

# COMMERCIAL DEPOSIT AGREEMENT AND DISCLOSURES



*City Bank*





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## Privacy Notice

Federal law requires us to tell you how we collect, share, and protect your personal information. Our privacy policy has not changed and you may review our policy and practices with respect to your personal information at [city.bank/privacy-policy](http://city.bank/privacy-policy) or we will mail you a free copy upon request if you call us at 800-687-2265.

## Important Information about Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering services, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. WHAT THIS MEANS FOR YOU: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We will also ask to see your driver's license or other identifying documents. The information received from you is very confidential and will be treated with a great deal of respect from all employees of City Bank.

# COMMERCIAL DEPOSIT ACCOUNT AND SERVICES AGREEMENT

## Agreement:

This booklet, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your accounts(s) with us. Please read this carefully. If you sign the signature card or open or continue to use the account, you agree to these rules. This deposit account agreement is also subject to other rules such as the operating letters of the federal reserve banks and payment processing system rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us. Please retain these terms and conditions for future reference. Nothing in this document is intended to vary the institution's duty to act in good faith and with ordinary care when required by law.

## Terms:

This agreement establishes the basic terms of the relationship between City Bank and you. You, your and yours mean the Depositor(s). We, our, ours and us mean City Bank. Unless the context clearly requires otherwise, a singular term includes the plural and vice versa, and a word of one gender includes the other. An "item" is any check, draft, or order for the payment of money, oral or written, in electronic or other form. A "business day" is any day we are open for banking business. Every day is a business day except Saturdays, Sundays, and federal holidays. "Such as" means the terms that follow are examples and are not intended to limit the possibilities. "This Agreement" means this document and any subsequent amendments that we give you including the signature card and any agreement for banking services connected with this account.

## Binding Agreement:

You have read this agreement and understand that it is binding between you and us for a deposit account, hereafter "the account."

## Power of Attorney (POA):

We are not required to recognize any Power-of-Attorney to act on an account, even if we have previously accepted the Power-of-Attorney for other transactions. If we accept a Power-of-Attorney, we may continue to recognize the authority of your Attorney-in-Fact until we receive written notice of revocation or termination and have had a reasonable time to act upon it. We also reserve the right to restrict the types or sizes of transactions we will permit an Attorney-in-Fact to conduct on a case-by-case basis and may require the Attorney-in-Fact to present the original Power-of-Attorney before conducting any transaction.

## Account Type:

The account type is noted on the signature card. If the account is a demand account, it will not earn interest. If the account is a savings or negotiable order of withdrawal (NOW) account, we reserve the right to require seven days' written notice before any withdrawal. If any ineligible entity becomes an owner of a NOW account, we will convert the account into a checking or savings account. We have given you disclosures explaining applicable transaction limits, fees, interest rates, and balance requirements. You agree that our fees and charges need not be based upon the cost of providing the service or administering the event to which the fee or change is associated, but may be based on other considerations such as the expense of providing account services, similar charges of other financial institutions with which we compete, revenues to the bank, and the deterrence of abuse of an account. Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity.

Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. You agree that we may charge fees for overdrafts and use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees. If we are presented with an item drawn against your account that would be a "substitute check, as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

## Severability:

If the courts determine that any part of this agreement is illegal or unenforceable, you agree that the remainder will be enforced and the offending provision changed to make it enforceable.

## Law, Jurisdiction and Venue:

The laws of the state in which your account is located govern this agreement except where preempted by federal law. You agree that jurisdiction of any dispute and venue will be proper in the courts in the county and city of our office where you signed or delivered this agreement. The body of state and federal law that governs our relationship with you, however, is too large and complex to reproduce here. The purpose of this document is to:

- Summarize some laws that apply to common transactions;
- Establish rules to cover transactions or events which the law does not regulate;
- Establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- Give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

### **Dispute Resolution; Mandatory Binding Individual Arbitration; Jury and Class Waiver; Opt-Out Right; Limitation On Claims and Damages.**

All disputes arising out of or related in any way to your account or this Agreement shall be governed by the substantive laws of the state in which your account is located without regard to its conflict of laws principles, and by applicable federal law, including the Federal Arbitration Act.

Bank and you agree that any Dispute relating in any way to your account or transactions, or otherwise arising under or related to this agreement, will be resolved by the dispute resolution procedures described below, which includes binding mandatory individual arbitration. YOU HAVE A RIGHT TO OPT OUT OF THIS AGREEMENT TO ARBITRATE, AS DISCUSSED BELOW. UNLESS YOU OPT OUT OF THIS AGREEMENT TO ARBITRATE, AS SPECIFICALLY DESCRIBED BELOW, YOU AND WE ARE WAIVING THE RIGHT TO HAVE OUR DISPUTE HEARD BEFORE A JUDGE OR JURY, OR OTHERWISE BE DECIDED BY A COURT OR GOVERNMENT TRIBUNAL. YOU AND WE ALSO WAIVE ANY ABILITY TO ASSERT OR PARTICIPATE IN A CLASS OR REPRESENTATIVE BASIS IN COURT OR IN ARBITRATION. ALL DISPUTES, EXCEPT AS STATED BELOW, MUST BE RESOLVED BY BINDING ARBITRATION.

**Arbitration Provision:** This section is referred to as the Arbitration Provision. By having an account, you agree that if you have a Dispute (as defined below) with Bank (as defined below), and are not able to resolve the Dispute informally, you and Bank agree that any Dispute you have with or against Bank and its employees, directors, agents, representatives and/or Bank's affiliates, service providers and their employees, directors, and agents (all, collectively referred to as "Bank" for the purposes of this Arbitration Provision) in any way arising out of or in any way related to your account, or any feature, product, or service in any way associated with your account, will be resolved by mandatory binding arbitration ("Arbitration") pursuant to this Arbitration Provision. Any Arbitration will be limited to addressing a Dispute (as defined below) individually and will not be part of a class-wide or consolidated arbitration proceeding.

**Agreement to Arbitrate.** You agree that any Dispute will be resolved by arbitration in accordance with federal law (including the Federal Arbitration Act) and the laws of the state in which your account is located.

**Arbitration Defined.** Arbitration is a means of having an independent third party resolve a Dispute. The term "Dispute" is given its broadest possible meaning and includes, without limitation, all causes of action, claims, controversies, demands, and/or disputes of any kind - including those that arose before the effective date of this agreement or any prior deposit account agreement or that may arise after the termination of this agreement or after your declaration of bankruptcy - based on any legal or equitable theory (tort, contract, or otherwise, including claims related to advertising, promotions, or disclosures), and regardless of the type of relief sought (i.e., monetary, injunctive relief, or declaratory relief) and whether such Dispute is based on a federal or state constitution, statute, ordinance, regulation, contract, or common law. A Dispute includes not only any claim, dispute or controversy directly between you and Bank, but also any such matter with respect to anyone connected with you or claiming through you, such as an account holder, account beneficiary, trustee, guardian, executor, administrator, conservator, custodian, heir or any other representative or agent including but not limited to authorized users of your account. A Dispute includes initial claims, counterclaims, cross-claims and third-party claims. A Dispute does not include any issue concerning the validity, enforceability, or scope of the waiver of class action lawsuit and class-wide arbitration contained in this Arbitration Provision which will be adjudicated by a state or federal court of competent jurisdiction.

**You acknowledge and agree that by entering into this Arbitration Provision:**

- **YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST BANK;**
- **YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT OF LAW RESOLVE ANY DISPUTE ALLEGED AGAINST BANK; AND**
- **YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING OR RELATED TO A DISPUTE FILED AGAINST BANK.**

**Choice of Arbitrator.** Bank may demand Arbitration by sending notice by certified mail return receipt requested to you at the address associated with your account in Bank's records. It is your responsibility to provide Bank with updated information regarding your address. You may demand Arbitration by sending notice to Bank by certified mail return receipt requested to: 5219 City Bank Pkwy, Lubbock, TX 79407. Any such notice of demand for Arbitration must indicate your intent to arbitrate, provide a description of the Dispute, and include the relief requested, even if a lawsuit has been filed. Regardless of who demands Arbitration, you have the right to select any of the following arbitration organizations to administer the arbitration: The American Arbitration Association (1-800-778-7879) <http://www.adr.org>; JAMS (1-800-352-5267) <http://www.jamsadr.com>; or an

arbitration organization agreed upon by you and Bank. The Party receiving notice of Arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. You understand that if you demand Arbitration, you must inform us of your demand and of the arbitration organization you have selected. You also understand that if you fail to notify us, then we have the right to select the arbitration organization. Any Arbitration under the Agreement and this Arbitration Provision may be conducted within fifty (50) miles of your primary residence or business location, at your choice. This accommodation shall not be construed to allow for the application of any law other than laws of the state in which your account is located.

**Cost of Arbitration.** If you initiate an arbitration of claims in the amount of \$75,000 or less, the Bank will pay the initial filing fee and any other pre-award fees assessed by the arbitration organization or arbitrator. Except where otherwise provided by state or federal law, each Party will be responsible for its own attorneys' fees and other expenses. Unless prohibited by law, the arbitrator may award arbitration fees, costs, and reasonable attorneys' fees to the Party who substantially prevails in the arbitration.

