



## COMMERCIAL ONLINE BANKING E-SIGN AGREEMENT AND DISCLOSURE TO ELECTRONIC DELIVERY

This E-Sign Disclosure and Agreement to Electronic Delivery (this “Agreement”) applies to all legal and regulatory disclosures and communications we may provide related to your eligible Accounts as well as products and services accessible through firstbankchicago.com and for which you elect to receive delivery from us in electronic form in lieu of receiving such disclosure or communication in writing, in the mail. Our Commercial Online Banking Service (the “Service”) was designed and built to provide records to you in electronic form. You cannot enroll in the Service online without agreeing to receive the Commercial Online Banking Agreement and other disclosures delivered through the Commercial Online Banking Service in electronic form.

If you consent, we may also provide other disclosures in an electronic format. These disclosures may include but are not limited to the following:

- Updates or Amendments to our Commercial Online Banking Agreement;
- Monthly account statements;
- Notice of change in account terms;
- Notice of fee changes;
- Responses to any questions you may have about electronic funds transfers;
- Privacy and security notices; and
- Other information related to your accounts with us.

Accounts may include, but are not limited to, Deposit Accounts (such as Business checking, money market and savings accounts), Safe Deposit Box Accounts and Loan Accounts.

The terms “we,” “us,” “our,” and “Bank” refer to First Bank Chicago. The terms “you” and “your” refer to each person, entity, Account owner(s) or authorized signer(s) identified on your Account. The term “Account” means the account(s) you have with us now or in the future. “Electronic Communication(s)” refers to the electronic transmission of any disclosure or communication related to your Account and/or any product or service that we are required by law to provide to you in writing.

### 1. **Scope of Communication to Be Provided in Electronic Form**

When you give your affirmative consent to receive Electronic Communications, you may receive disclosures and communications for all Account(s), products, and services electronically in lieu of receiving

that information in paper format, in the mail. Electronic Communications may change from time to time. Your consent to receive Electronic Communications applies to all customer agreements or amendments thereto, including, but not limited to, agreements and amendments containing information we are required by law to provide to you in writing.

We will always post our most current Commercial Online Banking Agreement and Disclosure on our website.

You may download or print all electronic notices and disclosures from your computer if you have the hardware and software described in the section entitled "Computer Requirements" below. You can also save copies of electronic notices and disclosures to your hard drive or other media for viewing and printing at a later time.

The Bank reserves the right to make additional types of Electronic Communications available to you.

## **2. Electronic Delivery No Longer Available**

The Bank reserves the right to discontinue providing any Electronic Communication in electronic form at any time. If an Electronic Communication will no longer be available, you may request a paper copy. We will notify you of any such change as required by law.

## **3. Change in Terms and Termination of Agreement**

The Bank reserves the right, in its sole discretion, to change the terms and conditions of this Agreement at any time, or to discontinue the provision of Electronic Communications. We will provide you with notice of any such change or termination as required by law.

## **4. Method of Providing Electronic Communications to You**

The Bank may deliver Electronic Communications to you by any of the following methods: (a) by posting a notice and making the information available to you through the Service; (b) by sending the information to an email address you have provided to the Bank; or (c) by sending the information to a wireless device you have designated; or (d) to the extent permissible by law, by access to a web site that the Bank will generally designate in advance for such purpose; (e) by requesting you download a Portable Document Format (.PDF) file containing the Electronic Communication; or (f) by any other electronic means we have mutually agreed upon. Delivery of Electronic Communications by any of these methods will be considered "in writing," and you intend that the Electronic Communications have the same legal effect as written and signed paper communications.

## **5. Right to Withdraw Consent**

You have the right to withdraw your consent to receive Electronic Communication for any of your Accounts. You may also withdraw consent by calling the Bank at 1-847-897-7600. At our option, we may treat your provision of an invalid email address, or the subsequent malfunction of a previously valid email address, as a withdrawal of consent to receive Electronic Communication. Any withdrawal of your consent to receive Electronic Communication will be effective only after we have a reasonable period of time to process your withdrawal. Your subsequent paper format Account statements and all other paper documents will be sent to the mailing address the Bank has on file for you.

