the linked account, withdrawal limits, and currency denominations provided by the non-PlainsCapital Bank ATM. If a non-PlainsCapital Bank ATM does not provide the option of various account types, such as checking or savings, the cash withdrawal will be from your linked account designated as "primary checking." The non-PlainsCapital Bank ATMs will normally charge an additional fee for usage of that machine, which is called a "surcharge." This fee can range from \$1.00 up to \$5.00 or more.

### **Foreign Transactions**

If you purchase goods or services or obtain cash from an ATM with your card in a currency other than US Dollars, the card network will convert the charge into a US dollar amount from your account. The conversion rate on the processing date may differ from the rate on the date of your transaction. The currency conversion exchange rate is a rate selected by the card network from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate the card network itself receives or the government-mandated rate in effect for the applicable central processing date. For each purchase transaction completed outside the United States, the Bank may also charge an International Purchase Transaction Fee, which is based on the amount provided to the Bank by the network in U.S. dollars.

### **Our Rights to Cancel or Block Your Card**

We may decide not to issue or renew a card and we may cancel or suspend your card privileges without cause or notice, other than that required by federal or state law. Your card remains our property and we may repossess it at any time. If we cancel your cardholder privileges, you must surrender the card to us upon demand or upon notice of cancellation. If the card is used other than as permitted by this Agreement, we may at our option and without waiving any rights, complete the transactions and debit or credit your account accordingly. The cancellation of card privileges does not affect other terms of your account. If we reinstate your card privileges, the terms and conditions of this Agreement applicable to your card are also automatically reinstated. If the card we send you is returned undelivered, we may restrict use of any card with the same numbers or we may close the card for your protection. If you have not used your card to conduct a transaction within the last twelve (12) months, we may close and cancel your card without any notice to you.

## Protecting Your Card and PIN

You and each Cardholder are responsible for caring for the Card and/or PIN as you, he or she would care for checks and other paper items. You and each Cardholder are responsible for maintaining the confidentiality of the Card PIN.

If you suspect that a Card tied to your account has been lost or stolen or is no longer secure, or is being used by an unauthorized person, notify us as soon as possible by calling 1-888-765-1765 immediately so the Card can be closed quickly. We recommend that you/each Cardholder:

- Activate the Card by either calling the toll free number on the sticker attached to the front of the Card or performing a transaction at any ATM or POS merchant terminal, using the four digit PIN selected for the Card.
- When selecting your PIN, do not use any number or word that appears in your wallet such as birth date, name or address. Always use a unique PIN and not one based on a number that can be easily determined.
- Memorize your PIN, never share it with anyone, and never write your PIN on your Card or on paper or store it with your Card.
- Change your PIN number every six (6) months.
- Purchase from and shop with merchants you know and trust.
- Regularly review your account statements as soon as you receive them to verify transactions. Contact the Bank immediately if you identify any discrepancies.
- Make sure any Internet purchase activity you engage in is secured with encryption to protect your account information. Look for the "secure transaction" symbols.
- Always be sure to log off from any site after a purchase transaction is made with your Card. If you cannot log off, shut down your browser to prevent unauthorized access to your account information.
- Do not send your Card number through email, as it is typically not secure, and don't provide it over the phone unless you initiated the call.
- If you have forgotten your PIN or would like to select a new one, please visit your nearest PlainsCapital Bank location.
- Sign the back of the Card immediately.

## Account Linkage and Designation of Accounts

To open and maintain any type of Card, at least one qualified PlainsCapital Bank business deposit account must be linked to the Card. You may link deposit or credit accounts to your Card as the Bank permits from time to time. In addition, a sole proprietor may also link personal accounts maintained at the Bank to a Card so long as the personal and business accounts are established under the same tax identification number.

If only one deposit account of each type (checking, savings, etc.) is linked to a Card, the checking account is automatically designated as the "primary" account of that type for the purpose of making electronic funds transfers and displaying the accounts where available at the Bank ATMs or non-PlainsCapital Bank ATMs.

If more than one account of a single type is linked to a Card, you will be asked to designate the primary account, secondary account, and other accounts. If you do not designate one account as the primary account of a particular type of account, the first account of that type linked to a Card is considered the primary account for that type of account. Certain transactions

are automatically debited from the linked account designated as primary.