**WAIVER OF JURY TRIAL AND WAIVER OF ABILITY TO PARTICIPATE IN A CLASS ACTION OR CLASS-WIDE ARBITRATION. THE ARBITRATOR HAS THE ABILITY TO AWARD ALL REMEDIES AVAILABLE, WHETHER AT LAW OR IN EQUITY, TO THE PREVAILING PARTY, EXCEPT THAT THE PARTIES AGREE THAT THE ARBITRATOR HAS NO AUTHORITY TO CONDUCT CLASS-WIDE PROCEEDINGS AND WILL BE RESTRICTED TO RESOLVING THE DISPUTES BETWEEN THE PARTIES ON AN INDIVIDUAL BASIS. IN NO EVENT SHALL THE ARBITRATION PROCEED ON A CLASS-WIDE BASIS, OR ON ANY OTHER BASIS BESIDES AN INDIVIDUAL ARBITRATION BETWEEN YOU AND THE BANK. IF THE ARBITRATOR FAILS OR REFUSES TO ENFORCE THE WAIVER OF CLASS-WIDE ARBITRATION, THE PARTIES AGREE THAT THE ISSUE OF CLASS-WIDE ARBITRATION WILL BE SUBMITTED TO A COURT OF COMPETENT JURISDICTION AND WILL BE DECIDED BY THE COURT. TO THE FULLEST EXTENT PERMITTED BY LAW, YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, LUBBOCK DIVISION FOR PURPOSES OF THIS ARBITRATION PROVISION. IN THE EVENT THAT SUCH FEDERAL DISTRICT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER SUCH DISPUTE, YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF THE JUDICIAL DISTRICT COURTS OF LUBBOCK COUNTY, TEXAS.**

**Opt-Out Period.** IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MAY OPT-OUT OF ARBITRATION VIA EMAIL TO: [support@city.bank](mailto:support@city.bank). OR BY MAIL TO: 5219 City Bank Pkwy, Lubbock, TX 79407, WITHIN 30 DAYS OF THE DATE THAT YOU FIRST RECEIVED A COPY OF THIS AGREEMENT CONTAINING THIS ARBITRATION PROVISION. IF YOU DO NOT SEND SUCH NOTICE WITHIN THOSE 30 DAYS, YOU AGREE THAT YOU ARE BOUND BY THE TERMS OF THIS ARBITRATION PROVISION.

**Time Limitation of Claims and Recoverable Damages - ANY DISPUTE AGAINST US ARISING FROM YOUR ACCOUNT OR THIS AGREEMENT MUST BE BROUGHT AGAINST US WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES OR ELSE IT SHALL BE BARRED UNLESS FEDERAL OR STATE LAW OR AN APPLICABLE AGREEMENT PROVIDES FOR A SHORTER TIME. THIS LIMIT IS IN ADDITION TO LIMITS ON NOTICE AS A CONDITION TO MAKING A LEGAL CLAIM. IF APPLICABLE LAW DOES NOT PERMIT A CONTRACTUAL SHORTENING OF THE TIME DURING WHICH A LEGAL CLAIM MUST BE FILED TO A PERIOD AS SHORT AS TWO (2) YEARS, YOU AGREE TO THE SHORTEST PERMITTED PERIOD UNDER APPLICABLE LAW. ANY RECOVERABLE DAMAGES UNDER ANY CLAIM AGAINST US IS ALSO LIMITED TO DAMAGES INCURRED DURING THE TWO (2) YEAR PERIOD IMMEDIATELY PRECEDING YOUR INITIATION OF THE CLAIM OR, IF GREATER, THE SHORTEST PERIOD PERMISSIBLE UNDER APPLICABLE LAW.**

### **Changes:**

We may amend, change, or delete any term of this agreement. We may also add new terms to the agreement. In addition, we may suspend, modify, convert, or terminate a service, convert this account to another account type, or close this account for any reason. For any of these types of changes, we will give you reasonable notice in writing by any reasonable method including by mail, by any electronic communication method to which you have agreed, on or with a periodic statement, or through any other method permitted by law.

Reasonable notice depends on the circumstances, and in some cases, such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change becomes effective. For instance, if we suspect fraudulent activity with respect to your account, and if we deem it appropriate under the circumstances and necessary to prevent further fraud, we might immediately freeze or close your account and then give you notice. Unless otherwise indicated in a notice of change, if we have notified you of a change to your account, and you continue to have your account after the effective date of the change, you have accepted and agreed to the new or modified terms.

We reserve the right to waive any term of this agreement. However, such waiver shall not affect our right to enforce the term at a later date.

### **Inactive Account:**

Accounts with no activity by you for 365 consecutive days will be considered inactive.

## Deposit Reclassification:

The Bank will make a change in your checking account that will not affect your available balance, interest earnings, FDIC insurance, or bank statement. This account will consist of a checking sub-account and a savings sub-account. The Bank may periodically transfer funds between these two sub-accounts. On a sixth transfer during a calendar month, any funds in the savings sub-account will be transferred back to the checking sub-account. If your account is a plan on which interest is paid, your interest calculation will remain the same. Otherwise, the savings sub-account will be non-interest bearing. The savings sub-account will be governed by the rules governing our other savings accounts.

## Certificate of Deposit Early Withdraw Penalty

A penalty may be imposed for withdrawals before maturity. The penalty will be in the amount equal to:

- Seven days' interest on the amount withdrawn if the withdrawal is made within the first six days after the deposit.
- 90 Days interest on a CD of one year or less.
- 180 Days interest on CD's greater than one year but less than 5 years.
- 365 Days interest on a 5 year CD.

We will charge the penalty first against any interest then in the account, and any excess will be deducted from the amount you withdraw. If you close your account before interest is credited, you will not receive the accrued interest.

## Depositor Encoded Items:

Items not encoded by us are non-conforming items, and are your sole responsibility. Any item presented for payment, whether check, draft, withdrawal or transfer document, and/or other item or instrument of payment, must conform in all respects, including its encoded message, to our automated bulk filing processing system. Failure of any item to conform to our automated bulk filing processing system is agreed to be the sole cause of our payment of, or failure to pay, the non-conforming item.

If our equipment is unable to read what we consider to be a significant number of your items and they are rejected, we may charge you additional fees. If we do charge you more, we may send you a notice. If there is an encoding error that results in costs or losses to us, you agree to reimburse us (and we may charge your account) for our claims, costs, losses and damages, including attorneys' fees.

## Account Closing:

We may close the account at any time without cause. We may close it without notice to you if we reasonably believe it will prevent loss to us or you have violated this agreement. You will pay any fees and costs for closing the account, as well as any outstanding items. Our rights and your obligations survive any closing of the account or cancellation of this agreement. You will not claim we wrongfully dishonored items we return unpaid on or after the day the account was closed. Accounts with a zero balance for 45 consecutive days will be automatically closed.

If you request that we close your account, you are responsible for leaving enough money in the account to cover any outstanding items or transactions to be paid from the account. Once any outstanding items or transactions are paid, we will close the account and tender the account balance, if any, to you or your agent personally, by mail, or by another agreed upon method. We are not required to close your account at your request if you have pending transactions, the account is overdrawn or your account is subject to legal action (such as garnishment, attachment, execution, levy or similar order). In those cases, we may restrict your account against all future withdrawals other than under legal action until pending transactions are paid or returned, the balance is no longer negative, and any legal restriction has been released. After your account is closed, we have no obligation to accept deposits or pay any outstanding checks and those items may be returned, but we may reopen your account if we receive a deposit, or we may apply an incoming deposit to satisfy any outstanding items or obligations owed to us.

If your account had funds in it when closed, we may: (1) hold the funds for your pick up or to pay outstanding or expected items or claims; (2) deposit the funds in another of your accounts with us; or (3) mail the funds in the form of a cashier's check to any of you by check at the address in our records for the account. The termination of this agreement and closing of an account will not release you from any fees or other obligations incurred prior to the date upon which this agreement is terminated and the account closed, any fees assessed by us in the process of closing an account, or from your responsibility to maintain sufficient funds in your accounts to cover any outstanding checks or other debit items. We will not be liable to you for any damages you may suffer as a result of your account being closed or the process that follows the decision to close your account.

## Notices:

We can send you communications at the last address you gave us in writing or by email if you have signed up for Electronic Delivery. You will send us communications at our address on the back cover of this agreement. The postmark or postage meter date, except where this agreement requires that something be "actually received", determines when a communication occurred. You will notify us immediately of any change in your name, address, e-mail address (if applicable), telephone number, or taxpayer identification

number. Notice must be received in time for us to have a reasonable opportunity to act on it. If a notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date, and payee. Notice we give you via the United States Mail is effective when it is deposited in the United States Mail with proper postage and addressed to your mailing address we currently have on file. Notice we give you through your email of record, or other electronic method to which you agreed, will be treated as delivered to you when sent. Notice to any of you is notice to all of you.

## No Assignment:

You understand that neither the account nor your rights under this agreement can be assigned, in whole or in part, without our written permission which may be withheld for any reason. Your successors and assigns are bound by this agreement. Any actual or purported assignment of this account remains subject to our right of setoff any assignment made in violation of this provision is void and unenforceable.

## Expenses:

You agree to pay any expenses we incur in good faith related to this agreement, such as fees on items sent for collection, foreign exchange charges, and un-reimbursed research and copying fees incurred when a third party requires records about our relationship. You agree to pay any and all attorneys' fees and court costs we incur in good faith due to concerns about the account, whether or not litigation has begun, through the trial and all appeals. You also agree to pay any expense that we incur, including attorneys' fees, in response to any subpoena, writ, government agency or judicial order, search warrant, or other order to which we may be required to respond regarding your account or your relationship with us.

## Temporary Account Agreement:

If the account documentation indicates, this is a temporary account agreement. Each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

## Multiple Signatures:

A requirement for more than one signature is for the depositor's internal control and audit purpose only. We are not liable for paying a check over one signature. You agree to hold the bank harmless for any payment of an item with fewer than the required signatures. The bank can properly pay an item payable to multiple payees unless the accountholder gives the institution notice in writing that multiple endorsements are required.

## Non-Manual Form of Signature:

If any items drawn on this account are signed, countersigned or endorsed using any facsimile signature, stamped signature, mechanical signature, computer software generated signature or other non-manual form of signature, you acknowledge that the use of such non-manual form of signature is solely for your benefit and convenience. Each authorized signer accepts sole responsibility for maintaining security over any device used for affixing each authorized signature on this account.

If we receive items containing non-manual signatures, you authorize us to charge you for such items, including checks, drafts, or other orders or debit or transfer requests for the payment of money that is drawn on us. You give us this authority regardless of by whom or by what means the non-manual signature(s) may have been affixed so long as they resemble an approved or authorized signature specimen. You must notify us at once if you suspect that your device for non-manual signatures is being or has been misused.

## Digital Signature:

A digital signature is an electronic identifier, created by a computer, intended by you to have the same force and effect as the use of your manual signature and satisfies the statute of frauds. A digital signature involves the use of both private and public key encryption. All written electronic communications, including transmission of electronic data over telephone lines, fiber optic cables or stored on a computer disk, sent to us in connection with the transaction is considered signed if a digital signature is transmitted with such communication. The use of the digital signature is subject to criminal laws pertaining to fraud and computer crimes.