If your Account type requires the receipt of Electronic Communication as a feature of the Account, and you subsequently opt to receive paper instead of Electronic Communication, we may, at our discretion, close your Account, or change your Account to a type that offers paper documents.

## **6. How to Update Your Records**

It is your responsibility to provide us with a true, accurate and complete email address, contact, and other information related to this Agreement and your Account(s), and to maintain and update promptly any changes in this information. You can update information, such as your email address, within the Online Banking System or by contacting the Bank at 1-847-897-7600. You must maintain a valid email address on file with the Bank as a condition of participating in Electronic Communication.

## **7. Computer Requirements**

Please refer to our website [www.firstbankchicago.com](http://www.firstbankchicago.com) for computer hardware and software specifications necessary to access Commercial Online Banking, process transactions, view, and retain Electronic Communication.

## **8. Requesting Paper Copies**

We will not send you a paper copy of any Electronic Communication unless you request it or we otherwise deem it appropriate to do so. You can obtain a paper copy of your Electronic Communication by printing it yourself or by requesting that we mail you a paper copy, provided that such request is made within a reasonable time after we first provided the Electronic Communication to you.

To request a paper copy, contact the Bank at 1-847-897-7600.

There are no fees or charges to access your Electronic Communications. We may charge you a reasonable service charge, of which we've provided you prior notice, for the delivery of paper copies of any Electronic Communication. We reserve the right, but assume no obligation (unless you request us), to provide a paper (instead of electronic) copy of any documentation that you have authorized us to provide

electronically.

**9. Communication in Writing**

All communication in either electronic or paper format from us to you will be considered “in writing.” You should print or download for your records a copy of this Agreement and any other Electronic Communication that is important to you.

**10. Legal Section**

You will ensure the confidentiality of your Commercial Online Banking password and you agree to indemnify, defend, and hold harmless the Bank and its successors, assigns, affiliates, officers, employees, directors, and agents against any loss, claims, damages, judgments, awards, legal obligations, costs or expenses, including without limitation, all fees, and expenses of the Bank’s counsel based upon, arising out of, or related in any way to your consent to receive Electronic Communication.

**11. Federal Law**

You acknowledge and agree that your consent to Electronic Communication is being provided in connection with a transaction that is subject to the federal Electronic Signature in Global and National Commerce Act, and that you and we both intend that the Act apply to the fullest extent possible to validate our ability to conduct business with you by electronic means.

**12. Consent Agreement**

You hereby give affirmative consent for Bank to provide Electronic Communications to you as described herein. You further agree that your computer complies with the hardware and software requirements specified above and that you have provided us with a current email address to which we may send Electronic Communications for you.

By selecting “Accept,” you agree that you have read, understand, and agree to the terms and conditions of this Agreement and you consent to receive Electronic Communications. If you do not agree to the terms and conditions of this Agreement, you must exit enrollment in Commercial Online Banking and must not select “Accept.”