### **Dollar Amount Limits on Transactions**

If a Card is used to make ATM withdrawals or transfers or POS purchases, the following rules apply:

- There is no limit on the number of times a Card may be used each day as long as the disclosed daily dollar limits are not exceeded.
- The ATM daily dollar limit is the maximum U.S. Dollar amount of cash that can be withdrawn from any ATM machine within one (1) day.
- The POS daily limit is the maximum U.S. Dollar amount of purchases (including cash back, if any) that can be debited from your account within one (1) day.
- For the purpose of the daily limit, a "day" is generally defined as a 24-hour period beginning at midnight.

The standard daily withdrawal limits for a Card are the following:

ATM	\$1,000
PIN Transactions (merchant purchases using the PIN)	\$1,500
Credit Transactions (merchant purchases using a signature)	\$1,500

At our discretion and without notice, we may establish a higher or lower daily withdrawal limit based upon your account type, account behavior or your total deposit relationship. In addition, upon your request, we may establish a higher or lower daily withdrawal limit for a temporary period. If we agree to establish a higher or lower limit for a temporary period, your limit will default to the above standard daily limit at the end of the temporary period.

If we have not established another limit for you, the standard daily limits will apply.

### **Documentation of Transfers and Transactions**

At the time you conduct an ATM transaction, POS transaction, or "Credit" debit card transaction, you may receive a written receipt from either the ATM machine or the merchant with the following information:

- Amount
- Date
- Type of transaction
- Merchant name (if applicable)
- Account number (which is partially displayed)
- ATM code number or POS terminal code number

### **Debit Card Holds**

When you use a debit card for a purchase, the merchant will send your card number and the purchase amount to the Bank for an approval or authorization. This authorization generally confirms that an account is open and the purchase amount is available. The funds for the purchase amount are then placed on "hold" and deducted from the available balance. When the Bank receives the actual transaction from the merchant, the hold is released and the transaction is presented for payment against the account in our stated order of payment. If the transaction has not been received by the Bank within two (2) business days for most in-person transactions or up to seven (7) business days for certain internet transactions as defined by

the card networks, the hold expires and the available balance will increase by that amount. The merchant may still settle a transaction after the hold expires and we will honor the transaction.

There are times, for example, at restaurants, for gas purchases, car rentals or hotels, that merchants will not know the exact amount of your purchase when they request the authorization. This means the authorization could be for an amount higher or lower than your actual purchase amount. This may temporarily affect your available balance, if your hold amount is different than your actual purchase amount. Therefore, it is extremely important that you are diligent about recording the actual transaction amount in your records. Once the merchant sends the transaction and it posts on your account, you can view the transaction through Internet Banking or Mobile Banking.

Your available balance is immediately affected by authorizations we provide merchants and we pay items presented based on your available balance and in accordance with our stated order of payment.

### **Stop Payments on Purchases and Refunds**

Stop payments cannot be requested on one time purchases made using a Business Debit Card. You can request the merchant to refund you for a purchase made, and the merchant may refund the Card used at the time of the original purchase. You may not receive cash refunds for the return of merchandise or services purchased using your Card.

### **ATM and POS Malfunction**

You agree not to hold the Bank responsible for damages that result from or are a consequence of an ATM or POS malfunction. You agree to promptly notify the Bank if an ATM fails to dispense the correct amount of cash or provide a proper receipt, by calling or writing the Bank at the telephone number or address provided within this Agreement.

### **Liability for Unauthorized Card Transactions**

You are responsible for each Card linked to your accounts. You will not be liable for unauthorized Card transactions except as explained below or as otherwise stated in this Business Debit Card Services section or the Account Statements section of this Agreement.

As used in this Business Debit Card Services section, an "unauthorized transaction" is a transaction that is made by a person who does not have your actual, implied, or apparent authority to use a Card or PIN. Authorized Card transactions for which you shall be liable include:

- Any transaction where you furnished the Card, PIN, or the Card number to another person or co-owner (even though that co-owner is not a Cardholder) and expressly or implicitly give that individual authority to perform, even if he or she exceeds the authority granted.
- Any transaction a merchant processed in error.
- Any transaction involving the purchase or payment for goods or services with which the Cardholder is not satisfied.
- Any other reason we conclude that the facts and circumstances do not reasonably support a claim of unauthorized use.

When you receive your account statement, if you note any errors with respect to or have questions about any Card transaction, please notify the Bank immediately by mail or telephone using the Bank contact information within this Agreement. Please review the Account Statements section of



this Agreement for further information with respect to receipt and examination of your account statements.

