

# CONSUMER MOBILE AND ONLINE BANKING SERVICE AGREEMENT

## I. GENERAL DESCRIPTION OF MOBILE AND ONLINE BANKING AND TRANSFERS OUTSIDE FIRST MERCHANTS BANK

### A. Welcome to Mobile and Online Banking

Mobile and Online Banking is the name for certain services offered by First Merchants Bank. It includes the services described in this agreement. Read this agreement carefully and keep it with your other account records. It includes certain disclosures for electronic funds transfers. The following terms and definitions apply when used in this agreement:

**"Access Device"** means a personal computer, mobile phone or other device that meets the requirements for use of the Service and by which the Service is accessed by you.

**"Agreement"** means this agreement setting forth the terms and conditions of using the Service for Mobile and Online Banking and transferring funds.

**"Bill Pay Service"** means an optional service where Payees can present bills through the Service and which can be paid directly from eligible deposit accounts.

**"Business Day"** means Monday through Friday, except Federal Reserve holidays.

**"Collected Funds"** means your current account balance minus the amount of any checks or other transactions that are in the process of being collected.

**"Due Date"** means the date when a payment is due as reflected on a statement provided by Payee. It is not the late date or grace period.

**"Financial Software"** means the software provided to allow you to access and use the Service.

**"Future Dated Transfer"** means a funds transfer that will be initiated on a

future day depending on your selection of the Transmit Date.

**"Future Payment"** means a payment, other than a Recurring Payment, that will be initiated on a future business day depending on your selection of the Transmit Date.

**"Online ID"** means an identification code needed to access the Service.

**"Password"** means a personal code selected by you that will be used to obtain access to the Service. The term includes any additional numbers, letters and symbols required by the Financial Software or equipment used, or otherwise established by you.

**"Payee"** means any person or entity to which you direct a payment through the Service.

**"Expedited Bill Payment Service"** means a feature of the Service whereby you may expedite payments as described herein.

**"Recurring Payment"** means a regular payment that is automatically made during recurring intervals permitted by the Service based on a recurring Transmit Date.

**"Same Day Payment"** means a payment that will be initiated on the same day that you enter the payment information through the Service.

**"Schedule of Fees"** means a listing of current fees as published from time to time by First Merchants Bank and available at [www.firstmerchants.com](http://www.firstmerchants.com).

**"Scheduled Payment Date"** means the day you want your Payee to receive your bill payment and (in the case of electronic payments) is also the day your Primary Service Account will be debited, unless Scheduled Payment Date fall on a day other than a Business Day in which case it will be considered the previous Business Day.

**"Service"** means the individual and collective Mobile and Online Banking Services and fund transfer service available in connection with the Financial Software and described herein.

**"Service Account"** means (i) the primary account(s) designated by you that will be used to initiate Mobile and Online Banking Services (any such account

being referred to herein as a "Primary Service Account"), (ii) all other eligible deposit accounts that are linked to your Primary Service Account, (iii) lines of credit from which funds may be transferred to a Service Account, (iv) investment accounts, such as IRAs which may be funded from a Service Account, and (v) any other account or financial product accessed using the Service. All of these accounts are subject to this Agreement.

**"Transmit Date"** means, (i) with respect to bill payments, the date on which the payment is to be initiated for remittance to the Payee, (ii) with respect to fund transfers, the date on which the transfer is to be initiated to us for processing.

**"User's Guide"** means any instructional materials (as amended from time to time) provided with the Service.

**"We," "us" and "our"** means First Merchants Bank.

**"You, " " your" and "yours"** means (i) each and every person who now or hereafter is an account holder with respect to the Service Account or has an interest therein; and (ii) each and every person who now or hereafter subscribes to the Service or uses the Service.

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

Other definitions may appear within the remaining text of this agreement.

## **B. What this Agreement Covers**

This agreement between you and First Merchants Bank governs the use of the Service. The Service permits First Merchants Bank customers (consumers) to perform a number of banking functions on Service Accounts through the use of an Access Device.

## **C. Eligibility**

To be eligible to use the Service, you must maintain an eligible account with First Merchants Bank.

## **D. Accepting the Agreement**

When you or anyone authorized or permitted by you, use the Service, you agree to abide and be bound by the terms and conditions of this Agreement.

## **E. Relations to Other Agreements**

Your use of the Service may also be affected by the agreements between us and you for each Service Account owned by you. When you link an account to the Service, the agreement governing that account is not changed and remains in full force and effect. This Agreement is only supplemental to the separate agreements governing each account you own. Similarly, if you use the Service to access a credit account you do so under the terms and conditions set forth in the agreement and disclosure provided to you for the credit account. You should review each agreement governing your accounts, including Service Accounts, for any applicable fees, limitations on the number of transactions you can make, and other restrictions that might impact your use of an account within the Service.

## **II. MOBILE AND ONLINE BANKING SERVICES**

### **A. Mobile and Online Banking for Consumers**

You may be able to use the Service to perform some or all of the following tasks:

1. Make payments to a Payee from your Primary Service Account.
2. Review past or scheduled payments from your Service Accounts.
3. Order transfers of funds among eligible accounts.
4. Order transfers of funds from Service Accounts to certain loan accounts accessible through the Service.
5. Perform balance inquiries with respect to each Service Account accessible through the Service.
6. Review account activity within each Service Account.
7. Communicate directly with us via electronic messaging.
8. Request advances from eligible loan account accessible through

Mobile and Online Banking to your service account.

9. Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, request copy of monthly statements, stopping payments on checks and changing your Online ID and Password.

Additional functionality may be added to the Service. We will notify you if and when they become available.

## **B. Mobile Banking**

**By installing the First Merchants Bank mobile application or software necessary to utilize Mobile Banking (the "Software") and using Mobile Banking, you also agree to be bound by this Agreement.**

This service is provided to you by First Merchants Bank ("We", "Us", "Our") and powered by a third party (the "Licensor") mobile technology solution. Section A is a legal agreement between you and First Merchants Bank. Section B is a legal agreement between you and the Licensor.

### **SECTION A**

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

Thank you for using First Merchants Bank Mobile Banking combined with your mobile device's text messaging capabilities. For help, text "HELP" to 226563. To cancel your plan, text "STOP" to 226563 at any time. In case of questions please contact customer service at [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464.

#### **Terms and Conditions**

1. The services are separate and apart from any other charges that may be assessed by your wireless carrier for text messages sent to or received from First Merchants Bank. You are responsible for any fees or other charges that your wireless carrier may charge for any related data or message services, including without limitation for short message service.

2. The services are provided by First Merchants Bank and not by any other third party. You and First Merchants Bank are solely responsible for the content transmitted through the text messages sent to and from First Merchants Bank. You must provide source indication in any messages you send (e.g., mobile telephone number, "From" field in text message, etc.).
3. We are not responsible or liable for the acts, omissions, systems, or services provided by the Licensor or any of the provisions of Section B which is the responsibility of the Licensor.
4. We reserve the right to alter charges and/or these End User Terms from time to time, and we reserve the right to terminate, discontinue or suspend any service at any time.
5. We may terminate Online Banking services as provided in the Service Agreement, and may terminate Mobile Banking, Text Messaging and/or Mobile Deposit Service at any time, including but not limited to if you or your accounts are not eligible for any service, if we believe you are in breach of your account agreement with us, the Service Agreement or these End User Terms, or in the event your mobile service terminates or lapses.

## **Mobile Banking and Text Messaging**

1. As used in these End User Terms, "Mobile Banking" means a service that allows you to use a mobile device (like an iPhone® or smartphone, sometimes also called a wireless device) to access First Merchants Bank's Online Banking service. "Mobile device" means a device specified by us, not a personal computer, including a mobile phone or personal digital assistant (PDA) that has text messaging capabilities and/or is Internet (Web) enabled. "Text Messaging," or "SMS," means a process that allows you to send and receive messages from us related to your accounts, of up to 160 characters each, using your mobile device.
2. Not all the Online Banking services or the functionality on the Online Banking website are available when you use a mobile device, and Mobile Banking and functionality available to you may vary based on the mobile device you use. For those Online Banking services available through your

mobile device, the Online Banking services may use different terminology and appear in different formats when viewed through your mobile device. You may be required to follow different instructions to access Online Banking services through your mobile device. Processing of payment and transfer instructions may take longer through Mobile Banking.

3. Your wireless provider's standard rates apply to Internet access, including messaging rates that apply to SMS usage. We do not charge for any content; however, downloadable content may incur additional charges from your wireless provider. Please contact your wireless provider for information about your Internet access and messaging plans. Your wireless provider may impose Internet access, message and/or charge limitations that are outside of our control, for using this service on your account. All such charges are billed by and payable to your wireless provider. You are responsible for any charges from your wireless provider. We are not responsible for any damages resulting from your failure to comply with any terms and conditions of your wireless provider.
4. You represent that you are the owner or authorized user of the mobile device you use to receive our Mobile Banking service, and that you are authorized to approve the applicable charges. You agree that we may send messages through your wireless provider to you and that your wireless provider is acting as your agent when sending and receiving messages. We may use the telephone or mobile phone number, email address or other delivery location we have in our records for you or other such information as you may provide to us to contact you for Mobile Banking. If you use Text Messaging, we will send you a message only once per request.
5. We will not be liable for any delays or failures in your ability to access our Mobile Banking service or in your receipt of any text messages, as access and messaging are subject to effective transmission from your network provider and processing by your mobile device, as well as delays and interruptions in the Internet. Mobile Banking services including Text Messaging are provided on an AS IS, AS AVAILABLE basis.

6. You understand and agree that Mobile Banking messages may not be encrypted and may contain personal or confidential information about you, such as your mobile phone number, your wireless provider's name, and the date, time, and content of any mobile banking messages including account activity, balance, and status of your accounts and other information that you or we may provide. We may use this information to contact you and to provide the services you request from us, and to otherwise operate, develop and improve the Mobile Banking service.
7. Your wireless provider and other service providers may also collect data from your Mobile Banking usage, and their practices are governed by their own policies. We are not responsible or liable for the acts or policies of such service providers. We will only use the information you provide to us from your Mobile Banking usage in connection with our Online Banking service. Nonetheless, we reserve the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect our rights or property.
8. When you complete forms online or otherwise provide us with information in connection with our Mobile Banking service, you agree to provide accurate, complete and true information. We will not be responsible or liable for losses or damages arising from any disclosure of your account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, the messages sent through Mobile Banking.
9. Our Mobile Banking service, as well as the content and materials you may receive or access through your use of our service, are proprietary to us and our licensors, and are for your personal, noncommercial use only. You will not damage, impair, interfere with, or disrupt our Mobile and Online Banking service or its functionality.
10. You agree that if you are using our Mobile Banking service outside the United States, you are responsible for having access to the appropriate wireless and/or telecommunications networks and are responsible for all

associated fees and charges.