## FBC Commercial Online Banking Agreement & Disclosures

	Page
1. APPLICABILITY .....	1
2. DEFINITIONS .....	1
3. RELATIONS TO OTHER AGREEMENTS .....	3
4. ELIGIBILITY .....	4
5. ONLINE BANKING SERVICES, TRANSFERS AND PAYMENTS .....	4
6. AUTHORIZATION ENROLLMENT FORMS .....	5
7. APPOINTMENT OF ADMINISTRATOR AND AUTHORIZED REPRESENTATIVES .....	5
8. RESTRICTIONS ON USE .....	7
9. SECURITY .....	8
10. COMMERCIAL ONLINE BANKING FEATURES .....	12
11. ACCESS REQUIREMENTS .....	30
12. WAIVER OF REQUIREMENT FOR TWO OR MORE SIGNATURES .....	31
13. TEXT MESSAGING .....	31
14. ERRORS AND QUESTIONS .....	31
15. SERVICE FEES AND ADDITIONAL CHARGES .....	32
16. NO OTHER USE .....	33
17. THIRD-PARTY SOFTWARE AND THIRD-PARTY CONTENT .....	33
18. DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES .....	35
19. TRANSACTION LIMITS .....	35
20. FAILED OR RETURNED TRANSACTIONS .....	36
21. ALTERATIONS AND AMENDMENTS .....	37
22. SERVICE TERMINATION, CANCELLATION, OR SUSPENSION .....	37
23. LINKING ACCOUNTS OF ADDITIONAL BUSINESSES .....	38
24. ELECTRONIC COMMUNICATIONS WITH FBC .....	39
25. REPRESENTATIONS, WARRANTIES AND LIABILITY .....	40
26. YOUR LIABILITY IN CASE OF LOSS, THEFT OR UNAUTHORIZED TRANSACTIONS .....	41
27. LIMITATIONS OF LIABILITY .....	43
28. INDEMNIFICATION .....	45
29. DOCUMENTATION OF TRANSACTIONS .....	45
30. VERIFICATION .....	46
31. BUSINESS DAYS AND CUT-OFF TIMES .....	46
32. GENERAL FUNDS TRANSFER PROVISIONS .....	46
33. CONFIDENTIAL INFORMATION AND PROPRIETARY DATA .....	46
34. NOTICES .....	47
35. AGENTS .....	48
36. AUTHORIZATION REPRESENTATION AND WARRANTY .....	48

37.	OVERDRAFT .....	48
38.	STATEMENTS OF REPRESENTATIVES .....	48
39.	ARBITRATION AND WAIVER OF JURY TRIAL .....	48
40.	OTHER AGREEMENTS .....	50
41.	WAIVERS .....	50
42.	ASSIGNMENT .....	50
43.	DATA CAPTURE .....	50
44.	CHANGE OF TERMS; ELECTRONIC DISCLOSURES .....	50
45.	NEW SERVICES .....	50
46.	APPLICABLE LAW .....	51
47.	ENTIRE AGREEMENT .....	51
48.	NO UNILATERAL ALTERATIONS TO THIS AGREEMENT OR ANY ENROLLMENT FORM BY YOU 51	
49.	AREA OF SERVICE .....	51
50.	INTERRUPTION IN SERVICES .....	52
51.	CONSTRUCTION OF DEFINED TERMS .....	52
52.	HEADINGS .....	52
53.	SEVERABILITY .....	52
54.	CONSENT TO THIS AGREEMENT .....	52

This Commercial Online Banking Agreement & Disclosures (the "Agreement") is entered into by and between the customer ("Customer," "Client," "you," or "your") and First Bank Chicago ("FBC," "Bank," "us," or "we"). The Agreement is provided to you here in electronic form. You should read the Agreement carefully because it is your legal agreement with us and it governs your use of the Bank's Commercial Online Banking Services ("Commercial Online Banking"). If you wish to have a hard copy of the Agreement, please print a copy by pressing or clicking on the print icon. After you have carefully read this Agreement, you will be asked to accept or decline the terms and conditions of this Agreement. By pressing or clicking on the "Accept" button on your computer screen, you are agreeing that you and anyone authorized by you are and will be bound by the terms and conditions of the Agreement both as it exists now and as it may be modified in the future. Future modifications may require reacceptance of our terms and conditions. We reserve the right to alter these terms and conditions from time to time. By pressing or clicking on the "Do Not Accept" button you will be returned to the Bank's website home page.

You understand that industry standards for online banking are dynamic and constantly developing. By consenting to the enrollment process, you acknowledge and understand that there are risks to online delivery of banking services, including but not limited to delay or failure of delivery due to technical difficulties, weather conditions, and matters beyond our reasonable control. You have considered the risk associated with online delivery of banking services and our security procedures, and you find that our security measures are commercially reasonable. By using Commercial Online Banking, you acknowledge and agree that you consider our security procedures to be commercially reasonable.