Except as otherwise stated in this section, you must notify us in writing of any errors, unauthorized transactions or problems including, without limitation, any loss or theft of the Card, no later than thirty (30) calendar days after we sent or otherwise made available the first statement on which the unauthorized transaction, problem or error appeared. When you contact the Bank, for each such error, unauthorized transaction and/or problem, we will need the following information:

- Cardholder's full name and account number.
- When you first noticed the error, problem or unauthorized transaction
- A description of the error, problem or unauthorized transaction and a clear explanation of why you believe it is an error or unauthorized transaction, or why you need more information.
- The date and dollar amount of the transaction in question.
- You will be asked to complete documentation in support of your claim, which may include, but may not be limited to, an affidavit, declaration or EFT notification form, and may also be asked to complete a police report with the local authorities.

In evaluating your claim, the Bank will consider whether any negligence on the part of you or the Cardholder(s) within your organization has contributed to the transaction in question.

Some of the factors that the Bank will consider in connection with this evaluation process include:

- **Timely reporting of lost Card.** Whether any loss or theft of the Card was reported to the Bank within the timeframes set forth in this Business Debit Card Services section after the discovery of the loss or theft.
- **Prompt review of statements.** Whether you promptly reviewed the statements for your linked accounts.
- **Prompt report of unauthorized transactions, problems or errors.** Whether, after we sent or otherwise made available the first statement on which the unauthorized transaction, problem or error appeared, the unauthorized transaction, problem or error was reported to the Bank within the timeframes set forth above or in the Account Statements section of this Agreement. If the unauthorized transaction, problem or error is not reported timely within the timeframes set forth above, such unauthorized transaction, problem or error shall be fully enforceable against you, and we will not be responsible or liable for such unauthorized transaction, problem or error.
- **Safeguard Card and PIN.** Whether you or the Cardholder exercised reasonable care in safeguarding your, his or her Card, Card number, and PIN from loss or theft.
- **Multiple prior incidents.** Whether you have reported multiple incidents of unauthorized transactions to the Bank within the twelve (12) month period immediately preceding your claim, and the facts and circumstances surrounding any such incidents.

We will have the right to reverse any credit made to your account if you fail to (i) sign any of our required affidavits and/or other documents that we request you to sign; (ii) cooperate fully with the Bank's investigation of your claim of an unauthorized transaction; (iii) cooperate fully with the Bank's efforts to recover funds related to your claim of unauthorized transaction; or, (iv) if we determine that the transaction was indeed authorized.

## **Card Fees**

If your Card is lost or stolen, you may have the Card replaced for a \$5.00 fee.

## **Mastercard Debit Card Transactions**

Under Mastercard's Zero Liability policy (as may be modified by Mastercard), you may not be held responsible for unauthorized purchases using your Mastercard card, provided the following conditions are met:

- You exercised reasonable care in safeguarding your card from risk of loss or theft; and
- Upon becoming aware, you promptly reported the loss or theft to us;

To the extent permitted by law, we may reasonably determine that you failed to exercise reasonable care in safeguarding your card from risk of loss or theft if you do not report one or more unauthorized card transactions to us within sixty (60) days of the date when the statement reflecting the transaction(s) was sent or otherwise made available to you. Zero Liability does not apply to the following Mastercard payment cards: commercial cards, unregistered prepaid cards or gift cards, except for Mastercard commercial cards used for small businesses as identified by Mastercard.

Provided further that:

- The zero liability policy applies to electronic funds transfers or transfers on the account involving use of a card or card number and made in a store, over the telephone, online, or via a mobile device and ATM transactions, but does not apply to unauthorized electronic fund transfer or transfers which do not involve the use of a card or card number or debit PIN transactions not processed by Mastercard.
- We consider a transaction unauthorized if it is initiated by someone other than you (the cardholder) without your actual or apparent authority. A transaction is not considered "unauthorized" if you furnish the card, card number or other identifying information to another person and expressly or implicitly give that individual authority to perform one or more transactions, and the person then exceeds that authority, or for any other reason we conclude that the facts and circumstances do not reasonably support a claim of unauthorized use.
- Reasonable time will be determined at our sole discretion based on the circumstances.

## **ATM Security Disclosure**

### **Security at Walk-up and Drive-up ATMs**

- Observe your surroundings before, during and after using an ATM. Observe the entire area from the safety of your car before getting out of your vehicle or using the drive-up ATM. If you see anyone or anything suspicious, leave the area at once.
- If an ATM is obstructed from view or poorly lit, go to another ATM. Report the problem to the financial institution operating the ATM.
- While waiting in line for the drive-up ATM, keep your engine running, doors locked and windows up. Leave enough room between cars to allow for a quick exit if necessary.
- At walk-up ATMs, park as closely as possible to the terminal.
- When possible, take a companion along when using an ATM, especially at night.