## Signatures to Come:

If you have asked us to create the account for multiple owners or authorized signers, we can limit use of the account until all owners have signed.

## Texas Business Deposit Customer Reporting Obligation:

Chapter 277 of the Texas Finance Code requires Texas Business Deposit customers to provide certain information upon opening the account and updating that information at least annually. You agree to provide updated information regarding your name, physical address of the business, drivers license number (if individual), certificate of formation changes (if a corporation, limited partnership, or limited liability company) and assumed name certificate (if any). You agree to provide such update no later than December 31 of each year during which you maintain your account at the bank. Include the title of the account and the

account number and send information updates to City Bank, PO Box 5060, Lubbock, TX 79408.

### **Indemnification:**

You will indemnify us against and hold us harmless from any and all losses, damages, costs, and attorney fees that we incur because of your failure to abide by any of the terms of this agreement, including but not limited to provisions in "Examination of Items."

### **No Waiver:**

Failure to insist upon your strict performance of any obligation under this agreement will not create any duty on our part to continue to do so. You will not claim that we waived our right to insist on proper performance.

### **Our Rights:**

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

### **Monitoring and Recording Telephone Calls and Account Communications:**

You give us permission to record your communications with us. If you authorize someone such as an attorney to do business with us on your behalf, you will be responsible for obtaining their permission to allow us to record their communications with us. You agree that the bank can contact you using any telephone numbers or email addresses on file.

To provide you with the best possible service, we may need to contact you about your account from time to time by telephone, text messaging or email. However, we first obtain your consent to contact you about your account in compliance with applicable consumer protection provisions in the Telephone Consumer Protection Act, CAN-SPAM Act and their related federal regulations and orders issued by the Federal Communications Commission (FCC). Your consent is limited to your account, and as authorized by applicable law and regulations. Your consent is voluntary and not conditioned on the purchase of any product or service from us.

With the above understandings, you authorize us to contact you on any day and at any time of the day regarding your account throughout its existence using any telephone numbers or email addresses that you have previously provided to us by virtue of an existing business relationship or that you may subsequently provide to us.

This consent is regardless of whether the number we use to contact you is assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service or any other service for which you may be charged for the call. You further authorize us to contact you through the use of voice, voice mail and text messages, including the use of pre-recorded or artificial voice messages and an automated dialing device.

### **Setoff:**

You grant us the right to apply the account balance to payment of any debt that any owner of the account owes us without notice including direct obligations, such as promissory notes and agreements (including this one), and indirect obligations, such as guarantees and endorsements. The right of setoff does not apply to this account if it is an escrow account or IRA or other tax- deferred retirement account. Also, this right of setoff does not apply to any home equity loan you may have with us. Right to setoff does not apply if it is prohibited by the Military Lending Act or it's implementing regulations.

### **Legal Process:**

If any owner or authorized signer is ever involved in a legal proceeding, such as a divorce, garnishment, levy, or attachment, you will not hold us responsible for any damages you suffer from our actions in good faith reliance on any order or other legal process. Subject to applicable law, we may, in our sole discretion, choose to freeze the assets in the account and not allow any payments or transfers out of the account, or take any other action as may be appropriate under the circumstances, until there is a final determination regarding the legal action. We will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action and applicable law. Any garnishment, levy, or attachment is subject to our right of setoff. If a bankruptcy or similar proceeding is filed by or against any owner, we can place an administrative hold on part or all of the account balance while we seek to have the automatic stay lifted.

### **Authority:**

You will not grant anyone authority to conduct business with us on your behalf until we have reviewed the terms of authorization and have given you written acceptance. This includes authority such as power of attorney, bill-paying arrangement, or other methods. You will not claim that we wrongfully dishonored items presented to us before we accepted the authorization. If you have not given us the proposed authorization for review, we may, in good faith, honor items and instructions from the person you authorized. You will not hold us responsible if someone you authorized to do business with us misapplies your money. You assume all risk of improper acts by such person. We can consider an authorization valid until we receive written revocation of it and have had reasonable time to review and act upon it. If we

accept an authorization, we may revoke our acceptance of that authority at any time at our discretion. If you voluntarily disclose information about the account that would permit someone to initiate a debit to the account (such as account number, bank routing number, and next unused check number), then you will be deemed to have authorized us to pay any debit to your account that person or entity initiates.

### **Telemarketers:**

Telemarketers and others trying to sell you goods or services may ask for information about your account, such as your account number, next unused check number, or our routing number. If you give any of that information to such a person, you agree that we may treat any debit to your account initiated by that person as having been authorized by you.

### **Checks:**

You will not write a postdated check without giving us written notice, describing the check with reasonable certainty, at least five business days before you write the check. If you do not give us notice, we can pay the check when it reaches us regardless of the date. You will use only approved checks and deposit slips. You will not attempt to create a substitute check for deposit into the account without obtaining our express written consent in advance. You will not write a check using ink of a color or type that is not legible when imaged or copied. You will not deposit any check that was written in such ink or that has any other features that would prevent it from being imaged or copied clearly and completely. You will verify your name, address, telephone number, and the numbers in the magnetic ink character line across the bottom of the face of each document in each order of checks and deposit slips. If there is an error, you will not use the affected documents, and you will notify us and the printer immediately. You will not hold us responsible for any amount beyond the replacement cost of the order, provided the checks were ordered through us. If we keep safe your cancelled checks and other items, we can destroy the originals and keep electronic or other images after a reasonable time has elapsed. We can destroy the images after a further reasonable time. By making your monthly statement with check images available to you, it is as though we have included cancelled checks and other items with your statement.

### **Check Processing:**

We may process items mechanically by relying on the information encoded along the bottom of the items. This means that we may not individually examine all of your items to determine if the item is properly completed, signed and endorsed. You agree that we have not failed to exercise ordinary care solely because we use an automated system to process items and do not inspect all items processed in such a manner. We reserve the right not to inspect each item because using an automated process helps us keep costs down for you and all account holders. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the times we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

### **Order of Payment:**

You understand that when two or more items are presented for payment on the same day, the law allows us to pay them in any order. For now, we have chosen the following order of payments:

(1) Debit card and ATM transactions will be presented to post against your account in an order of smallest dollar amount to largest dollar amount. These are all non-returnable items that must be paid as they were authorized at the time of purchase.

(a) The non-returnable items that must be paid as they are authorized at the time of purchase will post against your account in an order of smallest dollar amount to largest dollar amount. We will process the following items presented for payment in the following order of dollar size, paying smallest to largest

- Debit Card
- ATM

(2) Payments you have initiated that did not require an authorization by us at the time of purchase or order, such as ACH debits, checks, drafts and bill payments will be presented to post against your account in an order of largest dollar amount to smallest dollar amount.

We, in good faith, have chosen to present these items for payment against your account in an order that prioritizes important payments, such as mortgage/rent, automobile, or insurance payments before other smaller items.

(a) We will process the following items presented for payment in the following order of dollar size, paying largest to smallest.

- Credits/Deposits (ACH, cash, checks, etc.)
- Force Pays
- Over the counter withdrawals
- Checks
- ACH Debits

We can, in good faith, choose a different order of payment after giving you any legally required notice. Account statements do not necessarily report debits and credits in the order that we posted them to an account.

## Examination of Items:

You do not require us to comply with a restrictive legend or restrictive endorsements on any item, such as "void if not cashed within 90 days", "payment in full", or any other impermissible marking. Permissible markings include the following: drawee bank name and location, payee name, endorser name, drawer signature, and the magnetic ink characters across the bottom front of the item. You will not hold us responsible for any item's late return caused by an endorsement stamp or other marking outside the area allowed for by law. You will not claim that we failed to exercise ordinary care because our procedures do not require signature examination of each item with an amount below a set figure. Bank is not responsible if an unauthorized signature or alteration that would not be identified by a reasonable inspection of the item.

## Laws, Regulations:

We are subject to federal and state laws and regulations. You will not hold us liable for anything we do or decline to do, based on a good faith belief that it is required by law or regulation. Some laws allow parties to contract out of the law's provisions and establish their own rules. You intend this agreement to do that whenever a term of this agreement conflicts with such a law. You will abide by the rules of any clearinghouse or automated clearinghouse that handles any part of a transaction.

## Liability Limit:

You will not hold us responsible for a loss caused by an event beyond our control, such as war, terrorism, riot, labor trouble, natural disaster, computer problem, loss of electric power, communications, or transport. If we do not process a transaction in accordance with the terms of this agreement, our maximum liability shall be the amount of the transaction. **In no circumstances will we be responsible for consequential damages for any action that we take or fail to take in regard to the account.**

**Positive Pay and Other Fraud Prevention Services:** You agree that if we offered you commercially reasonable security procedure services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, and you rejected those commercially reasonable security procedure services, you agree to assume all risk associated with failing to use such services, and, to the fullest extent permitted by law, agree to indemnify, defend, and hold us harmless from any loss, claim, liability, damage, or other amounts (including attorneys' fees and costs) arising in any way, directly or indirectly, from your decision to reject such services. You will not be responsible for such transactions if we acted in bad faith or to the extent our negligence contributed to the loss. We offer a number of such services including (i) Positive Pay to help prevent unwanted paper checks from posting to your account, (ii) ACH Block and ACH Positive Pay to help prevent unwanted ACH debits from posting to your account, (iii) requesting you to open a new account in the event of fraud, and (iv) other commercially reasonable security procedure services. If we offered you Positive Pay, ACH Block, ACH Positive Pay, requested you to open a new account in the event of fraud, or any other commercially reasonable security procedure and you rejected our offer, you agree that you are responsible for any payment order or item, whether authorized or not, that we accept in compliance with an alternative security procedure that you have selected. The Positive Pay service can help detect and prevent check fraud and is appropriate for account holders that issue a high volume of checks, a lot of checks to the general public, or checks for large dollar amounts.