11. We reserve the right to alter charges and/or these End User Terms from time to time, and we reserve the right to discontinue our Mobile Banking service at any time without notice. We may suspend or terminate the service to you at any time, including but not limited to if we believe you are in breach of our End User Terms, the Service Agreement or your account agreement with us. The service is also subject to termination in the event your wireless service terminates or lapses.
12. If you have any questions, email [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call us at 800.205.3464. You can also text the word HELP to 226563 to get additional information about the service. If you receive a message from us unexpectedly, you can text the word STOP to 226563. We do not charge for help or info messages; however, your normal wireless provider rates apply.
13. Mobile Banking is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. Mobile Banking, including instructions for payment, transfer and other transactions, may be delayed, interrupted or otherwise negatively impacted by factors relating to your mobile device, your Internet service provider, wireless provider or other parties, or due to other reasons outside of our control. We will not be liable for any such delays, interruptions, or negative impacts to Mobile Banking and you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon.
14. You agree to indemnify, defend and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of the Mobile Banking and Text Messaging service and your provision of a telephone or mobile phone number, email address, or other delivery location that is not your own or your violation of applicable federal, state or local law, regulation or ordinance. Your obligation under this paragraph shall survive termination

of these End User Terms.

15. As used in these End User Terms, "Mobile Banking" means a service that allows you to use a mobile device (like an iPhone® or smartphone, sometimes also called a wireless device) to access First Merchants Bank's Online Banking service. "Mobile device" means a device specified by us, not a personal computer including a mobile phone or personal digital assistant (PDA) that has text messaging capabilities and/or is Internet (Web) enabled.
16. You warrant and represent to us that for every remotely created check, electronically created item or electronic payment order (collectively, "ECI") we receive from you for deposit or collection: (1) the ECI was authorized by you; (2) you have received express and verifiable authorization to create the ECI in the amount and to the payee that appears on the ECI; (3) you will maintain proof of the authorization for two years from the authorization, and supply us with the proof if we ask; and (4) if an ECI is returned, you owe us the amount of the item, regardless of when the item is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance. You also agree to indemnify us for any loss we may incur as a result of any ECI transaction you initiate.

## **SECTION B**

### MOBILE AND ONLINE BANKING APPLICATION END USER LICENSE AGREEMENT

1. Ownership. You acknowledge and agree that a third party provider or licensor to your financial services provider ("Licensor") is the owner of all rights, title and interests in and to the downloaded software to be used for access to mobile banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

2. License. Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

3. Restrictions. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

4. Disclaimer Warranty. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND

REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights. The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

7. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of Indiana and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation is and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.

8. Content and Services. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

## **C. Mobile Deposit Service**

The Mobile Deposit Service allows you to make deposits of the electronic

image of a check or Substitute Check (each an "item") to your eligible Accounts by capturing an electronic image of the item with a capture device (such as a camera) on your Mobile Device and submitting images and associated information to us for processing. All terms and conditions of the Mobile Banking Services provided above apply to the Mobile Deposit Service.

1. Eligible Items. You agree:

- a. You will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
- b. to deposit only images that originated as paper checks, and no third-party or electronic checks may be deposited using the Mobile Deposit Service;
- c. to implement and maintain security measures, including firewall protection, in compliance with your obligations under these End User Terms;
- d. to keep your email address updated within Mobile and Online Banking;
- e. to properly endorse all items using the Mobile Deposit Service as stated in Section 5 below;
- f. not to deposit items into your account unless you have authority to do so;
- g. after you submit an item for deposit using the Mobile Deposit Service you will not redeposit, otherwise transfer or negotiate the original item;
- h. We are authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
- i. after you submit an item for deposit you are solely responsible for the storage or destruction of the original item as further provided below;
- j. the electronic image of the item will become the legal representation of

the item for all purposes;

- k. each image of a check transmitted to us is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check;
- l. to promptly provide us with a written notice of any claim you receive regarding the Mobile Deposit Service.

2. **Restrictions and Limitations.** You agree not to use the Mobile Deposit Service to deposit any of the following Items:

- a. Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into.
- b. Checks containing an alteration on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
- c. Checks payable jointly, unless deposited into an account in the name of all payees.
- d. Checks previously converted to a substitute check, as defined in Regulation CC.
- e. Checks drawn on a financial institution located outside the United States.
- f. Checks that are remotely created checks, as defined in Regulation CC.
- g. Checks not payable in United States currency.
- h. Checks dated more than 6 months prior to the date of deposit.
- i. Checks or items prohibited by First Merchant Bank's current procedures relating to Mobile Deposit or which are otherwise not acceptable under the terms of your First Merchant Bank account.
- j. Checks payable on sight or payable through Drafts.

- k. Checks with any endorsement on the back other than that specified in this agreement.
- l. Checks that have previously been submitted through Mobile Deposit or through a Mobile deposit capture service offered at any other financial institution.
- m. Checks or items that are drawn or otherwise issued by the U.S. Treasury Department.

### 3. Contact.

First Merchants Bank will notify you via the email address that you provided within Mobile and Online Banking. You agree that this email address is up to date and a valid email address to contact you at. You may change this email address by logging into Mobile or Online Banking and going to the Settings > Preferences > Address Management. We will notify you by email after a deposit has been received, approved, and/or declined. We may also contact you by this email address if necessary to resolve any deposit disputes.

### 4. Image Quality.

The image of an item transmitted using the Mobile Deposit Service must be legible and clear. It must not be altered. It must capture all pertinent information from the front and back of the item. Image quality must comply with industry requirements established and updated by the ANSI, Federal Reserve Board and any other regulatory agency. You authorize us to convert items to an Image Replacement Document (IRD) or transmit them as an image. If the electronic files and/or images transmitted to us with respect to any item do not comply with our requirements for content and/or format, we may, in our sole discretion:

- a. further transmit the item and data in the form received from you;
- b. repair or attempt to repair the item or data and then further transmit it;
- c. process the item as photocopies in lieu of originals; or
- d. return the data and item to you unprocessed and charge back your account.

## 5. Endorsement

You agree to properly endorse all items captured and submitted using the Mobile Deposit Service. This should include a signature (s) from the named payee(s). It is also suggested that you write "For First Merchants Bank Mobile Deposit Only." This will help prevent a duplicate deposit being made.

## 6. Processing Time and Availability of Funds.

We may return or refuse to accept all or any part of a deposit to your account using the Service at any time and will not be liable for doing so even if such action causes outstanding checks or other debits to your account to be dishonored and returned. Images of items transmitted by you are not considered received by us until you receive an electronic confirmation of the receipt of the deposit from us. Receipt of the confirmation from us does not mean that the transmission was error-free or complete, you may still receive a declined deposit email if the deposit is outside our guidelines. Once items have been approved through the Mobile Deposit Service, they are subject to our Funds Availability Policy. In addition, please be advised that funds deposited via mobile check deposits may not appear immediately in your account balance. If you wish to make a deposit to an account and you need the funds from the deposit right away, you should contact your local banking center who can help you understand other deposit options.

## 7. Disposal of Transmitted Items.

You are responsible for retaining each original item in a safe and secure environment in accordance with applicable laws as in effect from time to time. You will store the original items and take appropriate measures to ensure they are not deposited a second time. You will promptly (but in any event within seven (7) Business Days) provide any retained original item to us as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any item or as we otherwise deem necessary. After forty-five (45) days following transmittal to us and receipt of a confirmation from us that the image of the item has been received, you agree to mark the item as "VOID" and properly dispose it to ensure it is not presented for deposit again.

## 8. Restrictions and Limitations.

We may establish restrictions and limitations on your use of the Mobile Deposit Service, including but not limited to dollar amount limitations and the number of items or deposits you are permitted to submit to your account(s) using the Mobile Deposit Service. We may make changes to these restrictions and limitations from time to time and without notice. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit.

#### 9. Minimum Hardware and Software Requirements.

In order to use the Mobile Deposit Service, you must obtain and maintain, at your expense, compatible hardware and software including but not limited to an Internet and mobile phone capable of capturing an electronic image. We recommend that you use the latest version of the supported browsers or Mobile Banking application available, and keep your security settings up to date.

#### 10. Mobile Banking Software.

The software provided by First Merchants Bank to Customer contains software provided by one or more third parties ("Third Party Software") under contract with First Merchants Bank (each a "Third Party")

Restrictions. Customer agrees that it will not itself, and will not permit any parent, subsidiary, affiliate, agent or other third party to: (1) sell, provide, distribute, lease, rent, lend, relicense, sublicense, or display Third Party Software or related documentation except as necessary to utilize the Software for mobile check deposits; (ii) decompile, disassemble, reverse engineer or attempt to reconstruct the Third Party Software, identify or discover any source code, trade secret, know-how, or ideas underlying user interface techniques or algorithms of Third Party Software by any means whatsoever, or disclose any of the foregoing; (iii) create any derivative works or any other software program based upon Third Party Software or related documentation or modify Third Party Software in any way; or (iv) use Third Party Software or documentation to develop or enhance any product that competes with Third Party Software.

#### 11. Intellectual Property.

First Merchants Bank or the Third Parties, as the case may be, retain all rights,

title and interests, including intellectual property rights, in and to the Third Party Software and services, any improvements, translations, modifications or derivatives thereof, and any related documentation provided or made available to Customer, including all intellectual property rights therein. Customer acknowledges that the Third Party Software and related documentation contain copyrighted material, trade secrets, and other material that is proprietary to one or more Third Parties. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights in the Third Party Software, services, or any related documentation or materials and all rights not expressly granted herein are reserved by Financial Institution and the Third Parties. Customer agrees to assign, and hereby does assign, to the Third Party all rights, title and interest, including all intellectual property rights, in any ideas, modifications, enhancements, improvements, inventions, works of authorship or any other suggestions that Customer or any of its employees or agents propose, create, author or develop relating to that Third Party's Software or services, and will take all necessary action, including execution of relevant documents, to perfect such party's ownership thereof.

## 12. Eligibility, Termination and Changes.

You must meet the eligibility requirements as defined by the bank and subject to change in order to use the Mobile Deposit Service. We have the right to suspend or terminate the Mobile Deposit Service at any time, including but not limited to if you or your accounts(s) do not meet our eligibility requirements or if you are in violation of these End User Terms, the Mobile and Online Agreement, or Account Agreement. We may also terminate the Mobile Deposit Service in the event your wireless service terminates or lapses. We also reserve the right to change the eligibility requirements and Mobile Deposit Service at any time without notice to you.

## 13. Errors.

You agree to promptly review each account statement and notify us of any errors. All deposits made through the Mobile Deposit Service will be deemed to be correct, unless you notify us of any errors to your deposits. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared or as otherwise specified in your Mobile and Online Agreement or Account Agreement.