- Minimize time spent at the ATM by having your card out and ready to use. If the ATM is in use, give the person using the terminal the same privacy you expect. Allow them to move away from the ATM before you approach the terminal.
- When conducting your transaction, stand in front of the ATM to keep your PIN and transaction amount from public view. Upon completing your transaction, make sure that the terminal reflects that the transaction is complete, and take your money, card and receipt and move away from the terminal.
- If an ATM appears to have been altered or otherwise appears unusual, do not use it.
- If you suspect that an ATM is not functioning properly, cancel your transaction, remove your card from the terminal and go to another ATM.
- If you see anyone or anything suspicious while conducting a transaction, cancel your transaction, remove your card from the terminal and leave immediately.
- If anyone follows you after you have made an ATM transaction, go immediately to a crowded, well-lit area and call the police.

### **Keeping your Card Secure**

- Keep your card in a safe place. Store your card in a card sleeve to protect the card's magnetic stripe and to ensure the card functions properly.
- Protect your card just as you would cash, checks or a credit card.
- Keep your personal identification number (PIN) a secret. Your card only works at an ATM with your PIN. Memorize your PIN and never write it on your card or store it with the card. Never tell your PIN to anyone or let anyone else enter your PIN for you.
- Take your ATM receipt with you. Do not leave it at or near the ATM.
- Do not give out any information about your card over the telephone. No one needs to know your PIN - not even your financial institution.
- Report a lost or stolen card immediately. Even though your ATM card cannot be used without your PIN, promptly report a stolen card and you will be issued another card.
- Change your PIN from time to time, and always use a unique PIN and not one based on a number that can be easily determined. You may change your PIN by calling 866- 392-9952 or by bringing the card into one of our branches.
- Check your receipts against your monthly statement to guard against ATM fraud. You get a receipt every time you make an ATM transaction. Verify each transaction by checking the receipts against your monthly account statements.

### **eStatements**

If you have requested, through Internet Banking (which required you to log in) to have eStatements made available to you, you understand that, when your statement, disclosure or notice is ready to be viewed through the System, we will send an email notification to your primary designated email address that your periodic account statement, disclosure or notice is available to be viewed through the System. You may access your statements, notices and disclosures by logging in to the

System and selecting the appropriate links.

If there is more than one depositor that is a signatory to the account, we will also send such notice(s) to any such depositor who has registered for eStatements through Internet Banking (which required you to log in); however, notice to any one depositor will be effective for all. You understand that such eAccess is governed by the E-Sign disclosure contained in the deposit agreement(s) for your account. To request a paper copy of any electronic statement, disclosure or notice provided pursuant to this consent, mail or fax your request to the address or fax number at the end of this disclosure.

You may also visit any of our branch locations and speak with one of our customer service representatives for assistance. See Miscellaneous Fees section within this Agreement for applicable research fees.

We will use commercially reasonable measures, consistent with industry standards, to maintain a reasonable level of security over the information contained in electronically delivered statements and notices. You understand that these industry standards are dynamic and constantly developing. By requesting, through Internet Banking (which required you to log in), to have eStatements made available to you, you acknowledge and understand that there are risks that are associated with electronic access to statements and notices including, but not limited to, delay or failure of delivery due to technical difficulties, weather conditions, and matters beyond our reasonable control. You have considered the historical and potential future content of your account statement(s) and notices, the risks associated with electronic access of account statements in choosing eAccess. You agree that by following our normal security measures and procedures for maintaining security and confidentiality, we will have acted in good faith and exercised ordinary care. If, in the future, you conclude that our security procedures cease to be reasonable, you must contact us to terminate eAccess through the System (click on Services, then click on Messages) or you may mail or fax your request to the address and fax number at the end of this disclosure. You may also visit any of our branch locations and speak with one of our customer service representatives for assistance.

### **eStatements Specifications**

If you have questions about whether these additional requirements apply to you, please contact one of our customer service representatives in person at any branch location or call 1-866-762-8392.

You understand that it is your responsibility to ensure that your email address(es) on file with the Bank are accurate, and you agree to notify us promptly of any change in your designated email address(es) via one of the following methods: change of address request within Internet Banking, branch visit, or by mail to the address at the end of this disclosure. For your protection and for security purposes, we will not accept any change of email address notices via email or telephone.