## Deposited Items:

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including item drawn "on us"). You understand that all deposits are subject to verification and corrections. We can accept an item for deposit or collection only, refuse it, or return it. In receiving items, we are acting only as your agent. We have no responsibility beyond ordinary care. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. You will not hold us responsible for default or negligence of our correspondents or loss of items in transit. Each correspondent we use will be liable only for its own negligence. If we give you credit for an item, we can revoke it if the item is not paid. Items deposited by mail will not be considered received by us until we actually receive them. You will not hold us responsible for loss of any item until we have received it under this standard. If an item requiring endorsement is deposited without it, you authorize but do not require us to supply it. You will reimburse us for loss or expense we incur because of any missing endorsement, whether yours or another's, on a deposited item. We do not have to notify you of any nonrecurring ACH credits or wire transfers to the account. See funds Availability Disclosure for additional information.

If you deliver a deposit to us and you will not be present when the deposit is counted, you must provide us with an itemized list of the deposit (deposit slip). To process the deposit, we will verify and record the deposit, and credit the deposit to the account. If there are any discrepancies, of \$2 or more, between the amounts shown on the itemized list of the deposit and the amount we determine to be the actual deposit, we will notify you of the discrepancy. You will be entitled to credit only for the actual deposit as determined by us, regardless of what is stated on the itemized deposit slip.

## Direct Deposits:

If, in connection with a direct deposit plan, we deposit any amount in an account which should have been

returned to the Federal Government or State Government or other retirement system for any reason, you authorize us to deduct the amount of our liability to the Federal Government or State Government or other retirement system from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

## Foreign Items:

If an item that is payable at a foreign bank or in a foreign currency is deposited, you will be responsible for all collection charges and exchange rate risk on it. You understand that we will not credit that kind of deposit until receiving the proceeds in United States currency.

## Returned Items:

We can charge for the amount of any deposited item that is returned unpaid. We can reprocess the item, but you do not require it. We can process a copy, electronic entry, or other evidence of the returned item. You waive presentment, notice of dishonor, and protest. Unless prohibited by law, the institution can charge back the amount of any item which was initially paid by the payor bank and which is later returned due to an allegedly forged, unauthorized or missing endorsement, claim of alteration, encoding error or other problem which in the institution's judgement justifies reversal of credit.

We may attempt to collect previously returned items without giving the depositor notice, and it may permit the payor bank to hold an item beyond the midnight deadline.

## Stale Items:

We can pay an item presented to us more than six months after the date on the item, but you do not require it. If you do not want us to pay such an item, you will place a stop payment on it.

## Stop Payments:

If you want us to stop payment on a check, you will tell us the check number, date, payee name, and exact amount. You understand that if either the check number or the amount is not exact, our check processing equipment may not catch the check in time; you will not hold us responsible. You must make any stop-payment order in the manner required by law and we must receive it in time to give us reasonable opportunity to act on it before our stop-payment cutoff time. Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. An oral stop payment is only valid for a period of fourteen (14) days. You understand that a stop payment signed by you expires in six months. You will place a new stop payment if you do not want us to pay the check after the previous one expires.

If you use Online Banking to process a stop payment, stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop a bill payment. You may initiate a stop payment request online via Online Banking only for paper checks you have written on your bank account or checks generated through the system bill payer (not electronic bill payer items). You will incur stop payment charges as disclosed in the current fee schedule for the applicable account.

**Right to Stop Payment of a Preauthorized Transfer (ACH).** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Call or write us at the telephone number or address listed on the back of this brochure, in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we will also require you to put your request in writing and get it to us within 14 days after you call. Stop Payments will automatically expire six (6) months from the date it is requested, unless it is renewed in writing.

## Automated Clearing House ("ACH") Provisions and Wire Transfer:

**ACH and Wire Transfer.** This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. A separate Wire Transfer Agreement will apply to wire transactions and will provide additional disclosures and security requirements, including federal disclosures regarding foreign remittances. We may accept, on your behalf, payments to your account which have been transmitted through one or more automated clearing houses and which are not subject to the Electronic Funds Transfer Act. Your rights and obligations with respect to such payments shall be construed in accordance with and governed by the operation rules of the National Automated Clearing House Association.

**Notice of Receipt of ACH items.** Under the operating rules of the National Automated Clearing House Association which are applicable to ACH transactions involving this account, we are not required to give next day notice to you of an ACH item and we will not do so. However, we will continue to notify you of the

receipt of payment in the periodic statements we provide to you.

**Provisional Payment.** Credit given by us to you with respect to an ACH credit entry is provisional until we receive final settlement. If we do not receive final settlement, you agree that the bank is entitled to a refund of any or all of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not have been deemed to have paid you the amount of such entry.

**Errors or Questions About Electronic Transfers & ACH Entries.** You agree that you are in the best position to protect against fraudulent and unauthorized transfers and to detect any such or any other error or discrepancy involving your commercial account or any payment order. You must notify us of any error or discrepancy with respect to any payment order AT ONCE for commercial accounts by the next business day from the Settlement Date by our deadline at 12:00 p.m. CT. The Settlement Date is the date on which the payment posted to your account, or any electronic message or confirmation is sent to you pertaining to the payment order. Such notice shall be made by calling 1-800-687-2265 (Client Support). In the event you fail to notify us within the timeframe set forth herein, you acknowledge and agree that we shall be relieved of any liability in connection with the payment order. In the event you receive an ACH Entry that is unauthorized, you acknowledge and agree that you have until the next business day from the Settlement Date to return it. The Settlement Date is the date on which the ACH Entry post to your account.

In the event you determine that the ACH Entry is unauthorized, we will ask you to provide us with a written statement under penalty of perjury and will return the ACH Entry accordingly. You acknowledge and agree that we must receive your written statement to return such ACH Entry by the next Business Day from the Settlement Date by our deadline at 12:00 p.m. CT. The Settlement Date is the date on which the ACH Entry posted to your account. Notwithstanding, you acknowledge and agree that you lose your right to return under the NACHA Operating Rules in the event you fail to notify us of your intent to return an unauthorized ACH Entry by the next business day from the Settlement Date by our deadline at 12:00 p.m. CT. Under such circumstances, in accordance with NACHA Operating Rules, we may act on your behalf to request a "permissible return" from the financial institution that sent the ACH Entry, but such institution is not required to comply with our request. You agree to hold us harmless from any loss you incur as a result of the unauthorized ACH Entry that is not returned by the next business day and deadline set forth herein and in accordance with, the NACHA Operating Rules.

**Bank Statements:**

**Your Duty to Report Unauthorized Signatures (Including Forgeries and Counterfeit Checks) and Alterations on Checks and Other Items.** You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures (including forgeries and counterfeit checks) or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer. You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures or alterations in your account within 30 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 30-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**Your Duty to Report Other Errors or Problems.** In addition to your duty to review your statements for unauthorized signatures and alterations, you agree to examine your statement with reasonable promptness for any other error or problem – including, but not limited to, an encoding error, unexpected deposit amount, unauthorized withdrawal or transfer or funds, or improper charge. Also, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 30 days. Failure to examine your statement and items and report any errors or problems to us within 30 days of when we first send or make the statement available precludes you from asserting a claim against us for any errors or problems identified in that statement and as between you and us the loss will be entirely yours.

**Duty to Notify if Statement Not Received.** You agree to immediately notify us if you do not receive your statement by the date you normally expect to receive it. Not receiving your statement in a timely manner is

a sign that there may be an issue with your account, such as possible fraud or identity theft. Absent a lack of ordinary care by us, a failure to receive your statement in a timely manner does not extend the time you have to conduct your review under this agreement.

**Claim of Loss.** If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys’ fees incurred by you.

You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

**Telephone Transfers:**

A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, are made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings/MMDA account to another account or to third parties, to a maximum of six per statement cycle (less the number of "preauthorized transfers" during the cycle). Other account transfer restrictions may be described elsewhere.

**Credit Reports:**

You authorize us to obtain reports about you periodically from organizations such as credit reporting agencies, check reporting services, and other consumer reporting entities, and to provide them information.

**Incomplete Items:**

If an authorized signer signs a check or authorizes any item that is not completed, you will not hold us responsible for paying it as completed by anyone unless we actually know it was completed in an unauthorized way.

**Disputed Authority:**

If anyone claims ownership over funds, and we have a good faith doubt about whether to recognize the claim, we can hold some or all of the account balance until the claim is resolved.

We can pay some or all of the account balance into court in an interpleaded or other action to determine ownership. You will not claim that we wrongfully dishonored items that were presented to us while such a dispute was pending.

**Truncation, Substitute Checks, and Other Check Images:**

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

If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications of substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

**Remotely Created Checks:**

Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection:

- 1. You have received express and verifiable authorization to created the check in the amount and to the payee that appears on the check;
- 2. You will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and
- 3. If the check is returned you owe us the amount of the check, regardless of when the check 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.

**Other Services:**

If you want services from us that are not covered by this agreement, you will sign an agreement with us for those services.

**Cashing Your Checks:**

Before we allow a person to cash an item, we can require identification, such as a driver's license or passport. We can secure further identification by methods such as photography, fingerprinting, and other biometric or technological means. If the person does not provide or permit such identification, we can decline to cash the item and you will not claim that we wrongfully dishonored it. Also, we may charge non-customers a check cashing fee.

**Notice of Prohibition on Unlawful Internet Gambling:**

Federal law, the Unlawful Internet Gambling Enforcement Act of 2006 and its implementing regulations, prohibit commercial customers from receiving deposits of any kind relating to illegal Internet gambling. City Bank is required to enforce that prohibition.

By maintaining an account with our bank you agree to notify us if your account is ever used for Internet gambling of any kind, even if you believe the activity to be legal. If you do not, we may terminate your access to various payment methods or close your account.

**OVERDRAFT PROTECTION (ODP)**

(Always a Discretionary Service)

It is the policy of City Bank ("the bank, we, us, or our") to comply with applicable laws and regulations, and to conduct business in accordance with applicable safety and soundness standards.

**A non-sufficient funds (negative) balance may result from:**

- Payments authorized by checks, ACH or electronic transactions, City Bank and foreign ATMs/debit cards, online banking and telephone banking transactions;
- Payments authorized by you;
- The return of unpaid items deposited by you;
- The imposition of bank service charges; or
- The deposit of items, which according to the Bank's Funds Availability Policy, are treated as not yet "available" or finally paid.