## 14. Changes

We reserve the right to change the Mobile Deposit Service at any time without notice to you. We reserve the right to change the fee structure for this service at any time. We reserve the right to deny, suspend or revoke access to the Mobile Deposit Service immediately at any time, in whole or in part, in our sole discretion, without notice, including but not limited to if we believe you are in breach of these Sections or this Agreement or another agreement related to your Account with us, or are otherwise using or accessing the Mobile Deposit Services inconsistent with the terms and conditions hereof. Further, we have the right to suspend the Mobile Deposit Service immediately in the event of an emergency or in the event of acts or circumstances beyond our control. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any items that were processed or in the process of being transmitted or collected prior to the termination date, or any returns prior to termination.

## 15. The Mobile Deposit Service

This service is provided for your convenience and does not replace your monthly account statement, which is the official record of your account. The Mobile Deposit Service may be delayed, interrupted or otherwise negatively impacted by factors relating to your mobile device, your Internet service provider, wireless provider or other parties, or due to other reasons outside of our control. We will not be liable for any such delays, interruptions, or negative impacts to the Mobile Deposit Service and you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon.

## 16. Indemnification

You agree to indemnify, defend and hold us harmless from and against any claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of the Mobile Deposit Service. This obligation survives termination of these End User Terms.

## 17. Compliance with Law.

Customer represents, warrants, and covenants that it will comply with all applicable laws, rules, regulations and prevalent industry standards in the use of Third Party Software, including compliance with applicable requirements under state and federal laws and regulations related to data security and

nonpublic personal information, as defined or used in such applicable law or regulation.

#### 18. Limitation of Liability.

FINANCIAL INSTITUTION AND EACH THIRD PARTY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND ANY SOFTWARE PROVIDED BY OR ON BEHALF OF A THIRD PARTY UNDER THIS AGREEMENT ARE PROVIDED "AS IS." WITHOUT LIMITING THE FOREGOING, EACH THIRD PARTY DOES NOT REPRESENT OR WARRANT, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, THAT THE OPERATION OF THE SERVICES OR THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE FUNCTIONS OR FEATURES OF THE SERVICES OR SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES OR SOFTWARE WILL OPERATE COMPATIBLY WITH PRODUCTS, SERVICES, HARDWARE OR SOFTWARE USED OR OFFERED BY ANY OTHER PARTY.

IN NO EVENT WILL ANY THIRD PARTY BE LIABLE HEREUNDER FOR AN AMOUNT EXCEEDING THE LESSER OF THE ACTUAL DAMAGES INCURRED BY CUSTOMER OR THE FEES PAID BY CUSTOMER FOR USE OF THE RESPECTIVE THIRD PARTY SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE EVENT GIVING RISE TO THE LIABILITY TOOK PLACE, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

IN NO EVENT WILL A THIRD PARTY BE LIABLE FOR ANY LOSS OF PROFITS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, OR LOSS OF BUSINESS) IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 19. Indemnification.

Customer shall indemnify, defend and hold harmless each Third Party and its respective affiliates, officers, employees and agents from and against any third party claims, suits, proceedings, actions or demands, including claims of another

financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to Customer's use of the Third Party Software, unless such claim directly results from an action or omission made by such Third Party in bad faith.

#### **D. Bill Pay Service**

In addition to the Mobile and Online Banking features listed above, First Merchants Bank customers with eligible deposit accounts may also use the optional Bill Pay Service. A monthly service fee may apply for the use of the Bill Pay Service.

#### **ELECTRONIC BILL PAYMENT AUTHORIZATION**

I AUTHORIZE First Merchants Bank to post payment transactions generated by personal computer or any First Merchants Bank approved access device from the Bill Paying Service to an external account registered through First Merchants Bank's Mobile and Online Banking Service. I understand that I am in full control of my account. If at any time I decide to discontinue service, I must provide written notification to First Merchants Bank. My use of the Bill Paying Service signifies that I have read and accepted all terms and conditions applicable to First Merchants Bank's Mobile and Online Banking Services and Bill Paying Service.

I UNDERSTAND that payments may take up to 10 business days to reach the vendor and that they will be sent either electronically or by check. First Merchants Bank is not liable for any service fees or late charges levied against me. I also understand that I am responsible for any loss or penalty that I may incur due to lack of sufficient funds or other conditions that may prevent the withdrawal of funds from my account.

**BILL PAYMENT INSTRUCTIONS.** For the Bill Payment Service, you agree to choose a payment date, not less than 5 business days before the actual due date without taking into account any grace period and subject to U.S. postal delivery. You agree to provide correct payee name, address, account information and payment amount. Each time you create an instruction for payment, you authorize us to debit your account for the total amount transmitted. You agree

to maintain sufficient funds in the account on the transaction payment date requested to pay in full the amount of the transaction.

You understand that First Merchants Bank or its authorized agent will use reasonable efforts to ensure payments reach payees on time, but cannot guarantee the time a payment will be received/posted by a payee. First Merchants Bank or its authorized agent will use reasonable efforts in ensuring payees reverse any service fee or late charge that is related to payment process error. First Merchants Bank or its authorized agent will not be responsible for any loss or penalty that may be incurred due to lack of sufficient funds or other conditions that may prevent the withdrawal of funds from your account. See FAQ's for additional requirements and limitations.

## **E. Expedited Bill Payment Service**

In addition to the Mobile and Online Banking and bill payment features listed above, if you are a First Merchants Bank customer with a checking account, you may participate in the optional Expedited Bill Payment Service.

For an additional fee, you may pay your bills faster with Expedited Bill Payments, if you choose to pay your bill by Expedited Bill Payment, the following additional terms apply:

A fee will be charged for the service, as disclosed in the then-current applicable Schedule of Fees in the Personal Checking and Savings Disclosures.

Because these payments are processed quickly, you cannot stop an Expedited Bill Payment once you have placed an order for an Expedited Bill Payment.

Expedited Electronic Payments are limited by the cut-off time established by the payee for accepting same day payments. Payee cut-off times vary by payee.

Expedited Bill Payment can only be sent to payees with a valid street address within the continental United States.

See FAQ's for additional requirements and limitations.

## **F. Internal Bank Transfers**

### 1. Description.

The Service allows you to transfer funds among your eligible Service Accounts held at First Merchants Bank.

## 2. Scheduling.

Transfers may be scheduled for the same day or for a future date, however, transfers initiated after 9:00 P.M. ET will not process until the following day. A request to transfer funds between Service Accounts may be scheduled for a future date. A Future Dated Transfer may be scheduled as a one-time request or a recurring request. Future Dated Transfers will be initiated on the Transmit Date requested (even if the Transmit Date is not a Business Day), not the date the transfer is scheduled.

First Merchants Bank is under no obligation to inform you if it does not complete a payment or transfer because there are insufficient funds or credit in your account to process the transaction. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within the Service.

You agree that you will have sufficient available funds in the designated deposit account to cover all transfers on the date scheduled. If the account does not have sufficient available funds on the scheduled transfer date, we will not initiate one or more of the transfers.

## 3. Limits.

There may be limits on the dollar amount of the transactions you can make using the Service. These limits may change from time to time in accordance with applicable laws and regulations and according to the discretion of First Merchants Bank.

## 4. Fees.

Additional fees may apply – see Schedule of Fees in the Personal Checking and Savings Disclosures.

## **G. External Transfers**

In addition to the Mobile and Online Banking features and services listed above, First Merchants Bank personal Mobile and Online Banking customers (not including sole proprietor or business customers) with eligible deposit

accounts may use the Service to transfer funds to accounts outside of First Merchants Bank.

1. Description/Requirements.

- a. You must be enrolled in personal Mobile and Online Banking to make an external transfer.
- b. Business customers are not eligible for this service.
- c. You agree that you will have sufficient available funds in the designated deposit account to cover all Outbound Transfers on the date scheduled. If the deposit account does not have sufficient available funds on the scheduled transfer date, we may elect not to initiate one or more of the transfers. If the transaction is completed, it may cause an overdraft in your account in which case you shall be liable for the overdraft and any overdraft fees (subject to your Regulation E opt-in/opt-out election), as set forth in your Deposit Agreement. If the transaction is completed, you agree to pay all related fees, (subject to your Regulation E opt-in/opt-out election), as disclosed in your Deposit Agreement.

2. Scheduling.

Transfers can be scheduled on the same day or can be scheduled for a future date; however, for a transfer to initiate on the same day it is scheduled, the transfer must be initiated prior to 9:00 P.M. ET. First Merchants Bank is not responsible for another financial institution failing to act in a timely manner.

3. Limits.

Transfers submitted to accounts outside of First Merchants Bank may be subject to daily limits. In addition, there may be a dollar limitation on a single transaction to an account outside of First Merchants Bank.

4. Fees.

Additional fees may apply – see Schedule of Fees in the Personal Checking and Savings Disclosures.

**H. ACH and Wire Transfers**

ACH transactions for consumers are covered by NACHA rules and can be found at <http://www.achrulesonline.org/>

## **I. Mobile and Online Banking Alerts**

We provide Automatic Alerts and Voluntary Account Alerts.

1. Automatic Alerts are sent to you following important account activities or when certain changes are made online to your Mobile and Online Banking account. You do not need to activate these alerts. We automatically activate them for you and you can choose to turn most of these off.
2. Voluntary Account Alerts must be activated by you. Voluntary Account Alerts allow you to choose alert messages for your accounts. We may add new alerts from time to time, or cancel old alerts.
3. Both Automatic Alerts and Voluntary Account Alerts are subject to the following:
  - a. We may add new Automatic and Voluntary Account Alerts from time to time, or cancel old alerts.
  - b. Alerts will be sent to the email address you have provided as your primary email address for Mobile and Online Banking. If your email address changes, you are responsible for informing us of that change.
  - c. You understand and agree that your alerts may be delayed or prevented by a variety of factors. We do our best to provide alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance of an alert.

## **J. Stop Payment Request**

We may accept online requests to stop payment on any check, except for cashier's checks, official checks, teller's checks or other cash equivalent items. Stop payments cannot be placed on debit card or recurring ACH transactions. We will process requests received prior to the posted cutoff time of 9:00 p.m.

Eastern Time on the same Business Day received. Requests received after the posted cutoff time will be processed on the next business day. We must receive a stop payment request at a time and manner that will give us a reasonable opportunity to act upon it prior to presentment of the item. Please review your transaction history and previous statements to verify that the check has not cleared.

Stop payment requests are not effective if, either before or within 24 hours of when the stop payment order was placed, we have already cashed the item or become otherwise legally obligated for its payment. Stop payment requests are processed electronically. We will assume no responsibility if any information provided to us is incorrect, incomplete or in a manner that would result in the check being paid (i.e., incorrect check number, amount, account number or date). Once placed, the stop payment order will remain in effect for six months from the date when it was made. You may renew the stop payment order for an additional six-month period when the expiration date arrives. You are responsible for monitoring the expiration of stop payments. No notice will be provided to you that a stop payment is expiring. A fee will be charged for each stop payment and extension thereafter.