**1. APPLICABILITY**

Commercial Online Banking is the name for the online banking services offered by FBC to its business clients. Commercial Online Banking enables the Bank's business clients to perform various banking functions relating to their eligible accounts via the Internet. Access to Commercial Online Banking will be provided through the Bank's online banking system ("Online Banking System") or through software (the "Mobile App" or "App") designed for your computer, smartphone, tablet, or similar device. Our "Website" refers to all firstbankchicago.com websites and all other web pages maintained by us and accessible through firstbankchicago.com. It also includes any other website or web pages you can access only after you enter into this Agreement. It does not include any website that has its own separate agreement governing online access, or any other third-party website not hosted and/or maintained by FBC.

**2. DEFINITIONS**

The following terms and definitions apply when used in this Agreement:

**"Access Device"** means a personal computer or other device that meets the requirements for use with Commercial Online Banking and by which Commercial Online Banking is accessed.

**“Access ID”** means the user identification created for you and required to access Commercial Online Banking.

**“Administrator”** means that person approved by the account owner(s) who is authorized to add additional users and to designate activity limitations

**“Authorization”** means the form, an account owner will need to complete to request and/or make modifications to Commercial Online Banking.

**“Bill Pay”** means an optional Service that is a feature of Commercial Online Banking and Commercial Mobile Banking allowing a client to transfer money from their checking account to a creditor or vendor to be credited against a specific account or invoice. These payments are typically executed electronically or by check draft.

**“Business Day”** means Monday through Friday, except those days designated by the Federal Reserve Bank as holidays.

**“Commercial Online Banking”** means any of the Bank’s websites, Online Banking Services, Online Banking System, Mobile App (as each term is defined below) or other electronic method for accessing any of the Services as offered by Bank from time to time.

**“Business Account”** means (i) the primary business banking account(s) designated by you to be used with Commercial Online Banking (any such account being referred to herein as a “Business Account”), (ii) all other eligible accounts that are linked to your Business Account and used with Commercial Online Banking.

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

**“Future Dated Transfer”** means a funds transfer that will be initiated on a future day.

**“Password”** means a personal code created by you that will be used to obtain access to Commercial Online Banking. It can include numbers, letters and special characters.

**“Payee”** means any person or entity to which you direct a payment by use of Commercial Online Banking.

**“Positive Pay”** means an automated fraud detection tool for commercial accounts for both check and automated clearing house (“ACH”) transactions intended to protect against (1) altered, forged, and counterfeit checks by verifying the accuracy of the checks you have written to checks submitted to clear your account, and (2) fraudulent or unauthorized ACH transactions by allowing you to approve certain companies authorized to submit ACH debits to your commercial account.

**“Schedule of Fees”** means a listing of current fees as published from time to time by FBC and available at

[www.firstbankchicago.com](http://www.firstbankchicago.com).

**“User’s Guide”** means any instructional materials (as may be amended from time to time) provided for use with Commercial Online Banking.

**“We,” “us” “our” “Bank” and “FBC”** refers to First Bank Chicago and any agent, independent contractor, designee or assignee that First Bank Chicago may, at its sole discretion, involve in the provision of Commercial Online Banking.

**“You,” “Your”, “Yours”, “Client” and “Customer”** refers to (i) each and every person or entity who now or hereafter is an account holder with respect to a Business Account or has an interest therein; and (ii) each and every person or entity who now or hereafter subscribes to Commercial Online Banking or is a user authorized by you the Business Account(s) holder to access Commercial Online Banking.