If you have not notified us in writing of any change to your email address(es), you agree that we may rely on the email address(es) on file with us, and that any failure on your part to provide us with a good email address is a lack of ordinary care on your part. If we attempt to send you an eAccess notification email and it is returned undeliverable twice, we will discontinue sending you email notifications until you provide us with your correct email address. Please note that this will not affect the availability of your eStatement(s), disclosures or notices, which will continue to be available to you when you log in to the System.

Your email address may be changed using the procedure

described above by any authorized signer on your account. The Bank shall have no obligation or liability to any of the owners of a multiple-party account if the email address(es) is or are changed using the procedures set forth above.

You agree that the Bank has no control over the persons who have access to your personal computer or device and your password. The Bank will not be liable for any third party access to your personal computer or device using your password or for any losses you incur as a result thereof. You agree that it is your responsibility to initiate and maintain adequate procedures to prevent any unauthorized access to your personal computer or device or unauthorized use of your password.

We disclaim any and all implied warranties, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. If you believe that someone has obtained access to your eStatements, disclosures or notices without your permission, contact us at the address or telephone numbers at the end of this Agreement

Notwithstanding any provisions to the contrary contained in this Agreement, we shall be responsible only for performing the eStatement services as expressly provided for in this Agreement.

**TO THE FULLEST EXTENT PERMITTED BY LAW, WE SHALL BE LIABLE ONLY FOR ACTUAL LOSSES WHICH ARE THE DIRECT RESULT OF OUR OWN GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT IN PERFORMING THESE SERVICES. IN ADDITION TO HAVING NO LIABILITY FOR UNAUTHORIZED ACCESS TO YOUR PERSONAL COMPUTER OR DEVICE, WE SHALL HAVE NO LIABILITY FOR FAILURE TO PERFORM ANY eSTATEMENT SERVICES OR FOR ANY DISRUPTION OR DELAY IN PERFORMING SAID SERVICES IN THE EVENT SUCH FAILURE, DISRUPTION OR DELAY IS DUE TO CIRCUMSTANCES BEYOND OUR REASONABLE CONTROL (INCLUDING, BUT NOT LIMITED TO, FAILURE OR DISRUPTION OF ELECTRONIC POWER, COMPUTER EQUIPMENT, TELECOMMUNICATIONS SYSTEMS, YOUR INTERNET ISP OR AS A RESULT OF INCLEMENT WEATHER CONDITIONS). WE SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE DAMAGES OR INDIRECT LOSS UNDER ANY CIRCUMSTANCES.**

**YOU AGREE TO INDEMNIFY, DEFEND AND HOLD US AND OUR AFFILIATES, AND EACH OF THEIR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ALL CLAIMS, SUITS, CAUSES, ACTIONS, LOSSES, COSTS, DAMAGES, LIABILITIES, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THE eSTATEMENT SERVICES IF WE ACT IN GOOD FAITH AND WITH ORDINARY CARE.**

You agree that this indemnification shall survive the termination of this agreement.

### **eStatement Termination**

Subject to our rights set forth below, the Commercial Services Form and eAccess shall remain in full force and effect until it is terminated by either party upon thirty (30) days prior written notice to the other party. Please mail or fax requests to the address or fax number at the end of this disclosure. You may also visit any of our branch locations and speak to one of our customer service representatives for assistance. We also have the right to terminate the Commercial Services Form and eAccess immediately, with or without cause. If we terminate the Commercial Services

Form and eAccess for any reason, such termination shall be effective on the effective date specified in a written notice mailed to you, and not on the date when the notice is mailed or received. We will not charge you any fees to cancel eAccess, however, certain statement fees may apply pursuant to our current fee schedule.

Address and Fax Number for Changes and Termination:

PlainsCapital Bank  
ATTN: Deposit Support Department  
5010 University Avenue  
Lubbock, TX 79413  
Fax: 1-877-450-3985