## **K. Quicken® Connectivity**

First Merchants Bank offers a connection with Quicken. You may download your account activity from Online Banking. You are responsible for separately purchasing Quicken, and First Merchants Bank makes no warranties nor accepts any liability for such software. Quicken is a registered trademark of Intuit, Inc.

## **L. Zelle® Network Service (Email and Mobile Transfers)**

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

By clicking "Agree" after reviewing the terms and conditions you are agreeing to the Zelle Network Terms and Conditions.

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

## 1. Description of Services

- a. First Merchants Bank ("We", "Us", "Our") have partnered with the Zelle Network ("Zelle") to enable a convenient way to send money between you and others who are enrolled directly with Zelle® or enrolled with another financial institution that partners with Zelle (each, a "User") using aliases, such as email addresses or mobile phone numbers (the "Service"). Financial institutions that have partnered with Zelle will be referred to as "Network Banks."
- b. *Zelle* provides no deposit account or other financial services. *Zelle* neither transfers nor moves money. You may not establish a financial account with *Zelle* of any kind. All money will be transmitted by a Network Bank.
- c. THE SERVICE IS INTENDED TO SEND MONEY TO FRIENDS, FAMILY AND OTHERS YOU TRUST. YOU SHOULD NOT USE THE SERVICE TO SEND MONEY TO RECIPIENTS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST.

## 2. Eligibility and User Profile

When you enroll to use the Service you agree to the terms and conditions of this agreement ("Agreement"). You represent that you have the authority to authorize debits and credits to the enrolled bank account.

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

You agree that you will not authorize a third party to use the Service or share your credentials with a third party to use the Service on your behalf except in legally authorized situations such as legal guardianship or pursuant to a power of attorney.

The Service is intended for personal, not business or commercial use. You agree that you will not use the Service to send or receive payments in

connection with your business or commercial enterprise. We reserve the right to decline your enrollment if We believe that you are enrolling to use the Service with your business account or to receive business or commercial payments. We further reserve the right to suspend or terminate your use of the Service if We believe at our sole discretion that you are using the Service for business, or commercial or illegal purposes.

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

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

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

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

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

#### Retention of Records

The Network Operator shall maintain accurate and complete records of

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

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

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

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

#### 4. Privacy and Information Security

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

#### 5. Wireless Operator Data

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

US Cellular, Verizon, or any other branded wireless operator) to disclose your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status and device details, if available, to our third party

service provider, solely to allow verification of your identity and to compare information you have provided to us or to *Zelle* with your wireless operator account profile information for the duration of our business relationship. See *Zelle's Privacy Policy* <https://www.zellepay.com/privacy-policy> for how it treats your data. See Our Privacy Policy <https://www.firstmerchants.com/help/agreements-disclosures/privacy-policy> for how We treat your data.

## 6. Enrolling for the Service

- a. You must provide Us with an email address that you regularly use and intend to use regularly (i.e., no disposable email addresses) and a permanent U.S. mobile phone number that you intend to use for an extended period of time (i.e., no "burner" numbers). You may not enroll in the Service with a landline phone number, Google Voice number, or Voice over Internet Protocol.
- b. Once enrolled, you may:
  - i. authorize a debit of your account to send money to another User either at your initiation or at the request of that User; and
  - ii. receive money from another User either at that User's initiation or at your request, subject to the conditions of the Section below titled "Requesting Money."
- c. If at any time while you are enrolled, you do not send or receive money using the Service for a period of 18 consecutive months, We may contact you and/or take other steps to confirm that the U.S. mobile phone number or email address that you enrolled still belongs to you. If We are unable to confirm that you are the owner of the mobile phone number or email address, then you understand that We may cancel your enrollment and you will not be able to send or receive money with the Service until you enroll again.

## 7. Consent to Emails and Automated Text Messages

By participating as a User, you represent that you are the owner of the email address, mobile phone number, and/or other alias you enrolled, or that you have the delegated legal authority to act on behalf of the owner of such email

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

- a. You are responsible for any fees or other charges that your wireless carrier may charge for any related data, text or other message services, including without limitation for short message service. Please check your mobile service agreement for details or applicable fees.
- b. You will immediately notify Us if any email address or mobile phone number you have enrolled is (i) surrendered by you, or (ii) changed by you.
- c. In the case of any messages that you may send through either Us or *Zelle* or that We may send or *Zelle* may send on your behalf to an email address or mobile phone number, you represent that you have obtained the consent of the recipient of such emails or automated text messages to send such emails or text messages to the recipient. You understand and agree that any emails or text messages that We send or that *Zelle* sends on your behalf may include your name.
- d. Your wireless carrier is not liable for any delay or failure to deliver any message sent to or from Us or *Zelle*, including messages that you may send through Us or through *Zelle* or that We may send or *Zelle* may send on your behalf.
- e. To cancel text messaging from Us, send STOP to 20736. For help or information regarding text messaging, send HELP to 20736 or contact Our customer service at 800-205-3464 or [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com). You expressly consent to receipt of a text message to confirm your "STOP" request.
- f. Supported Carriers: All Carriers

g. To indemnify, defend and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of Service and your provision of a telephone or mobile phone number, email address, or other delivery location that is not your own or your violation of applicable federal, state or local law, regulation or ordinance. Your obligation under this paragraph shall survive termination of this Agreement.

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

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

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

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

## 9. Sending Money; Debits by Network Banks

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

app or with a Network Bank, the money is sent directly to their bank account (except as otherwise provided below) and may not be canceled or revoked.

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

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

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

## 10. Liability

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

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

## 11. Send Limits

Please refer to the Electronic Funds Transfers, Computer Transfers and Mobile Transfers sections of the Personal Checking and Savings Disclosures for Zelle limits. You make any number of transfers from your *Zelle* app, up to the transaction or daily dollar amount limit.

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

## 12. Requesting Money

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

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

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

on behalf of the sender of a request for money.

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

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

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

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

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

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

Business days: For purposes of these disclosures, our business days are Monday through Friday, excluding Holidays.

### ERROR RESOLUTION NOTICE

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

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

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

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

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

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

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

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

## 15. Fees

No specific fees are charged for use of the Service, other service fees may apply. Please see Schedule of Fees in the Personal Checking and Savings Disclosures for Personal Banking Fees.

## 16. Use of Our Online Banking Site and/or Mobile Application

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

## 17. Right to Terminate Access

We reserve the right to terminate, discontinue or suspend any service at any time. We may terminate *Zelle* at any time, including but not limited to if you or your accounts are (1) not eligible for any service, (2) if We believe you are in breach of your Account Agreement with Us, the Service Agreement, this Agreement, or the Terms and Conditions of Your Account.

## 18. Disclaimer of Warranties

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

## 19. Limitation of Liability

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

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

## 20. Your Indemnification of Zelle®, Waiver of Class Action Rights, and Agreement to Arbitration

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

You further acknowledge and agree that for any claims or disputes that you assert against Zelle® and Early Warning Services, LLC, Zelle® and Early Warning Services, LLC are entitled to enforce the provisions in this Agreement and OAA regarding arbitration and waiver of class action rights against you.

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

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the state of Indiana excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of Indiana and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation is and will be in the English language. The application of the

United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded. If any provision of this Agreement is determined to be unenforceable or invalid, the remaining provisions of this Agreement will remain in full force and effect.

## 22. Miscellaneous

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

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

## **M. Financial Tools and Conditions**

You are accessing services provided directly or indirectly to you by MX Technologies, Inc. ("MX") and being asked to agree to a legally binding agreement in accordance with the terms and conditions set forth below. Therefore, we encourage you to read this thoroughly and carefully.

**If you are under the age of eighteen (18) years of age or are not at least the age of majority or otherwise incapable of binding Yourself to a legal contract in the jurisdiction from which you enter into this agreement, you MUST have your legal guardian (e.g., your parent) or someone with authorized power of attorney review this agreement and consent upon your behalf or you should not proceed any further. Notwithstanding the foregoing, MX has not designed the services with the intention that such be used by minors nor does it market the services for use by minors.**

This **agreement** (the "*Agreement*") is a legal agreement between you individually if you are agreeing to it in your own capacity, or if you are authorized to acquire the MX services ("MX Services") on behalf of your company or organization, between the entity for whose benefit you act and your financial institution (such user or power of attorney - the person for whom this Agreement is entered into, hereinafter "You", "Your" or "User") and MX including its affiliates and service providers pertaining to Your use of the MX Services. By indicating Your acceptance as set forth below, and/or by downloading, installing, activating or using the MX Services, You accept all the terms and conditions of this Agreement. By using the MX Services, You agree to be bound by these terms and conditions and the MX Privacy Policy available at [http://www.moneydesktop.com/legal/privacy\\_policy](http://www.moneydesktop.com/legal/privacy_policy), which is hereby incorporated by reference into these terms and conditions (collectively the "Terms"). These Terms constitute the complete and exclusive understanding and agreement between You and MX relating to the subject matter hereof and replaces all previous terms and conditions or similar agreements or documents entered into between You and MX, whether oral or written.

By CLICKING to accept or agree to the Mobile and Online Banking Service Agreement, YOU EXPRESSLY ACKNOWLEDGE THE FOLLOWING:

### **MINIMUM TERMS AND CONDITIONS**

This User agreement contains the terms and conditions for your use of digital money

management tools and services that we may provide to you and that involve accessing third party account information ("Services"). Hereinafter "you" "your" means the User and "us" "we" "our" or "Financial Institution" refers to Client and/or Customer (protecting MX as its third-party service provider).