We are not obligated to pay any item presented for payment if your account does not contain sufficient collected funds. Rather than automatically returning, unpaid, any non-sufficient funds items that you may have, if your eligible account has been open for at least thirty (30) days and thereafter you maintain your account in good standing, which includes at least:

- You bring your account to a positive balance (not overdrawn) at least once every thirty-five (35) days, and
- Your account is not the subject of any legal or administrative order or levy,

then we may consider, without obligation on our part, approving your reasonable overdrafts.

This discretionary service is limited to a \$1,500 overdraft (negative) balance for eligible commercial checking account types. Some restrictions do apply. Any and all fees<sup>1</sup> and charges, including without

limitation our Return Item/Overdraft Paid fees<sup>1</sup> will be included in this limit.

We may refuse to pay an overdraft at any time, even if your account is in good standing and even though we may have previously paid overdrafts for you. We will charge you the amount of any overdrafts plus our Return Item fee(s) and/or Overdraft Paid fee(s) of \$33 per item.

Please be aware that an item may be presented multiple times by the merchant or other payee until it is paid, and that we do not monitor or control the number of times an item is presented for payment. It is the policy of the Bank to endeavor to only charge one Return Item or Overdraft Paid fee per each item, regardless of the number of times the item is presented for payment. Be aware, however, that the Bank does not control how an item is presented for payment and a merchant or other payee may present an item in a manner that does not allow the Bank's processing system to identify that it is a re-presented item that has previously been assessed a Return Item fee. If the Bank's processing system cannot identify that an item has been re-presented for payment, you understand and agree that you may be inadvertently charged additional Return Item or Overdraft Paid fees if the item is presented for payment multiple times. In that event, you understand and agree that you must contact the Bank to identify the fees attributable to the same item being re-presented for payment and the Bank will refund any such fees to your account.

There is no limit on the number of Overdraft and Returned Item Fees that can be charged to your account. No Overdraft Paid fee will be assessed for any item(s) which causes the account to be overdrawn for less than \$50 (negative balance of -\$50 or less) on any one business day. No Returned Item Fee will be assessed for any items returned where the account has a negative balance of less than \$50 at the time of presentment.

If there is an overdraft paid by us on an account with more than one (1) owner on the signature card, each owner, and agent if applicable, drawing/presenting the item creating the overdraft, shall be jointly and severally liable for such overdrafts plus our Return Item fee(s) and/or Overdraft fee(s)<sup>1</sup>. We may use deposits you or others make to your account to pay overdrafts, fees<sup>1</sup> and other amounts you owe us.

**ODP Denial Process:**

Some common reasons your ODP may be denied are: if you have a negative record with Chexsystems, and/ or if you do not have regular payroll, social security, or similar direct deposits. Additionally, based on safety and soundness concerns, we may terminate your participation in this discretionary ODP service at any time, including, but not limited to, if there is a history of potential chronic or excessive use of the ODP service or you are in default of your obligations to City Bank.

**Limitations:**

Savings Type Accounts, Money Market Accounts, Public Funds/Charitable Organization Accounts, certain trust accounts, ODP Plus, Fresh Start repayment plan, accounts with restrictive hold codes (garnishment, liens, etc.), dormant, bad address, deceased, bankruptcy, fraud and charged off accounts are not eligible for ODP. We may limit the number of accounts eligible for ODP to one account per tax payer ID.

The bank is not obligated to honor any overdraft on your account if the overdraft, either alone or when aggregated with other overdrafts and related overdraft fees<sup>1</sup>, exceeds your ODP limit.

Here's how the ODP works if we pay your overdraft item: If you inadvertently write a check or other payment or withdrawal request for more than the funds on deposit in your account, we may cover them, and save you time, money and inconvenience. Suppose your account type permits a \$1,500 limit. With ODP, you may be covered for a check of \$1,467 plus the \$33 Overdraft Paid Fee-ODP<sup>1</sup>. Alternatively, you may be covered for a \$100 ATM withdrawal, a check of \$1,334 plus the \$66 Overdraft Paid Fee-ODP<sup>1</sup> for two items.

The bank uses the "Ledger" balance" at the time each item posts or settles to your account to determine when your account is overdrawn and whether an Overdraft Paid or Returned Item fee should be imposed. This means that your account balance is calculated based on settled transactions only at the time that such transactions actually post to your account, not at the point of sale. Electronic transactions that are pre-authorized but not settled (for example, debit card transactions that have been authorized but which are still pending and pre-authorized temporary merchant holds), or deposit holds that have not yet cleared (for example, checks that have not yet cleared), will not be considered in the "Ledger" balance for your account until those transactions post.

For example, a merchant may request a temporary hold on your account for a specified sum of money at the point of sale, which may be more than the actual amount of your purchase when it posts to your account. When this happens, the bank cannot determine whether the hold exceeds the actual amount of your purchase. The temporary hold and the amount charged to your account will eventually be adjusted, but it may take up to three days before the adjustment is made. Because the bank cannot determine the amount that will ultimately be charged to your account by the merchant, the "Ledger" balance for your account is not reduced by the preauthorized temporary hold until the adjustment is made by the merchant

<sup>1</sup>All fees subject to sales tax in New Mexico.

and the purchase posts to your account. This means that, for all pre-authorization requests or temporary holds, the amount of the authorization or hold is not set aside and it is not otherwise sequestered or made available to pay the specific transaction authorized. As a result, this means that intervening transactions that post to your account before the pre-authorized and/or temporary hold transaction posts to your account may reduce your "Ledger" balance, such that an Overdraft Paid Fee-ODP is imposed on the transaction at the time of posting.

It is the policy of the bank to endeavor to not charge an Overdraft Paid or Return Item fee for everyday debit card transactions, if you had sufficient available funds in your account to cover the transaction at the time of authorization, regardless of the nature of intervening transactions that may have caused the transaction to overdraw your account at settlement (this is often referred to as an "Authorize Positive/Settle Negative" or "APSN" transaction). We have implemented software that is intended to prevent the imposition of fees on an APSN transaction. However, if the Bank's processing system cannot identify an APSN transaction, you understand and agree that you may be inadvertently charged an Overdraft Paid or Return Item fee. In that event, you understand and agree that you must contact the bank to identify the fees attributable to the APSN transaction and the bank will refund any such fees to your account.

In contrast, please be aware that we may assess an Overdraft Paid or Return Item fee for everyday debit card transactions if you did not have sufficient funds in your account at the time of authorization and we choose to authorize the transaction overdrawing your account (often referred to as an "Authorize Negative/Settle Negative" or "ANSN" transaction).

**Customer ODP Decline:**

You may choose at any time to not participate in City Bank's ODP service, by notifying in writing or in person one of our customer Xperience representatives or by phoning 1-800-687-2265. If you decline the ODP service, any transactions that would overdraw your account will generally be returned, unpaid, and ATM/debit card transactions will not be authorized. A Return Item fee of \$33<sup>1</sup> will be imposed for each item that we return unpaid.

**ODP Excessive Use:**

Please contact the Overdraft Department using the information on the back of this booklet if you: (1) do not believe that you will be able to bring your account to a positive end-of-day balance within the 35 day time period; (2) find that you are using Overdraft Protection (ODP) more often than you intend; or (3) don't understand why your account becomes overdrawn. We would like to discuss your situation with you.

Following regulatory guidance, we will contact you if you are paying multiple ODP fees (i.e., more than 6 fees in a rolling 12-month period), to discuss possible alternatives to ODP that may better meet your short-term credit needs. In the event you ask us to stop contacting you because you have determined ODP is appropriate for your needs, we will honor your wishes. However, if we identify that the number and frequency of overdrafts increases materially for an extended period of time at some point after that, we may contact you again to ensure ODP is still the most appropriate option available to you for covering your short term credit needs.

**Optional Overdraft Protection Services:**

City Bank offers optional overdraft protection products/services that you may apply for. We offer sweep accounts, which link your checking to another account at City Bank (please note that each transfer is subject to an Overdraft Protection Transfer fee, as set forth in your Fee Schedule) or overdraft protection from a line of credit (subject to credit approval and the terms and conditions of the line of credit agreement) to cover any transactions that would otherwise overdraw your account. These services may be less expensive than ODP.

**Removal of ODP:**

ODP may be removed from any account at any time without prior notice or cause. Some common reasons ODP would be removed from an account are:

- The account has been overdrawn for 35 or more consecutive days;
- The account is enrolled in ODP Plus or a Fresh Start repayment plan;
- The account is subject to a restrictive hold (for example garnishment, liens, etc.)
- The account is dormant, has a bad address, has been charged off, or the account holder is deceased in bankruptcy, or there is a risk of fraud; or
- Based on safety and soundness concerns, if there is a history of potential chronic or excessive use of ODP, or you are in default of your obligations to City Bank.

**If You Need Help:**

Of course, overdrafts should never be used to finance ordinary or routine expenses - and you should never rely on overdrafts to cover these expenses. If at any time you feel you need help with your financial

obligations please contact customer service at 1 (800) 687-2265. You may also go to the Federal Trade Commission's (FTC) Choosing a Credit Counselor website <https://consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0040-choosing-a-credit-counselor.pdf>. For additional education or information, please visit [city.bank](https://www.citybank.com) to review our Checking Navigator tool.

**Always a Discretionary Service:**

City Bank's Overdraft Protection Service (ODP)\* does not constitute an actual or implied agreement between you and City Bank. Nor does it constitute an actual or implied obligation of City Bank. This service represents a purely discretionary courtesy or privilege that City Bank may provide to you from time to time and which may be withdrawn or withheld by City Bank at any time without prior notice or reason or cause.

**INVESTMENT SWEEP ACCOUNT**

The Investment Sweep Account combines a business checking account with the ease of automatically investing excess cash in an interest-bearing account. This account will be set up as a Commercial Checking on Account Analysis.

**How to Get Started**

- Step 1:** Contact your banker to set up a City Bank Investment Sweep Account or to convert an existing conventional checking account.
- Step 2:** Plan to meet your objectives. Your City Bank banker will work with you to confirm the ideal target balance that you need to manage your daily business, and any excess cash will be automatically swept into the sweep account.
- Step 3:** Deposit cash and start earning interest on your excess balances automatically.
- Step 4:** Enjoy the convenience of earning more interest on your cash. In most cases, the automatic sweep begins the same day you make your initial deposit.