## **Unlawful Internet Gambling Enforcement Act Disclosure**

You understand and agree that PlainsCapital Bank strictly prohibits the use of any account to conduct any transaction of any sort that is related, whether directly or indirectly, to unlawful Internet gambling. As used in this Agreement, "unlawful Internet gambling" shall have the meaning set forth in the Unlawful Internet Gambling Enforcement Act of 2006, and Regulation GG. You may not use your account or related services to conduct any unlawful Internet gambling transaction or activity, including without limitation to deposit any funds in connection with unlawful Internet gambling. Restricted transactions, including acceptance of credit, funds, instruments or other proceeds from another person in connection with unlawful Internet gambling, are prohibited from being processed through your account or relationship with us. You agree to indemnify, defend and hold us harmless from every claim, suit, cause, action, proceeding, loss, cost, damages, liabilities and expense (including without limitation attorney's fees) arising out of or in any way connected with, or suffered or incurred by us due to any U.S. or foreign government entity seizing, freezing or otherwise asserting or causing us to assert control over any account or funds in an account of yours (or ours) when purportedly caused by, or arising out of, your action or inaction in relation to any purported or alleged unlawful Internet gambling. This will apply whether or not such action or inaction is ultimately determined to be authorized under the laws of the U.S. or its territories, or of any foreign jurisdiction. We are not required to inquire or determine the authority of any action taken by the U.S. or any foreign government entity prior to acceding to any legal process initiated by either.

Please note that your agreement to comply with applicable laws and regulations includes United States economic sanctions laws and regulations, including regulations issued by the Office of Foreign Assets Control.

## **FEE AND CHARGES**

Your account may be subject to regular service fees as well as miscellaneous fees and charges. These fees and charges may differ based on the type of Account you have with us. A fee schedule is available upon request and is subject to change at any time. You agree to pay the fees and charges that apply to you based on your account activity. We will deduct these fees and charges automatically from your account without any specific request from you.

The fees and charges on certain types of accounts may be reduced by an earnings credit calculated on the balances in selected accounts you have with us. The earnings credit rate is set by us and may change at any time.

## SCHEDULE OF FEES

### Overdrawn Account Fees:

Overdraft Item Fee (per item)	\$20
NSF Item Fee (per item, per presentment)	\$20.
Overdraft Account Balance Rate	Prime Rate + 2.50%

### ATM/Mastercard Debit Card Fees:

ATM Usage at Non-PlainsCapital Bank ATM (domestic or international) Per Transaction\*

- Transactions include cash withdrawals, funds transfers, and balance inquiries  
Fees from the ATM owner/operator still apply

Replacement MasterCard Debit Card	\$5
Expedited Delivery for a Replacement Debit Card:	
• Weekday Delivery within the U.S.	\$30
• Weekend Delivery within the U.S.	\$50
• International Delivery to Canada and Mexico	\$100
• International Delivery outside of North America	\$150

### External Transfer Fees:

External Transfer	\$1
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### Money Orders and Official Checks:

Money Orders	\$3
Official Checks	\$5

### Wire Transfer Fees:

Incoming wire transfer	\$15
Outgoing domestic wire transfer	\$35
Outgoing domestic wire transfer through Business Online Services (BOS)	\$15
Outgoing international wire transfer	
in U.S. Dollars	\$55
in foreign currency	
if wire transfer is under \$5,000	\$25
if wire transfer is \$5,000 and over	no fee
if returned	\$10 + processing cost

### Collection Fees:

Incoming/Outgoing domestic collection Item with documentation (Examples, but not limited to: automobile drafts, oil and gas lease payments and other similar items)	\$30
Incoming/Outgoing domestic collection Item without documentation (Examples, but not limited to: NSF Item, credit card, check, and photocopy of check without original)	\$30
Trust Receipt Fee (incoming collection drafts)	Prime Rate

### Non-U.S. Items:

Canadian item deposited	\$5
Canadian item returned unpaid	\$35
International item collection	\$35
International returned item	\$35
Foreign currency exchange	Market Rate
Foreign currency exchange shipping & handling fee	
If exchange is under \$300	\$10
If exchange is \$300 or over	no fee
Foreign business verification	\$100+ processing cost

**Safe Deposit Box Fees:**

Annual rent	
Size: 3X5X21	\$25
Size: 4X5X21	\$30
Size: 3X10X21	\$45
Size: 5X10X21	\$60
Size: 10X10X21	\$110
Key Deposit	\$20
Replace lost keys	\$25
Exchange locks	\$25
Drill lock	\$350

**Miscellaneous Fees:**

Research	\$25/hour plus \$2 per statement (\$25 minimum)
Account activity print-out	\$5
Special cut-off statement	\$5
Telephone transfer	\$5
Stop payment order	\$30
Official check stop payment order	\$50
Returned deposited item	\$12
Returned cashed item	\$10
Zipper Bag with Lock	\$35
Hold Mail Fee (per statement cycle)	\$5
Returned Mail Fee	\$5
Legal process fees	\$75
includes freezes, levies, subpoenas and other requests for information from law enforcement	
Writs of garnishment	\$100
Plus actual legal costs and fees incurred by the bank	
Notary Fee	\$4





PlainsCapital Bank  
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