1. **Provide Accurate Information.** You represent and agree that all information you provide to us in connection with the Services is accurate, current, and complete. You agree not to misrepresent your identity or account information. You agree to keep account information secure, up to date and accurate. You represent that you are a legal owner, or an authorized user, of the accounts at third party sites which you include or access through the Services, and that you have the authority to (i) designate us and our service providers as your agent, (ii) use the Services, and (iii) give us and our service providers the passwords, usernames, and all other information you provide.
2. **Content You Provide.** Your use of the Services is your authorization for Financial Institution or its service providers, as your agent, to access third party sites which you designate in order to retrieve information. You are licensing to Financial Institution and its service providers any information, data, passwords, usernames, PINS, personally identifiable information or other content you provide through the Services. You authorize us or our service providers to use any information, data, passwords, usernames, PINS, personally identifiable information or other content you provide through the Services or that we or our service providers retrieve on your behalf for purposes of providing the Services, to offer products and services, and for other permissible business purposes. Except as otherwise provided herein, we or our service providers may store, use, change, or display such information or create new content using such information.
3. **Power of Attorney.** You grant Financial Institution and its service providers a limited power of attorney as provided below to access information at third party sites on your behalf. Third party sites shall be entitled to rely on the authorizations, agency, and the power of attorney granted by you or through your account. For all purposes hereof, you hereby grant Financial Institution and its service providers a limited power of attorney, and you hereby appoint them as your true and lawful attorney in- fact and agent, with full power of substitution and re-substitution, in any and all capacities, to access third party sites to retrieve information, use such information, as described herein, with the full power and authority to do and perform each and every act and thing required and necessary to be done in connection with such activities, as fully to all intents and purposes as you might or could do in person. You understand and agree that the Services are not sponsored or endorsed by any third-party site. **YOU ACKNOWLEDGE AND AGREE THAT WHEN FINANCIAL INSTITUTION OR ITS SERVICE PROVIDERS ACCESS AND RETRIEVE INFORMATION FROM THIRD PARTY SITES, THEY ARE ACTING AS YOUR AGENT, AND NOT AS THE AGENT OR ON BEHALF OF THE THIRD-PARTY SITES.**
4. **Third Party Accounts.** With respect to any third-party sites we may enable you to access through the Services or with respect to any non- Financial Institution accounts you include in the Services, you agree to the following:

- a. You are responsible for all fees charged by the third party in connection with any non-Financial Institution accounts and transactions. You agree to comply with the terms and conditions of those accounts and agree that this User agreement does not amend any of those terms and conditions. If you have a dispute or question about any transaction on a non-Financial Institution account, you agree to direct these to the account provider.
  - b. Any links to third party sites that we may provide are for your convenience only, and Financial Institution and its service providers do not sponsor or endorse those sites. Any third-party services, which you may be able to access through the Services, are services of the listed institutions. We nor our service providers have responsibility for any transactions and inquiries you initiate at third party sites. The third-party sites you select are solely responsible for their services to you. We nor our service providers are liable for any damages or costs of any type arising out of or in any way connected with your use of the services of those third parties.
5. **Limitations of Services.** When using the Services, you may incur technical or other difficulties. We nor our service providers are responsible for any technical or other difficulties or any resulting damages that you may incur. Any information displayed or provided as part of the Services is for informational purposes only, may not reflect your most recent transactions, and should not be relied on for transactional purposes. We and our service providers reserve the right to change, suspend or discontinue any or all of the Services at any time without prior notice.
6. **Acceptance of User Agreement and Changes.** Your use of the Services constitutes your acceptance of this User agreement. This User agreement is subject to change from time to time. We will notify you of any material change via e-mail or on our website by providing a link to the revised User agreement. Your continued use will indicate your acceptance of the revised User agreement. The licenses, user obligations, and authorizations described herein are ongoing.
7. **Aggregated Data.** Anonymous, aggregate information, comprising financial account balances, other financial account data, or other available data that is collected through your use of the Services, may be used by us and our service providers to conduct certain analytical research, performance tracking and benchmarking. Our service providers may publish summary or aggregate results relating to metrics comprised of research data, from time to time, and distribute or license such anonymous, aggregated research data for any purpose, including but not limited to, helping to improve products and services and assisting in troubleshooting and technical support. Your personally identifiable information will not be shared with or sold to third parties.
8. **Ownership.** You agree that Financial Institution and its service providers, as applicable, retain all ownership and proprietary rights in the Services, associated content, technology, mobile applications and websites.

9. **User Conduct.** You agree not to use the Services or the content or information delivered through the Services in any way that would: (a) be fraudulent or involve the sale of counterfeit or stolen items, including but not limited to use of the Services to impersonate another person or entity; (b) violate any law, statute, ordinance or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); (c) create liability for Financial Institution or its service provider or cause Financial Institution to lose the services of our service providers; (d) access the information and content programmatically by macro or other automated means; or (e) use the Services in such a manner as to gain unauthorized entry or access to computer systems.
10. **Indemnification.** You agree to defend, indemnify and hold harmless Financial Institution, its third party service providers and their officers, directors, employees and agents from and against any and all third party claims, liabilities, damages, losses or expenses, including settlement amounts and reasonable attorneys' fees and costs, arising out of or in any way connected with your access to or use of the Services, your violation of these terms or your infringement, or infringement by any other user of your account, of any intellectual property or other right of anyone.
11. **Disclaimer.** The Services are not intended to provide legal, tax or financial advice. The Services, or certain portions and/or functionalities thereof, are provided as strictly educational in nature and are provided with the understanding that neither Financial Institutions nor its third-party providers are engaged in rendering accounting, investment, tax, legal, or other professional services. If legal or other professional advice including financial, is required, the services of a competent professional person should be sought. Financial Institution and its third-party providers specifically disclaim any liability, loss, or risk which is incurred as consequence, directly or indirectly, of the use and application of any of the content on this site. Further, Financial Institution and its third-party providers are not responsible for any credit, insurance, employment or investment decisions or any damages or other losses resulting from decisions that arise in any way from the use of the Services or any materials or information accessible through it. Past performance does not guarantee future results. Financial Institution and its third-party providers do not warrant that the Services comply with the requirements of the FINRA or those of any other organization anywhere in the world.
12. **DISCLAIMER OF WARRANTIES.** YOU AGREE YOUR USE OF THE SERVICES AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE, AND OUR SERVICE PROVIDERS, DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE, AND OUR SERVICE PROVIDERS, MAKE NO WARRANTY THAT THE SERVICES (i) WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE

OBTAINED FROM THE SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, OR (v) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FINANCIAL INSTITUTION OR ITS SERVICE PROVIDERS THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

13. **LIMITATION OF LIABILITY.** YOU AGREE THAT FINANCIAL INSTITUTION AND ITS THIRD PARTY SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM (i) THE USE OR THE INABILITY TO USE THE SERVICES AT OUR WEBSITE/MOBILE APPLICATION OR OF ANY THIRD PARTY ACCOUNT PROVIDER'S WEBSITE/MOBILE APPLICATION; (ii) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES, (iii) ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE SERVICES, (iv) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSION OR DATA, (v) STATEMENTS OR CONDUCT OF ANYONE ON THE SERVICES, (vi) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY ACCOUNT PROVIDER SITE, EVEN IF THE PROVIDER HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES, OR (vii) ANY OTHER MATTER RELATING TO THE SERVICES.
14. **WAIVER OF JURY TRIAL AND CLASS ACTION.** You agree that, with respect to any dispute with us or our service providers, arising out of or relating to your use of the Services or these terms: (i) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY; and (ii) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING SUCH DISPUTE.
15. **Export Restrictions.** You acknowledge that the Services and any software underlying such Services are subject to the U.S. Export Administration Regulations (15 CFR, Chapter VII) and that you will comply with these regulations. You will not export or re-export the software or Services, directly or indirectly, to: (1) any countries that are subject to U.S. export restrictions; (2) any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government; or (3) any end user who you know or have reason to know will utilize them in the design, development or

production of nuclear, chemical or biological weapons. You further acknowledge that the Services may include technical data subject to export and re-export restrictions imposed by U.S. law.

16. **Other Terms.** You may not assign this User agreement. A determination that any provision of this User agreement is unenforceable or invalid shall not render any other provision of this User agreement unenforceable or invalid.

### **III. OTHER MOBILE AND ONLINE BANKING TERMS AND CONDITIONS**

Your use of the Service is subject to the following terms and limitations:

#### **A. Limits**

1. **Dollar Amount.** There may be limits on the dollar amount of the transactions you can make using the Service. These limits may change from time to time in accordance with applicable laws and regulations and according to the discretion of First Merchants Bank.
2. **Frequency.** There may be limits on the number of transactions you can make using the Service. These limits are for security reasons and may change from time to time in accordance with applicable laws and regulations and according to the discretion of First Merchants Bank.
3. **Court Directed and Governmental Payments.** You acknowledge and agree that if you use the Service to make any payment of alimony, child-support, taxes, or other court-directed or governmental payments, fines, or penalties, or any payment to settle a securities transaction, that We may process or refuse to process any such payments in our sole and absolute discretion, and, in any event, to the fullest extent permitted by law, you assume all risk relating to the proper scheduling, initiation, processing, transmission, receipt, and application of such payments, and you release us from any and all claims, liabilities, and/or damages resulting from your making or attempting to make any such payments through the Service, whether such claims, liabilities and/or damages arise (or would arise) under this Agreement or otherwise.
4. **United States Currency Only.** You may only make payments through the Service using the valid currency of the United States (U.S.

Dollars).

5. **Account Agreements.** Funds transferred from Service Accounts to loan accounts accessible through the Service will be applied to such loan accounts according to the terms of the agreements governing such loan accounts. There may be additional limitations elsewhere in this Agreement. Your ability to initiate transactions also may be limited by the terms of your deposit, loan, or other agreements with us or applicable law. You agree to abide by and be bound by all applicable limitations.

## **B. Access Device Specifications.**

In order to use the Service, your Access Device must meet the minimum specifications required for use of the Financial Software.

1. Internet Access.
2. You will need a currently supported internet browser tool such as; Microsoft Internet Explorer, Mozilla Firefox, Apple Safari, Google Chrome and a currently supported version of Adobe Acrobat Reader. Cookies and JavaScript must be enabled in the browser options.
3. Adobe® Acrobat Reader – You can download the Adobe Acrobat Reader free of charge at [www.adobe.com](http://www.adobe.com).
4. We will give you notice of any change to the hardware and software requirements if the change will adversely affect your ability to access, receive and retain documents, eStatements, disclosures and legal notices.

## **C. Virus Protection.**

First Merchants Bank is not responsible for any computer virus, problems or malfunctions resulting from a computer virus, or related problems that may be associated with accessing the internet or the Service. We recommend that you routinely update your virus software, apply all security patches for your operating system and install a firewall on your Access Device. We are not responsible for any errors or failures resulting from defects or malfunctions of the Financial Software. WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING YOUR ACCESS DEVICE OR RELATED

EQUIPMENT, OR YOUR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS

FOR A PARTICULAR PURPOSE. For additional information please see our Security Guidelines located on the First Merchants Bank website at [www.firstmerchants.com](http://www.firstmerchants.com).

#### **D. Reviewing Payments.**

The Service automatically stores records of past payments and payments scheduled for the future. The number of records and amount of time that they will be stored will vary at our discretion.

#### **E. Performing Account Inquiries.**

You may use the Service to determine the balance and recent activity in the Service Accounts. Any balance or recent activity shown displayed by the Service will include a date as of which the balance is current. The balance or recent activity shown on the Service may include deposits still subject to verification by us. The balance or recent activity shown also may differ from your records because it may not include deposits in progress, outstanding checks, or other withdrawals, payments, or charges.