**FUNDS AVAILABILITY DISCLOSURE**

**Your Ability to Withdraw Funds:**

This policy statement applies to "transaction" accounts. Transaction accounts, in general, are accounts which permit an unlimited number of payments to third persons and an unlimited number of telephone and preauthorized transfers to other accounts of yours with us. Checking accounts are the most common transaction accounts. Feel free to ask us whether any of your other accounts might also be under this policy.

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

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit. An item may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item.

**When Your Deposit is Received:**

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

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

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

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

**Deposits and Transfers made through a City Bank ATM:  
Self-service Deposits and Transfers**

- Deposits and Transfers made through a City Bank ATM prior to 6:00 p.m. Central Time on a business day will post to the account the same day.
- Deposits and Transfers made through a City Bank ATM after 6:00 p.m. Central Time on a business day will post to the account the next business day.

\*Overdraft Protection (ODP) is subject to approval. Some restrictions do apply.

<sup>1</sup>All fees subject to sales tax in New Mexico.

## Teller-assisted Deposits and Transfers

- Deposits and Transfers made via a virtual teller (assisted transaction) through a City Bank ATM prior to 6:00 p.m. Central Time on a business day will post to the account the same day.
- Deposits and Transfers made via a virtual teller (assisted transaction) through a City Bank ATM after 6:00 p.m. Central Time on a business day will post to the account the next business day.

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

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw funds until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

## Longer Delays May Apply:

**Case-By-Case Delays.** In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$275 of your deposits, however, may be available on the first business day.

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

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

- We believe a check you deposit may not be paid.
- You deposit checks totaling more than \$6,725 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

## Special Rules for New Accounts:

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

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$6,725 of the day's total deposits of cashier's, certified, teller's, traveler's and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the check must be payable to you (and you may have to use a special deposit slip). The excess over \$6,725 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$6,725 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available no later than the ninth business day after the day of your deposit.

## Non-Transaction Account Holds:

IRA's, CD's, Savings and Money Market accounts are subject to a 7 business day hold of any or all of the amount deposited.

## International ACH Transactions (IAT):

An International ACH Transaction is an Automatic Clearing House (ACH) entry that is part of a payment or deposit transaction involving a bank that is not located in the territorial jurisdiction of the United States.

All banks that **receive** ACH transactions are required to meet Office of Foreign Assets Control (OFAC) compliance obligations when handling IAT transactions. Due to the requirements of OFAC, from time to time it may be necessary to temporarily stop the processing of a credit or debit transaction. Greater scrutiny or verification against the Specially Designated Nationals (SDN) list may affect settlement and/or availability.

# DIGITAL AND ONLINE BANKING SERVICES

To enroll please see a Customer Service Representative at one of our locations.

## BUSINESS DEBIT CARD

### How It Works

The City Bank Business Debit Card gives business account holders access to funds from their business checking accounts. Cardholders can make purchases at any of the over 12 million locations MasterCard® is accepted. The amount of the purchases will be automatically deducted from the primary business checking account.

### Multiple Cards

The Financial Institution will provide one Business Debit card for those individuals designated as Authorized Signers on the business account.

The following is the Agreement between City Bank ("Financial Institution") and the business, partnership, corporation, sole proprietor, or non-profit organization ("the Company" "you" or "your") named on the designated Account covering the Business Debit Card(s). In this Agreement, the words "you" and "your" mean each person who serves as an Authorized Signer to the designated Account. The words "we" and "us" mean the Financial Institution.

1. **Designated Accounts** The Company shall establish and maintain at the Financial Institution a Commercial Checking Account, Small Business Checking Account or Commercial Interest Checking Account (the "Account").
2. **Agreement** By signing, using or allowing someone else to use your Card(s) or use an electronic fund transfer service, you agree to the terms and conditions contained in this Agreement. If you do not agree to the terms of the Agreement, you should immediately cut in half all Card(s) and return them to the address listed in this Agreement. You will be responsible for any use of the Card(s) pursuant to the terms of this agreement prior to the receipt of your Cards(s) by the Financial Institution.
3. **Authorization** The Company authorizes the Financial Institution to debit the Account for any fees<sup>1</sup>, and/or for money disbursed or transferred in connection with Card Transactions as hereinafter provided for in this agreement.
4. **Use of Card** The Financial Institution will provide one Business Debit card for those individuals designated as Authorized Signers on the Account. Each Cardholder will be responsible for selecting a Personal Identification Number (PIN) for their Card if not otherwise provided. Cards may only be used by Authorized Signers to accomplish certain transactions that would result in a withdrawal and/or demand upon the Account. The following transactions are permissible under this Section 4 and shall be hereinafter collectively referred to as "Card Transactions."
  - a) **ATM** Subject to such limitations as may be established from time to time by the Financial Institution and/or the Company, the Account may be accessed by Representatives through the Financial Institution's or other institution's Automated Teller Machines ("ATM") to:
    - Make balance inquiries regarding the Account;
    - Make withdrawals from the Account;
    - Make transfers between Accounts designated by the Financial Institution and selected by you on the ATM application (Financial Institution ATMs only); and
    - Engage in such other transactions added from time to time by the Financial Institution to the foregoing services.

The use of your Card(s) to withdraw money from an ATM will constitute a simultaneous withdrawal from and/or demand upon your Account. As a security procedure, you agree to require both a card and a PIN to be used together to obtain cash at designated ATMs.

<sup>1</sup>All fees subject to sales tax in New Mexico.

- b) **Point of Sale ("POS")** You may use your Card(s) to pay for goods and services at retail locations displaying the MasterCard® symbol. We shall charge against your Account all purchases and all withdrawals made with your Card(s). The use of your Card(s) to purchase goods and services will constitute a simultaneous withdrawal from and/or demand upon your Account. You cannot place a stop payment on any transaction made with your Card(s). If you use your Card and a dispute arises with the merchant, you agree to make a good faith effort to resolve the dispute with the merchant. If you cannot resolve the dispute satisfactorily, we will assist you in your effort to resolve such dispute.

You agree that all Card Transactions performed on the Account(s) will be for business purposes only and not for personal, family, or household purposes. You further acknowledge and agree that the Card(s) shall not be treated as a consumer card under provisions of state and/or federal law. You agree to provide written instructions to all Representatives that the Card(s) shall not be used for consumer purposes.

5. **Transaction Limits** Unless otherwise restricted, a Representative may use the Card(s) at ATM's to withdraw cash from your Accounts, up to the amount of your "Available" balance, not exceeding \$505.00 per day, per Card. The "Available" balance" is your current "Ledger" balance minus any withdrawals, plus any transfers or credits made to your Accounts. Representatives may use the Card up to the amount of your "Available" balance, not exceeding \$1,500 for Point of Sale purchases per day from an Account. No representative may use a Card for a transaction that would cause the outstanding balance of an Account to fall below zero (except in the instance of Overdraft Protection utilization, as described above in the Overdraft Protection service section), or transfer money to or from an Account which the Company does not have.

The Financial Institution may impose additional restrictions on any Representative if the Financial Institution deems such restrictions are necessary to safeguard the Card(s) against misuse or if the Company or any of its Representatives have failed to follow proper procedures.

6. **Liability for Authorized Use** If you withdraw, inadvertently or otherwise, cash from your Account, resulting in a transaction that overdraws your "Ledger" balance, you become liable to us in the amount of the excess plus the amount of any Return Item/Overdraft Paid fee as described above regarding the Bank's Overdraft Protection service<sup>1</sup>. You will use the Card(s) in accordance with the information provided with your Card(s) and will be responsible for authorized use of the Card(s).

Your use or use by anyone with authority, implied or apparent, or for your benefit, constitutes an authorized use. When you receive your Card(s), sign your name in ink on the signature panel.

The use of your PIN together with your Card(s) and signature is intended to prevent your Card(s) from being improperly used and constitutes a security procedure. In order to protect this security, do not write your PIN on your Card(s) or keep your PIN close to your Card(s). You should not tell your PIN to anyone.

7. **Unauthorized Use** The Company is responsible for ensuring that all Cards are used only by Representatives, and for the confidentiality and security of all PINs. The Company shall only be responsible for authorized use of the Cards and PIN numbers. The Company shall promptly notify the Financial Institution (within 30 calendar days of the mailing date of the first statement showing any unauthorized transactions) if it or any Representative believes that any Card has been lost or stolen, or if the PIN has been disclosed to an unauthorized party. After receipt of such notice, the Financial Institution shall promptly void the use of any such Card.

The Financial Institution may require the Company to confirm the complaint in writing. If the Company properly notifies the Financial Institution within the designated time frame, then the Company shall have zero liability for such unauthorized transactions. The Financial Institution will provisionally re-credit Company's account within ten (10) business days.

8. **Limitation of Liability** The Financial Institution makes no representations, warranties or guarantees, expressed or implied, concerning the operations of the Financial Institution's electronic banking system in any portion of this Agreement. In performing the services in this Agreement, the Financial Institution shall not be liable or responsible for any errors, delays, equipment malfunctions or any other acts or omissions unless you prove that such events were caused by our willful misconduct or gross negligence and caused you actual losses. Without limiting the foregoing, the Financial Institution shall not be liable or responsible for delays or errors occurring by reason or circumstance beyond its control. In no event will the Financial Institution be liable for any subsequent or consequential loss or damage, incidental loss or damage, or for lost profits. In any event actual damages shall not exceed an amount equal to the total fees and charges paid by the Company to the Financial Institution relating to the services provided herein during the twelve (12) month period immediately preceding the event giving rise to the Financial Institution's liability.

9. **MasterCard Liability** A cardholder will not be liable for an unauthorized transaction, signature or PIN-based, as long as the cardholder has exercised reasonable care in safeguarding the card from risk of loss or theft, and, upon becoming aware, promptly reporting the loss or theft to the issuer.

If any of these conditions are not met, you may be liable for the transaction. "Unauthorized use" means the use of your debit card by a person, other than you, who does not have actual, implied, or apparent authority for such use, and from which you receive no benefit.

In the event an investigation by the Financial Institution finds substantial evidence that a Cardholder or Representative was grossly negligent in the handling of the Card or the Account, liability may be re-imposed.