#### **F. Our Liability for Failure to Complete Transactions.**

We will process and complete all payments and transfers properly initiated through the Service in accordance with this Agreement and any User's Guide. We will not be liable (and any payment guarantee provided elsewhere in this Agreement will not be applicable), in connection with any of the following occurrences:

1. if, through no fault of ours, you do not have sufficient Collected Funds in the Service Account to complete the transaction;
2. if the transaction would exceed the credit limit on any overdraft line of credit linked to the Service Account;
3. if your Access Device, internet connection method, or other equipment is not operating properly;
4. if the Service is not working properly and you were aware of the

malfunction when you initiated the transaction;

5. if you do not properly follow all instructional materials provided in connection with the Service;
6. if you do not authorize a payment within a sufficient period of time for your payment to be received by the Payee by the Due Date (External Transfers Only);
7. if you have not provided us with the correct Payee name, address, account information, payment amount, or other instructions necessary to complete the payment, or the foregoing instructions stored on your Access Device's hard drive or the host system have been lost (External Transfers Only);
8. if a Payee mishandles or delays the handling of payments sent by us (External Transfers Only);
9. if your funds are held or frozen, or a court order or other legal process prevents us from making a transaction;
10. if your Password has been reported lost or stolen;
11. if we have reason to believe that a transaction has not been properly authorized or authenticated, or is fraudulent, erroneous, or illegal;
12. if you have exceeded the limitations on frequency of transactions or dollar amount of transactions applicable to the Service Account;
13. if circumstances beyond our control (such as telecommunication or electrical outages and malfunctions, postal strikes or delays, computer system failures or natural disasters) prevent the transaction;
14. if making a transfer would cause us to violate any law, rule, or regulation to which we are subject; or
15. if any failure on our part was not intentional and resulted from a bona fide error notwithstanding procedures to avoid such error, except for actual damages (which do not include indirect, incidental, special or consequential damages).

There may be other exceptions to liability stated in the agreements governing your accounts with us or provided under applicable law.

## **G. Electronic Messaging (E-mail).**

The Service provides you with the ability to send and receive messages to and from us by two means: (i) Conventional E-mail or (ii) Secure Messaging. (i) Conventional E-mail is not a secure method of communication over the Internet, and we recommend that you do not send confidential or privileged information, such as account numbers and financial information, by conventional E-mail. An electronic message sent by you may not be immediately received by us. (ii) Secure Messaging is a secure method of communication contained within the Service application. Secure Messaging allows secure messages to be sent and received from within the Service application. If you need to contact us immediately, please refer to Section III(R) titled "Errors or Questions." No action will be taken on any electronic message you send to us until we actually receive your message and have a reasonable opportunity to act on it. You cannot use Conventional E-mail or Secure Messaging to make a bill payment, account inquiry, or funds transfer. There may be other limitations to your use of electronic messaging in effect from time to time. To the extent you elect to communicate with us using E-mail, the following provisions apply to those communications:

You agree and acknowledge that the information communicated via E-mail to or from us may include information regarding any or all of the services that are part of the Service or other information we feel may be of added interest to you.

You acknowledge that you have been advised and understand the risks of using E-mail with respect to the communication of information regarding the Service and that we are unable to guarantee the authenticity, privacy or accuracy of information received or sent by E-mail or to monitor the authorization of persons using your E-mail address to send or receive information.

In the event you receive information from us via E-mail that you believe is intended for another recipient, you agree to immediately return the information to us and to thereafter delete the information from your computer system. You shall not use the information for any personal or commercial purposes.

You agree that certain information communicated from us to you may be confidential in nature as a communication between you and us. You agree to maintain the confidentiality of the information and to refrain from sharing the information with any other person or entity or from using the information for any purpose that is not related to the Service or your financial relationship with us.

In the event that you believe that an unauthorized person has gained access to your computer system, you agree to immediately notify us so that we can cease communication of information to you via E-mail until you and we take measures agreed to jointly to protect your financial information.

Having acknowledged the risks associated with communicating financial information via E-mail, you (a) agree that we have no obligation to monitor or investigate the use of your computer system or the source of any communication received from you bearing your email address, (b) release us from any claim or liability arising from or in connection with any communications sent or received using E-mail, and (c) agree to indemnify and hold us harmless from all claims, losses, expenses or liability arising in any way out of or connected in any way with the use of E-mail as contemplated by this Agreement.

To the extent any other agreement between you and us requires the delivery of a written notice to a particular address regarding any matter, you agree (a) that these provisions regarding the use of E-mail do not displace or modify any such requirement for a written notice, and (b) to comply with any requirement for a written notice without reference to these provisions regarding the use of E-mail.

#### **H. Service Hours.**

The Service is available 24 hours a day, seven days a week (with the exception of maintenance periods) for the scheduling, modification, or review of payment transactions and for balance inquiries.

#### **I. Transaction Authorization; Protecting Your Password.**

You authorize us to follow any instructions entered through the Service notwithstanding any dual or multiple signature requirement identified on the signature card or other documents relating to your Service Account. You

agree and intend that the authorization of transactions through the Service shall be considered the same as your written signature in authorizing us to perform any actions relating to the transactions requested. You also agree that use of your Password is the agreed security procedure to access the Service and that such security procedure is commercially reasonable. You agree to keep your Password confidential, to prevent unauthorized access to the Service Account, and to prevent unauthorized use of the Service. You agree not to give your Password or make it available to any person or entity who is not authorized to access the Service Account for the purpose of performing the transactions contemplated by the Service or who intends or may use the Service for the purpose of accessing and compiling account data for such person's or entity's own commercial gain. You should change your Password frequently. You should avoid using your ATM Card personal identification number (PIN) as your permanent Password. If your access to the Service is blocked or if you forget your Password, you must contact us at the number identified in the Section III(R) titled "Errors or Questions." We may issue you a new Password, although it may not be available for use in accessing the Service for several days. You understand that for security purposes, First Merchants Bank may require you to periodically change your Password used to access your Service Account. Additionally, if you fail to access your Service Account(s) for an extended period, First Merchants Bank reserves the right to disable your access to the inactive account at any time.

#### **J. Protecting Your Personal Information.**

In addition to protecting your Password and other account information, you should also take precautions to protect your personal identification information, such as your driver's license, Social Security Number, etc. This information by itself or together with other account information may allow unauthorized access to your Service Account(s). It is your responsibility to treat personal information with the same level of care as your account information. You also are responsible for protecting and securing all information and data stored on your Access Device's hard drive or similar storage system.

#### **K. Accounts Eligible For Service.**

We may change from time to time the accounts that may be designated as Service Accounts. We also reserve the right (i) to refuse to include any account among your Service Accounts, or (ii) to allow transactions between or among Service Accounts (and other eligible accounts) under certain

circumstances as provided in this Agreement or as may be required by applicable law.

#### **L. Joint Accounts.**

When you designate a joint account as a Service Account, we may act on the verbal, written or electronic instructions of any authorized signer.

#### **M. Your Liability in Case of Loss, Theft or Unauthorized Transactions.**

You are responsible for all transactions you initiate or authorize using the Service. If you allow any other person to use your Password or the Service, you will have authorized that person to access your Service Accounts and you are responsible for all transactions that person initiates or authorizes in connection with the Service Accounts. Tell us AT ONCE if you believe that your Password has been lost or stolen or that a Service Account has been or may be accessed without your authorization. Telephoning is the best method for limiting your potential losses. You could lose all funds in your Service Accounts plus the maximum amount of any overdraft line of credit.

If you believe your Password has been lost or stolen or that someone has transferred or may access your Service Account(s) without your authorization, please contact us through the following methods:

**Call: 1-800-205-3464**

**Fax to: 1-765-378-8173**

**First Merchants Bank Online Banking Attention:  
Customer Service Center  
P.O. Box 792  
Muncie, Indiana 47308-0792**

You agree to take any reasonable actions requested by us to prevent unauthorized transactions to your Service Account.

Notwithstanding anything to the contrary in this Agreement, you will be liable for any unauthorized use of the Service in these instances unless otherwise provided by applicable law or written agreement with us.

*No First Merchants Bank employee will contact you via email, phone or otherwise requesting your Online I.D., Passwords or other Security*

*Device. If you are contacted by anyone requesting this information, please contact First Merchants Bank immediately at 1-800.205.3464.*

## **THE FOLLOWING PROVISIONS OF THIS SECTION APPLY TO CONSUMER ACCOUNTS ONLY AND DO NOT APPLY TO BUSINESS ACCOUNTS**

To the extent a transaction is an electronic funds transfer as defined by Regulation E, if you tell us within two (2) business days after you learn of the loss, theft, or unauthorized transaction, you can lose no more than \$50.00 if someone used your Password or made a transaction without your authorization.

If you do NOT tell us within two (2) business days after you learn of the loss, theft or unauthorized transaction, and we can prove we could have stopped someone from using your Password or the Service without your authorization if you had told us, you could lose as much as \$500.00.

Also, if your statement shows a transaction that you did not make or authorize, tell us at once. If you do not tell us within 60 days after the statement was mailed, electronically transmitted, or otherwise made available to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods as may be reasonable under the circumstances.

### **N. Documentation of Transactions.**

All of your transactions completed through the Service will appear on your periodic (or, as applicable, electronic) statement. You will receive a periodic statement each month for the Service Account from which or into which a transaction through the Service has been completed during the month. For all other Service Accounts, you will receive a periodic statement at least quarterly or as required by applicable law or the terms of the respective deposit agreements regarding such Service Accounts. The periodic statement will include a description of the transactions completed through the Service. The Payee name, payment amount, and transaction date will be reflected for each payment made through the Service.

### **O. Fees.**

You agree to pay all fees applicable to the Service. These fees are listed in the

Schedule of Fees and are subject to change from time to time. Without limiting the generality of the foregoing, you agree that we may impose a fee for research requested by you. You authorize us to deduct all fees from your Primary Service Account or, to the extent your Primary Service Account lacks sufficient funds, from any of your other accounts maintained with us. You also acknowledge that these fees are in addition to any costs you incur for the telephone service or Internet service provider you use to access the Service.

#### **P. Disclosure of Service Account Information to Third Parties.**

We will only disclose information to third parties about your Service Account(s) in accordance with the Privacy Policy, which may be obtained at any time from any of our customer service representatives or by visiting our Web site at <https://www.firstmerchants.com/help/agreements-disclosures/privacy-policy>. You agree to review the Privacy Policy before initiating your first Service transaction under this Agreement, and you agree that your initiation of any Service transaction indicates that you have reviewed and agreed to the terms of the Privacy Policy.

#### **Q. Third Party Service Providers.**

We may offer third-party provider products and services ("Third Party Services") through Mobile and Online Banking and those Third-Party Services also may be governed by separate agreements with the applicable provider. By using any Third-Party Service, you agree that we make no warranties and have no liabilities as to the accuracy, completeness, availability or timeliness of the Third-Party Service to the fullest extent of the law. The Bank and those third parties, as applicable, reserve the right to change, suspend, remove or disable access to any of the Third-Party Services at any time without notice. In no event will we be liable for access to certain services, in any case and without notice or liability.

#### **R. Errors or Questions.**

In case of errors or questions about your electronic funds transactions through the Service, you should, as soon as possible:

**Call: 1-800-205-3464  
Fax to: 1-765-378-8173**

**First Merchants Bank Online Banking  
Attention: Customer Service Center  
P.O. Box 792  
Muncie, Indiana 47308-0792**

**THE FOLLOWING PROVISIONS OF THIS SECTION III(R) APPLY TO  
CONSUMER ACCOUNTS ONLY AND DO NOT APPLY TO BUSINESS  
ACCOUNTS**

If you think that your statement is wrong or you need more information about a transaction listed on your statement or appearing on the account activity screen of your Access Device, we must hear from you no later than sixty (60) days after we sent the FIRST statement on which the problem or error appeared or you received notification of the problem or error on/our Access Device.

- a) Tell us your name and the Service Account number.
- b) Describe the error or the transaction you are unsure about and explain as clearly as you can why you believe it is an error or why you need more information.
- c) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) Business Days. We will determine whether an error occurred within ten (10) Business Days [twenty (20) Business Days for transactions that have occurred within thirty (30) days after the first deposit to the account] after we hear from you and will correct any error promptly. If we require more time, however, we may take up to forty-five (45) days [ninety (90) days for point-of-sale transactions, transactions initiated outside the United States, or transactions that have occurred within 30 days after the first deposit to the account] to investigate your complaint or question. If this additional time is necessary, and your written notification has been received by us, we will credit your account within ten (10) Business Days [twenty (20) Business Days for transactions that have occurred within 30 days after the first deposit to the account] for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) Business Days [twenty (20) Business Days for transactions that have

occurred within thirty (30) days after the first deposit to the account], we will not credit your account and we will still have up to forty-five (45) days [ninety (90) days for point-of-sale transactions, transactions initiated outside the United States, or transactions that have occurred within thirty (30) days after the first deposit to the account] for our investigation.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

#### **S. Verification.**

You authorize us to investigate or reinvestigate at any time any information provided by you in connection with your application for the Service or the Service Account, and to request reports from credit bureaus and consumer reporting agencies for such purpose. You also agree that we may obtain information regarding your Payee account in order to facilitate proper handling and crediting of your payments through the Bill Pay Service.

#### **T. Business Days and Cut-Off Times.**

A Business Day means Monday through Friday, except federal holidays. First Merchants Bank has established Business Day cut-off times for the use of some Services. First Merchants Bank may change established cut-off times at any time without notice. First Merchants Bank may treat Communications received after such cut-off times established by First Merchants Bank, as received on the following Business Day.

#### **U. General Funds Transfer Provisions.**

1. Notice of Receipt of Funds Transfers. The periodic statements provided to you by First Merchants Bank will notify you of funds transfer payments received by First Merchants Bank for credit to your accounts at First Merchants Bank. You are hereby notified and agree that First Merchants Bank shall not be required to provide any other notice to you of such receipt of funds. First Merchants Bank may however, at its sole discretion mail or email to you an appropriate advice of charge or deposit receipt at the time of receiving funds on your behalf.

a) Credits From Funds Transfers are Provisional. Subject to First

Merchants Bank's Availability of Funds Disclosure, all credits to your accounts for funds transfers, which First Merchants Bank receives, are provisional until First Merchants Bank receives final settlement for the funds. If First Merchants Bank does not receive such final settlement, you are hereby notified and agree that First Merchants Bank is entitled to a refund of the amount credited to your account for that transfer. In that situation, the person who originated the transfer to your account will not be deemed to have paid the amount of that transfer and, accordingly, your right to expect that payment from that third party would be preserved.

## **V. Confidential Information and Proprietary Data.**

All information of a business nature disclosed by either party to the other in connection with the Agreement is confidential, including Security Devices and the Security Procedures (the "Confidential Information"). Neither party shall without the express written consent of the other, disclose or permit access to any such Confidential Information by any person, firm or corporation and each party shall cause its officers, employees, and agents to take such action as shall be necessary or advisable, to preserve and protect the confidentiality of disclosing such Confidential Information to persons required to have access thereto for the performance of the Agreement, or to any other party to which First Merchants Bank may be required by law to report such information. You agree to hold confidential and to use only in connection with the Services provided under the Agreement all information furnished to you by First Merchants Bank or by third parties from whom First Merchants Bank has secured the right to use the Services, including, but not limited to, First Merchant Bank's product and service pricing structure, system design, programming techniques or other unique techniques. First Merchants Bank and your obligations and agreements under this paragraph shall not apply to any information supplied that: was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of the Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is authorized and agreed by the parties hereto that the performance of said Services is or might be subject to regulation and examination by authorized representatives of federal and state banking

regulators, and you agree to the release of 'your reports, information, assurances, or other data as may be required by them under applicable laws and regulations. The circumstances under which First Merchants Bank will disclose information about you or your accounts has been separately disclosed in First Merchants Bank's Privacy Policy and in other disclosures which have been provided. First Merchants Bank's Privacy Policy may change from time to time and is available online and at banking locations.

You have a nonexclusive, nontransferable license to use First Merchants Bank's services, user manuals and other implementation and reference guides and manuals, as in effect from time to time, and all other material and associated documentation that First Merchants Bank supplies to you pursuant to the Agreement (collectively, "Proprietary Data"). You acknowledge that you are not purchasing title to the Proprietary Data and the Proprietary Data constitutes trade secrets; Customer will use reasonable care to keep the Proprietary Data confidential and will not disclose any Proprietary Data to any person. The obligation to keep the Proprietary Data confidential shall survive termination of the Agreement. You will not use, make or have made, any additional copies of the Proprietary Data, or any part of it, without obtaining the prior written consent of an officer of First Merchants Bank. You will not remove any identifying marks or copyright marks in or on the Proprietary Data. Upon the termination of the Agreement, you may be required to return all the Proprietary Data to First Merchants Bank or certify to First Merchants Bank that it has destroyed all copies of the Proprietary Data in your possession.

## **W. Notices.**

Unless otherwise provided by applicable law, all notices to you may be delivered by hand, mail, private delivery service or (unless otherwise specified by First Merchants Bank) by facsimile, electronic mail, or via 'the Service and shall be effective when received. Notices may be delivered to some customers in electronic format, including posting to First Merchants Bank's website, if requested and authorized, or appropriate. All notices delivered via mail to you shall be delivered to the address, facsimile or email address designated for you in First Merchants Bank's records. All notices to First Merchants Bank shall be delivered to the attention of First Merchants Bank, P.O. Box 792, Muncie, IN 47303-0792. Each notice shall be addressed as specified in writing by the parties from time to time. Your continued use of Services after amendment of

this Agreement shall constitute an acceptance of the amended terms and conditions of this Agreement. If you do not wish to agree to the amended terms of this Agreement, you must immediately discontinue use of, and access to, the Services, and provide notice to First Merchants Bank in accordance with the requirements of this Agreement.

## **X. Fees and Charges.**

You authorize First Merchants Bank to assess and deduct fees from its designated account for Services provided under the Agreement as specified in writing by First Merchants Bank by means of a First Merchants Bank statement, account analysis statement or fee letter; or as otherwise agreed by you and First Merchants Bank. First Merchants Bank may change the Service fees, at any time without notice. You will be notified of any such change as required by applicable law, either by mail or by an electronic message. First Merchants Bank may charge your account for any fees, charges, taxes or pass-through charges charged or incurred by First Merchants Bank in respect of the provision of any Service to or on behalf of you. You agree to reimburse First Merchants Bank upon demand if such charges and fees are not paid when due. First Merchants Bank may charge a person who cashes a check drawn on your account a fee if that person is not a deposit customer of First Merchants Bank.

## **Y. Agents.**

You acknowledge and agree that some or all of the Service may be provided by an agent of First Merchants Bank; provided, further, that First Merchants Bank has no obligation to disclose the identity of any agent to you, or to obtain your consent prior to delivering any information to such agent. It is the intent of the parties to the Agreement that the provisions of the Agreement and any Service terms will inure equally to the benefit of any such agent of First Merchants Bank, or any successor thereto, providing Services pursuant to the Agreement.

## **Z. Authorization Representation and Warranty.**

You represent and warrant to First Merchants Bank that the person acknowledging these Terms and Conditions is duly authorized to enter into the Agreement with First Merchants Bank, and to execute any and all documents, including the Agreement.

## **AA. Termination.**

You may terminate your use of the Service at any time by calling or writing us as provided in Section III(R) titled "Errors or Questions." You must notify us at least ten (10) Business Days prior to the date on which you wish to have the Service terminated. We may require that you put your request in writing. If you have scheduled transactions with a Transmit Date within this ten-day period, you also must separately cancel those transactions. If we have not completed processing your termination request and you have not otherwise canceled a transaction, you will be responsible for transactions with a Transmit Date during the ten (10) Business Days following our receipt of your notice of termination. We may terminate your use of the Service, in whole or in part, at any time without prior notice. If you would like to (a) transfer the Service to a different account with us, or (b) add or remove an account with respect to the Service, you must provide ten (10) business days advance written notice.

Termination will not affect your liability or obligations under this Agreement accruing prior to the date of termination.

## **BB. Exclusion of Warranties; Limitation of Liability.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OR EXCEPT AS REQUIRED BY APPLICABLE LAW, WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING THE SERVICE OR ANY ASPECT THEREOF, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR BY APPLICABLE LAW, YOU AGREE THAT NEITHER WE NOR OUR SERVICE PROVIDERS SHALL BE RESPONSIBLE FOR ANY LOSS, INJURY, OR DAMAGE, ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF ANY USE OF OR INABILITY TO USE THE SERVICE, THE FIRST MERCHANTS BANK WEBSITE OR MOBILE APPLICATION OR ANY PORTION THEREOF, REGARDLESS OF WHETHER FIRST MERCHANTS BANK HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, TORT, (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, WHETHER CAUSED BY THE OPERATION OF EQUIPMENT (WHETHER OWNED BY YOU OR US OR ANY OF OUR SERVICE PROVIDERS), THE SERVICE, THE FINANCIAL SOFTWARE, OR US, AND IN NO EVENT SHALL

WE OR OUR SERVICE PROVIDERS BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST OPPORTUNITY ) CAUSED BY THE SERVICE OR THE USE THEREOF, OR ARISING IN ANY WAY OUT OF THE INSTALLATION, USE OR MAINTENANCE OF THE FINANCIAL SOFTWARE, EQUIPMENT OR THE SERVICE, EVEN IF WE OR OUR SERVICE PROVIDERS HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**CC. Overdraft.**

You agree not to use or attempt to use the Service to overdraw any Service Account, to exceed your limit on any credit account, or to engage in any transaction that is not specifically authorized and permitted. Such use or attempted use may result in the immediate cancellation of the Service and the Service Accounts, and may expose you to possible legal action. We may honor instructions to initiate transactions on the same business day (whether received through the Service, ATM or point-of-sale (POS) terminals, checks or other means) in any order we determine, even if honoring a particular item or instruction results in an insufficient balance in the Service Account to honor other instructions that otherwise could have been honored. If there are insufficient funds in the Service Account to complete the transaction you have initiated, we may either refuse to honor the request or complete the transaction and thereby overdraw the Service Account. In either event, you are responsible for any overdraft charges (subject to your Reg E opt in/opt out election) that we may impose.