10. **No Warrant Regarding Goods and Services** The Financial Institution makes no guarantee for the quality, safety, legality or any other aspect of any goods or services purchased by the Company. The Financial Institution is also not responsible for the delivery of such goods or services to the Company.
11. **Card Fees** The Company agrees to pay fees<sup>1</sup> to the Financial Institution as set forth in the Financial Institution's Schedule of Fees and such other fees<sup>1</sup> as may be established from time to time by the Financial Institution. The financial Institution reserves the right to make future changes in the Account and/or Card(s) service charges, subject to our giving you notice as required by law.

The Company shall be liable to the Financial Institution for any Return Item/Overdraft Paid fee<sup>1</sup> accrued on the Account through the use of the Card. The amount shall be no less than \$33.00 and is subject to change at the Financial Institution's discretion, with proper notice to you as required by law. Return Item/Overdraft Paid fees<sup>1</sup> shall be charged against the Account for each Card transaction that overdraws the Ledger Balance of the Account at the time each Card transaction posts or settles to your account.<sup>1</sup>

12. **Cancellation** We are not, under any circumstances, obligated to reissue a lost or stolen Card(s). We may, without prior notice, cancel or invalidate your Card(s) at any time, and may at our option, cancel this Agreement. Cancellation of the Agreement shall not affect the Company's obligations herein for transactions completed with a Card and PIN, even if such transactions are completed after such termination. If you or the Financial Institution cancel your Card(s), you remain liable for whatever you owe us as a result of the use of your Card(s). You may cancel your Card(s) by cutting all Card(s) in half and returning the pieces to us at the address set forth in the Agreement. If you close all of your Accounts with us, which are accessible by the Card(s), you agree to return the Card(s) to us at the address set forth in this Agreement.

13. **Records and Statements** You should retain copies of all records including receipts, credit slips (for returned merchandise), and cancellation numbers (for cancelled reservations resulting from the use of the Card(s). You should also mark each transaction in your account record. You will get a monthly account statement from us for your business account that will also include a record of transactions made using your Card(s). You should review your periodic statement for accuracy and compare your account record against your periodic statement to reconcile balances.
14. **Error Resolution** You agree to examine your receipts and periodic statements using ordinary care and to report any errors or problems to us within a reasonable time. You agree that the time to examine your statement and report to us will depend on the circumstances, but will not, in any circumstances, exceed a total of 30 days from when the statement containing the error or problem was first mailed or made available to you. If you do not report within 30 days, we will be entitled to treat such information as correct and you will be precluded from asserting otherwise.
15. **Disclosure of Account Information to Third Parties** We will disclose information to third parties about your Account or transfers you make:
- Where it is necessary for completing transfer;
  - In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant;
  - In order to comply with government agency or court orders;
  - If you give us your written permission.
16. **Assignment** The Company may not assign any of its rights in part or in whole under this Agreement without the Financial Institution's written consent which may be withheld for any reason. The Financial Institution reserves the right to assign this Agreement and to delegate any of its functions hereunder.
17. **Notices** Any notice required to be given or provided in writing under this Agreement shall be delivered by certified mail, return receipt requested, to the Financial Institution at: 5219 City Bank Parkway, Lubbock, Texas 79407. The Company may also notify the Financial Institution via phone by calling 806-792-7101 or 1-800-687-2265.
18. **Expenses Incurred in Collection** If the Financial Institution brings suit against the Company or Representatives or takes other actions to enforce this Agreement, the Company shall pay the Financial Institution's costs and expenses and attorney's fees.
19. **Change of Terms** The Financial Institution may change the terms of this Agreement at any time in order to comply with applicable laws, regulations and rules and/or any other reason. Such amendments shall become effective immediately upon written notice to the Company. Other amendments may be made by the Financial Institution for any other reason and shall become effective upon thirty (30) day written notice to the Company.
20. **Terms** The section headings in this Agreement are for convenience only and do not in any way limit or otherwise define the rights and liabilities of the parties. In the event of any inconsistency between the provisions of this Agreement and applicable federal or state law, this Agreement will be deemed modified to the extent necessary to eliminate the inconsistency. No waiver of any right or obligation hereunder by either party on any occasion shall be deemed to operate as a waiver on any subsequent occasion.
21. **Applicable Law** The validity, construction and enforcement of this Agreement, and all matters arising out of the issuance and use of the Card(s) and electronic fund transfers, shall be governed by the applicable State Law to the extent not preempted by federal law. Normal banking customs and practices shall also apply and be used to construe this Agreement and the use of the Card(s) hereunder. We may amend this Agreement at any time. Notice of such changes will be given to you as required by law. To the extent any use of your Card(s) constitutes a "Funds Transfer" under Article 4A of the Uniform Commercial Code, and/or this Agreement conflicts with our Deposit Agreement with you, this Agreement controls. Except as provided in the preceding sentence, our Deposit Agreement shall apply, including the provisions on Funds Transfer.
22. **Foreign ATM/Debit Transactions** In order to use your debit card for international purchases, you must notify City Bank, prior to use, for authorization. This includes purchases made in person, by phone, online or by any other means. City Bank requests prior business day notification to ensure proper usage. You may be charged a foreign transaction fee. You may also be charged a currency conversion (CC) fee and/or Cross Border fee (MC) for any debit card point of sale transaction or ATM transaction.
23. **MasterCard Automatic Billing Updater** MasterCard's Automatic Billing Updater (ABU) is a service participating merchants can use to retrieve cardholder account changes, like new debit or credit card numbers, to ensure as little disruption as possible for your card-on-file transactions and recurring payments. City Bank debit cards are automatically enrolled. Opt out is available by calling 1-800-687-2265 or visiting your local branch. ABU only updates participating merchants and may not update all recurring payments.
24. **Important Information Regarding "Decoupled" Debit Cards** Decoupled debit cards are debit cards offered or issued by an institution or merchant other than us, and can take the form of either physical cards or virtual cards provided to you by the separate institution or merchant decoupled debit card issuer. As part of the issuing process, you provide the decoupled debit card issuer with the information it needs to link the decoupled debit card to your account with us. Once this is done, you can typically use the decoupled debit card as you would any other debit card. Importantly, however, while transactions initiated with these decoupled debit cards may originate as debit card transactions paid by the card issuer, we receive and process them as ACH transactions. Additionally, you need to refer to your agreement with the decoupled debit card issuer to understand the terms of use for that card. Thus, when our documentation refers to "debit cards," "everyday debit card transactions," or "one-time debit card transactions," we are referring to debit cards issued by us, not decoupled debit cards issued by other institutions or merchants. Different payment types can use different processing systems and some may take more or less time to post. Knowing which card you are using and how the transaction is processed can help you manage your finances, including helping you to avoid Overdraft Paid or Return Item fees. In addition, if you believe a decoupled debit card transaction is fraudulent or unauthorized, you should contact the decoupled debit card issuer in addition to contacting us. We will work with the decoupled debit card issuer to investigate and resolve transactions you claim are fraudulent or unauthorized.

## ATM/DEBIT CARD SAFETY TIPS

Customers should always use good judgment and be conscious of their surroundings when using an ATM. These tips are helpful suggestions, but the best advice is simply not to use an ATM if you feel uncomfortable in doing so. ATMs provide convenience, but they haven't replaced the bank teller. If you prefer, conduct your business in the bank lobby. For security reasons, your debit card will be cancelled after one year of inactivity. (HSA cards are exempt from this policy). Debit cards are safe and secure. Use yours today!

### Protecting your ATM and Debit Card:

Always protect your ATM or Debit Card and keep it in a safe place, just like you would cash, credit cards, or checks. If your Debit Card has an embedded chip, you should keep your Debit Card in a safety envelope to avoid undetected/unauthorized scanning.

Do not leave your ATM or Debit Card lying around the house or on your desk at work. No one should have access to the card but you. Notify City Bank immediately if it is lost or stolen.

Do not expose your card's magnetic stripe to magnetic objects.

Report a lost or stolen card immediately to City Bank. This will reduce the chance that it will be used for the wrong reasons. Prompt notice to the bank will limit your liability for unauthorized transactions.

Contact the bank if you notice any suspicious or unauthorized ATM or Debit Card transactions on your monthly statement or online banking.

### Using an ATM:

Be aware of your surroundings and exercise caution when withdrawing funds, particularly at night. If you observe or sense suspicious persons or circumstances, do not use the machine and leave the area immediately.

Inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or your personal identification number.

Have your ATM or Debit Card ready and in your hand as you approach the ATM to reduce the time spent at the ATM. Make sure that no one can see you enter your PIN number. Use your body to "shield" the ATM keyboard as you enter your PIN into the ATM.

To keep your account information confidential, always take your receipts or transaction records with you.

Be cautious of counting or visually displaying any money you received from the ATM. Immediately put your money into your pocket or purse and count it later. Wait to count cash until you are in the safety of a locked enclosure, such as a car or home.

### Special Precautions for Using an ATM at Night:

Park close to the ATM in a well-lit area. If the lights at the ATM are not working, do not use it. Take another person with you if possible. If shrubbery is overgrown or a tree blocks the view, select another ATM. If this occurs at one of our ATM's, please let us know about it.

### Drive-up ATM Security:

If you are using a drive-up ATM, be sure passenger windows are rolled up and all doors are locked. If you leave your car and walk to the ATM, lock your car. If there is a line at the ATM, always leave enough room between vehicles to allow for a quick exit should it become necessary.

Minimize the time spent at the ATM. Before rolling down the window to use an ATM, observe the entire area. Cancel your transaction and drive away immediately if anyone or anything looks suspicious. If anyone appears to follow you after making an ATM transaction, drive immediately to a well lit, crowded area and call the police.

### Point-of-Sale (POS) Security:

Never allow a cashier or any other person to enter your PIN for you, even if they are helping you with the transaction.

When using a POS terminal, block the view of others when using your PIN. Make sure the transaction is complete and look at your receipt before leaving. If you receive cash back from a transaction, always secure it before leaving the area.

When using an outdoor POS terminal such as a gas station, observe your surroundings before making a transaction. Leave the area immediately if anyone or anything looks suspicious. It is always a good idea to take another person with you when using an outside POS terminal at night. If anyone appears to follow you after using a POS terminal, drive immediately to a well lit, crowded area and call the police.

### Online Security:

When making purchases online, be aware of the site you are visiting. If the website looks suspicious, do not complete the transaction. If you receive any unsolicited email requesting debit card or account information, do not reply and notify the bank immediately.

If making a purchase online with an access device, you should end the transaction by logging out of the website instead of just closing the web browser.

### Telephone Security:

Be cautious about giving information about your ATM card, Debit Card, or PIN over the telephone. Should you provide your card information to an untrusted source, contact City Bank immediately.

If you receive a call (supposedly from your bank or the police) wanting to verify your PIN, do not give that information. Notify the police immediately.

### ATM/Debit Card Crime:

These tips are meant to make you aware that although rare, ATM crime can happen. Preventing such a crime must be a cooperative effort between you and City Bank.

## PROTECT YOURSELF FROM IDENTITY THEFT & FRAUD ATTACKS

### Password Tips:

- Select passwords that are not obvious. Avoid using personal information as passwords, such as your last name or birthday. Also, avoid using the same user ID and password for multiple web sites.
- Do not write or post user IDs, passwords or other sensitive information.
- Remind your users to frequently change their passwords and not to share user IDs or passwords.
- Prevent unauthorized persons from using your computer by logging off or locking your workstation when you leave the area.

### Anti-Virus Software and Download Tips:

- Scan any software downloaded from the internet for viruses before installation.
- Ensure your computer's operating system and software is updated on a regular basis. Consult with your company's IT professional for assistance.
- Use anti-virus and anti-malware software, and keep the software up-to-date.

### Social Engineering:

In a social engineering attack, an attacker uses human interaction to manipulate a person into providing them information. People have a natural tendency to trust. Social engineering attacks attempt to exploit this tendency in order to steal your information. Once the information has been stolen it can be used to commit fraud or identity theft.

Criminals use a variety of social engineering attacks to attempt to steal information, including:

- Website Spoofing
- Phishing

SCHEDULE OF FEES:

The following fees may be assessed against your account and the following transaction limitations, if any, apply to your account. All fees are per item, per presentment, unless otherwise noted.

|                                                                                                            |                                                                             |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Telephone transfer from one account to another                                                             | \$5.00                                                                      |
| Overdraft protection transfer fee                                                                          | \$5.00 (per transfer)                                                       |
| Paper statements                                                                                           | \$5.00 (per statement)                                                      |
| Automatic transfer fee                                                                                     | \$5.00 (per sweep)                                                          |
| Early closing fee (closed within 90 days of opening)                                                       | \$25.00                                                                     |
| Nonsufficient items (NSF) paid or returned <sup>1</sup>                                                    |                                                                             |
| Overdraft Paid Fee - ODP <sup>1</sup>                                                                      | \$33.00 (per item)**                                                        |
| Overdraft Paid Fee - NSF <sup>1</sup>                                                                      | \$33.00 (per item)**                                                        |
| Return Item Fee <sup>1</sup>                                                                               | \$33.00 (per item)**                                                        |
| Account research                                                                                           | Various                                                                     |
| Emailed is \$5.00 per statement, not to exceed \$200.00 per account.                                       |                                                                             |
| Emailed \$5.00 flat fee for credits & debits at \$2.00 per page, not to exceed \$200.00 per account.       |                                                                             |
| Printed is \$25.00 per statement, not to exceed \$200.00 per account.                                      |                                                                             |
| Printed is \$25.00 flat fee for credits and debits at \$5.00 per page, not to exceed \$200.00 per account. |                                                                             |
| Account balancing assistance (\$30.00 minimum)                                                             | \$30.00/hour                                                                |
| Stop payments (all items)                                                                                  | \$33.00                                                                     |
| Declaration of loss for cashiers check                                                                     | \$50.00                                                                     |
| Cash withdrawal from ATMs we do not operate (SVC CHG) <sup>2</sup>                                         | \$2.50                                                                      |
| Balance inquiry at ATMs we do not operate (SVC CHG) <sup>2</sup>                                           | \$2.50                                                                      |
| Debit/ATM card (Replacement)                                                                               | \$10.00                                                                     |
| Debit Card Rush Fee (priority mail)                                                                        | \$25.00                                                                     |
| Debit Card Rush Fee (overnight)                                                                            | \$100.00                                                                    |
| Outgoing domestic wire transfers                                                                           | \$30.00                                                                     |
| Incoming domestic wire transfers                                                                           | \$15.00                                                                     |
| Incoming international wire transfers                                                                      | \$26.00                                                                     |
| Outgoing international wire transfers                                                                      |                                                                             |
| Consumer                                                                                                   | \$150.00                                                                    |
| Commercial                                                                                                 | \$150.00                                                                    |
| Check Printing (fee depends on style of check)                                                             | 1 personal style available<br>at no charge                                  |
| Cashier's checks                                                                                           | \$6.50                                                                      |
| Collections                                                                                                | \$30.00                                                                     |
| Foreign currency exchange purchase                                                                         | \$35.00                                                                     |
| Foreign currency exchange return processing                                                                | \$50.00                                                                     |
| Photocopies/fax                                                                                            | \$1.00 per page                                                             |
| Loose coins                                                                                                | \$5.00 or 1% of total<br>whichever is greater                               |
| Safe deposit boxes available upon request <sup>3</sup>                                                     |                                                                             |
| Key deposit                                                                                                | \$20.00                                                                     |
| Freezes/Garnishments/Levies                                                                                | \$100.00/each occurrence/<br>each account plus any<br>reasonable legal fees |
| Gift card fee <sup>4</sup>                                                                                 | \$5.00                                                                      |
| Foreign check processing                                                                                   |                                                                             |
| Canada                                                                                                     | \$15.00/check                                                               |
| Europe, Australia, Great Britain                                                                           | \$20.00/check                                                               |
| All others (depending on the country)                                                                      | \$30.00 or \$90.00/check                                                    |
| Please feel free to ask for a list of countries                                                            |                                                                             |
| International debit card transaction fee <sup>5</sup>                                                      | 3%                                                                          |
| Mail-In Deposit                                                                                            | \$5.00                                                                      |
| Payroll Card Fee                                                                                           | \$6.50                                                                      |

COMMERCIAL ACCOUNT ANALYSIS FEE SCHEDULE

| SERVICES                                                                                                                                                                                                                                                                   | CHARGES       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| COLLECTION SERVICES                                                                                                                                                                                                                                                        |               |
| Deposits                                                                                                                                                                                                                                                                   | \$0.50        |
| Deposited Items                                                                                                                                                                                                                                                            | \$0.16        |
| Items On Us And Other Local Banks                                                                                                                                                                                                                                          | \$0.07        |
| Items On Regional Settlement Centers                                                                                                                                                                                                                                       | \$0.08        |
| Collection Items                                                                                                                                                                                                                                                           | \$30.00       |
| PAYMENTS                                                                                                                                                                                                                                                                   |               |
| Checks Paid                                                                                                                                                                                                                                                                | \$0.26        |
| Outgoing Wire Transfer-Domestic                                                                                                                                                                                                                                            | \$30.00       |
| Outgoing Wire Transfer-International                                                                                                                                                                                                                                       | \$150.00      |
| Incoming Wire Transfer-Domestic                                                                                                                                                                                                                                            | \$15.00       |
| Incoming Wire Transfer-International                                                                                                                                                                                                                                       | \$26.00       |
| Payroll Card Fee                                                                                                                                                                                                                                                           | \$6.50        |
| OTHER SERVICES                                                                                                                                                                                                                                                             |               |
| Account Maintenance (Monthly)                                                                                                                                                                                                                                              | \$26.00       |
| Rolled Coins (per roll)                                                                                                                                                                                                                                                    | \$0.10        |
| Strapped Currency (per \$1,000)                                                                                                                                                                                                                                            | \$0.25/strap  |
| Locked Bags                                                                                                                                                                                                                                                                | \$35.00/bag   |
| Night Drop Keys                                                                                                                                                                                                                                                            | \$13.00/key   |
| Overdrawn Balance Charge                                                                                                                                                                                                                                                   | 12% per annum |
| Stop Payment                                                                                                                                                                                                                                                               | \$33.00       |
| Cashier's Check Fee                                                                                                                                                                                                                                                        | \$6.50        |
| EARNING CREDIT RATE                                                                                                                                                                                                                                                        |               |
| The earnings rate applies to the net investable balance will be based on the monthly average federal funds rate.<br>All fees subject to sales tax in New Mexico. Treasury Solutions provides a tailored fee schedule for customers utilizing treasury management products. |               |

\* Overdraft Paid and Return Item Fees apply to overdrafts and non-sufficient funds items created by check, in person withdrawal, ATM withdrawal, one-time debit card transactions, or other electronic means.

\*\* Please be aware that an item may be presented multiple times by the merchant or other payee until it is paid, and that we do not monitor or control the number of times an item is presented for payment. It is the policy of the Bank to endeavor to only charge one Return Item or Overdraft Paid Fee per each item, regardless of the number of times the item is presented for payment. Be aware, however, that the Bank does not control how an item is presented for payment and a merchant or other payee may present an item in a manner that does not allow the Bank's processing system to identify that it is a re-presented item that has previously been assessed a Return Item Fee. If the Bank's processing system cannot identify that an item has been re-presented for payment, you understand and agree that you may be inadvertently charged additional Return Item or Overdraft Paid Fees if the item is presented for payment multiple times. In that event, you understand and agree that you must contact the Bank to identify the fees attributable to the same item being re-presented for payment and the Bank will refund any such fees to your account.

<sup>1</sup> There is no limit on the number of Overdraft Paid and Returned Item Fees that can be charged to your account. No Overdraft Paid Fee will be assessed for any item(s) which causes the account to be overdrawn for less than \$50 (negative balance of -\$50 or less) on any one business day. No Returned Item Fee will be assessed for any items returned where the account has a negative balance of less than \$50 at the time of presentment.

<sup>2</sup> Not responsible for ATM terminal owner imposed fees.

<sup>3</sup> Not FDIC Insured. Price based upon size and availability.

<sup>4</sup> Additional fees may be assessed if card is not used.

<sup>5</sup> Fees will vary based on currency used within country.

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Fees may not apply to all account types. All fees subject to sales tax in New Mexico.



*City Bank*

5219 City Bank Parkway  
Lubbock, TX 79407  
800 Our Bank (800 687 2265)

city.bank

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