**DD. Statements of Representatives.**

If there is a conflict between what one of our representatives says and the terms of this Agreement, the terms of this Agreement will prevail.

**EE. Arbitration and Waiver of Jury Trial.**

ALL DISPUTES OR CLAIMS PERTAINING TO THE SERVICE, A SERVICE ACCOUNT OR THE RELATIONSHIPS THAT ARISE THERE FROM, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, SHALL BE RESOLVED BY BINDING ARBITRATION UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES OF THE

AMERICAN ARBITRATION ASSOCIATION (AAA) AND THE FEDERAL ARBITRATION ACT IN TITLE 9 OF THE US CODE. ARBITRATION HEARINGS WILL BE HELD IN THE STATE OF INDIANA IN A CITY OF FIRST MERCHANTS BANK CHOOSING. A SINGLE ARBITRATOR WILL BE APPOINTED BY THE AAA AND WILL BE AN ATTORNEY OR A RETIRED JUDGE WITH EXPERIENCE AND KNOWLEDGE IN BANKING TRANSACTIONS. ANY ISSUE CONCERNING WHETHER OR THE EXTENT TO WHICH A DISPUTE OR CLAIM IS SUBJECT TO ARBITRATION, INCLUDING BUT NOT LIMITED TO ISSUES RELATING TO THE VALIDITY OR ENFORCEABILITY OF THESE ARBITRATION PROVISIONS, SHALL BE DETERMINED BY THE ARBITRATOR. ALL STATUES OF LIMITATIONS OR OTHER DEFENSES RELATING TO THE TIMELINESS OF THE ASSERTION OF A DISPUTE OR CLAIM THAT OTHERWISE WOULD BE APPLICABLE TO AN ACTION BROUGHT IN A COURT OF LAW SHALL BE APPLICABLE IN ANY SUCH ARBITRATION, AND THE COMMENCEMENT OF AN ARBITRATION UNDER THIS AGREEMENT SHALL BE DEEMED THE COMMENCEMENT OF AN ACTION FOR SUCH PURPOSES. NO PROVISION OF THIS PARAGRAPH SHALL RESTRICT THE ABILITY OF ANY PERSON TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE UNDER APPLICABLE LAW OR THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE EXERCISE OF THOSE RIGHTS OR REMEDIES IS SUBJECT TO THE RIGHT OF ANY OTHER PERSON TO DEMAND ARBITRATION AS PROVIDED HEREIN. THE COMMENCEMENT OF LEGAL ACTION BY A PERSON ENTITLED TO DEMAND ARBITRATION DOES NOT WAIVE THE RIGHT OF THAT PERSON TO DEMAND ARBITRATION WITH RESPECT TO ANY COUNTERCLAIM OR OTHER CLAIM. A PERSON ENTITLED OR OBLIGATED TO DEMAND ARBITRATION SHALL BE PERMITTED TO ASSERT A DISPUTE OR CLAIM THAT IS BROUGHT ON BEHALF OF ANY OTHER PERSON AND THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE OR CLAIM TO BE ARBITRATED AS, OR ON THE BASIS OF, A CLASS ACTION. SIMILARLY, AN ARBITRATION PROCEEDING UNDER THIS AGREEMENT MAY NOT BE CONSOLIDATED WITH OTHER ARBITRATIONS PROCEEDINGS. JUDGMENT UPON THE AWARD RENDERED IN ARBITRATION SHALL BE FINAL AND MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. IF A DISPUTE OR CLAIM IS NOT SUBJECT TO ARBITRATION FOR ANY REASON, THEN THE DISPUTE OR CLAIM SHALL BE DECIDED IN THE COURTS OF DELAWARE COUNTY, INDIANA, WITHOUT A JURY. YOU AND FIRST MERCHANTS BANK, NA IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY.

YOU AGREE TO THE TERMS STATED ON EVERY PAGE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE ARBITRATION OF CLAIMS AND

DISPUTES CLAUSE AS OF EFFECTIVE DATE ABOVE AND ACKNOWLEDGES RECEIPT OF THIS AGREEMENT.

#### **FF. Other Agreements.**

You agree to use the Service according to any User's Guide and any other instructional materials provided to you (including on-screen help). You will be bound by these instructional materials, together with all agreements controlling the use of the Service or relating to any accounts accessed through the Service (such as your deposit agreement with us). To the extent any provision of this Agreement conflicts with such other agreements or instructional materials, the provision herein shall control; otherwise, the provision supplements but does not displace such other agreements and instructional materials.

#### **GG. Waivers.**

No delay or omission by us in exercising any rights or remedies under this Agreement or applicable law shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy shall not preclude further exercise of that right or remedy or the exercise of any other right or remedy. No waiver shall be valid unless in writing signed by us. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

#### **HH. Assignment.**

You may not assign this Agreement or any of your rights or responsibilities under this Agreement to any other party. We may assign this Agreement or any or all of our rights and/or responsibilities hereunder, or delegate any or all of such rights and responsibilities to any third party or parties.

#### **II. Data Recording.**

When you use the Service, the transaction or other information you enter may be recorded. By using the Service, you consent to such recording.

#### **JJ. Potential Disruption of Service**

Access to the Online Banking Website or to the Mobile Banking Application may from time to time be unavailable, delayed, limited or slowed due to,

among other things:

- Hardware failure, including among other things failures of computers (including your own computer), servers, networks, telecommunication lines and connections, and other electronic and mechanical equipment;
- Software failure, including among other things, bugs, errors, viruses, configuration problems, incompatibility of systems, utilities or applications, the operation of firewalls or screening programs, unreadable codes, or irregularities within particular documents or other content;
- Overload of system capacities;
- Damage caused by severe weather, earthquakes, wars, insurrection, riots, civil commotion, act of God, accident, fire, water damage, explosion, mechanical breakdown or natural disasters;
- Interruption (whether partial or total) of power supplies or other utility of service;
- Strike or other stoppage (whether partial or total) of labor;
- Governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or
- Any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond the control of First Merchants Bank.

## **KK. Links to Other Sites.**

Links to non-First Merchants Bank Websites are provided solely to direct to information on topics that may be useful to you, and First Merchants Bank has no control over the content on such non-First Merchants Bank Websites. If you choose to link to a Website not controlled by First Merchants Bank, First Merchants Bank makes no warranties, either express or implied, concerning the content of such site, including the accuracy, completeness, reliability or suitability thereof for any particular purpose, nor does First Merchants Bank warrant that such site or content is free from any claims of copyright, trademark or other infringement of the rights of third parties or that such site or content is devoid of viruses or other contamination. First Merchants Bank does not guarantee the authenticity of documents on the Internet. Links to non-First Merchant Bank sites do not imply any endorsement of or responsibility for the opinions, ideas, products, information or services offered at such sites, or any representation regarding the content at such sites.

## **LL. Change of Terms; Consent to Receive Electronic Disclosures.**

This Agreement and all other agreements and disclosures relating to your use of the Service may be changed or amended from time to time, but we will provide you with advance notice of such changes or amendments to the extent required by applicable law. If you do not agree to any change or amendment, you must discontinue use of the Service to which the change or amendment relates or cancel your access to the Service. By using the Service after any change or amendment, you agree to that change or amendment.

BY AGREEING TO THE TERMS OF THIS AGREEMENT, YOU CONSENT TO RECEIVING ANY AND ALL DISCLOSURES SENT OR PROVIDED BY FIRST MERCHANTS BANK IN AN ELECTRONIC FORM. In order to receive the disclosures, information, and/or messaging electronically, you must be able to access the Mobile and Online Banking Service application or website to view or print the electronic documents. You have the option to receive the disclosures, information, and/or messaging in a non-electronic paper format from time-to-time upon your request by contacting customer services

[customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464. It is your responsibility to inform us of any changes to your address, email address or other contact information that we require to send you disclosures, information, and/or messaging electronically. You may update this information by updating your settings in Mobile or Online banking or by contacting customer service. If you choose to withdraw your consent to receive the disclosures, information, and/or messaging electronically, you must contact us at [customerservice@firstmerchants.com](mailto:customerservice@firstmerchants.com) or call 800.205.3464. Please know some services require you to receive electronic disclosures, information, and/or messaging, and you may not be able to utilize some Mobile and Online Banking Services without consenting to receive documents electronically.

## **MM. New Services.**

We may introduce new services from time to time that are available through the Financial Software. By using these new services after they become available, you agree to be bound by all terms and conditions applicable thereto.

## **NN. Applicable Law.**

Except as otherwise provided herein, regardless of where you live or work or where you access the Service, this Agreement, any enrollment form, and your

deposit relationship with us will be governed by the substantive laws (excluding laws of conflict) and regulations of the United States and the State of Indiana, including without limitation, the Indiana Uniform Commercial Code.

**OO. Venue.**

Any proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of Delaware County, Indiana.

**PP. No Unilateral Alterations to This Agreement or Any Enrollment Form by You.**

Neither this Agreement nor any enrollment form may in any way be altered by you without our expressed written agreement. Any attempt by you to alter either this Agreement or any enrollment form without our express written agreement shall be void and shall have no legal effect. You hereby agree to indemnify and hold us harmless from and against any and all claims, losses, liabilities, penalties', expenses and punitive and other damages (including without limitation reasonable attorneys' fees) directly or indirectly resulting from, relating to or arising in connection with any successful or unsuccessful attempt by you to alter either this Agreement or any enrollment form without our express written agreement.

**QQ. Area of Service.**

The Service and any application for deposit or other services at our Web site are solely offered to the citizens and residents of the United States of America (USA) and may not be accessed while outside the USA.

**RR. Construction of Defined Terms.**

As appropriate, the singular number shall include the plural and the plural shall include the singular.

**SS. Headings.**

The headings used in this Agreement are for convenience only and shall not be held to limit or affect the terms of this Agreement.

**TT. Severability.**

If a court of competent jurisdiction finds any provision of this Agreement to

be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

YOU AGREE TO THE TERMS STATED ON THIS MOBILE AND ONLINE BANKING SERVICE AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE ARBITRATION AND WAIVER OF JURY TRIAL CLAUSE AS OF TIME OF SUBMISSION AND YOU ACKNOWLEDGE RECEIPT OF THIS AGREEMENT.

First Merchants Bank - Consumer Mobile and Online Banking Service Agreement Version 3.0 Effective Date 02/15/2026