### **3. RELATIONS TO OTHER AGREEMENTS**

The terms and conditions of this Agreement are in addition to, and shall supplement the terms, conditions, rules, and regulations that apply to any of your existing FBC accounts or services of FBC which you currently use. Without limiting the foregoing, this Agreement is in addition and supplemental to: a) any Account Agreement you have regarding any bank account(s) you have with FBC; b) the E-Sign Disclosure and Agreement to Electronic Delivery between you and us (such agreement is a condition to your access to and use of Commercial Online Banking offered hereunder); c) the Website Terms of Use, found at [firstbankchicago.com/terms of use](http://firstbankchicago.com/terms%20of%20use); d) the terms or instructions appearing on a screen when enrolling for, activating, accessing, or using any services in the Online Banking System or through a Mobile Device; e) our rules, procedures and policies, as amended from time to time, that apply to Commercial Online Banking; f) any then- current rules and regulations of any funds transfer system or payment system used in connection with any account you access through Bill Pay; and g) state and federal laws and regulations, as applicable. When you link one of your Business Accounts to Commercial Online Banking, the account disclosure and agreement that governs that account remains in full force and effect. However, as it relates to Commercial Online Banking, to the extent that there is a conflict or inconsistency between the provisions of this Agreement and the provisions of the agreement governing a business banking account, the provisions of this Agreement control, but only to the extent necessary to resolve the conflict or inconsistency, and are in addition to the provisions of those separate agreements governing each of your accounts. You should review each agreement governing your accounts for applicable fees, limitations on the number of transactions you can make, and other restrictions that might impact your use of an account within Commercial Online Banking. In the event of an inconsistency between a provision of this Agreement and the Illinois Commercial Code, or any other law or regulation which permits waiver or modification by agreement, the provisions of this Agreement shall prevail. The information you provide to FBC and its third-party service providers, including your personal information, is subject to the terms of FBC’s Privacy Policy, available at [firstbankchicago.com](http://firstbankchicago.com). By using

Commercial Online Banking, including, but not limited to, the Online Banking System, Mobile App, and Website, you represent that you have read, understood, and agreed to FBC's Privacy Policy.

#### **4. ELIGIBILITY**

You are only eligible to use Commercial Online Banking as long as you maintain one or more open and active Business Account(s) with FBC. Not all accounts are eligible for electronic transfers using Commercial Online Banking. You should consult your Treasury Advisor to determine which of your accounts are eligible.

#### **5. ONLINE BANKING SERVICES, TRANSFERS AND PAYMENTS**

Subject to the terms and conditions of this Agreement, you may use the Commercial Online Banking Service(s) we offer to you from time to time to access your Business Account(s) through the Online Banking System and Mobile App, perform authorized transactions through the Online Banking System or through your Mobile Device, and conduct the Online Banking Services contained in this Agreement. The available categories of eligible accounts and Online Banking Services are described on our Website and may change from time to time, at our sole option. Available transactions include obtaining balance information, transaction history, and other information as well as making one-time or recurring transfers.

To access your accounts and the Online Banking Services through the Online Banking System or Mobile App, you must have an Access ID and Password; and answer any other required additional informational questions or requests for information that Bank may require from time to time, in Bank's sole discretion, in connection with any additional authentication procedures that Bank may employ ("Additional Authentication Information" or "AAI"); and maintain the required hardware and software as specified on the Bank's website. You must also comply with any other security procedures and policies we may establish from time to time. Subject to the terms of this Agreement, you will generally be able to access your accounts and Online Banking Services through the Online Banking System and Mobile App seven days a week, 24 hours a day. At certain times, the Online Banking Services, Online Banking System, Mobile App, and Website may not be available due to system maintenance or circumstances beyond our control.

In some instances, balances and transaction history may only reflect activity conducted through the close of the previous Business Day. When we introduce new features or eliminate features, we will notify you using the procedures described in this Agreement (see section 45 New Services). You are solely responsible for acquiring and maintaining a computer or any other electronic device and equipment that can handle and access the Commercial Online Banking Service, and for all costs associated with accessing the same through the electronic device of your own choice (e.g., personal computer or Mobile Device). When you instruct FBC to transfer funds to or from your Business Account(s) through the Commercial Online Banking Services, you authorize FBC to withdraw the necessary funds from the Business Account you designate. As with any funds transfer request, whether or not utilizing Online Banking Services, you agree that you will instruct FBC to make

a withdrawal only when sufficient funds are or will be available (including any available overdraft protection amount you may have) in your designated Business Account at the time of withdrawal. FBC will not be obligated to act on any withdrawal instruction from you if sufficient funds, including overdraft limits, are not available in the account you designate.

## **6. AUTHORIZATION IMPLEMENTATION FORMS**

To use Commercial Online Banking, you must complete an Authorization evidencing your desire to access your Business Account(s), identifying the specific account(s) and authorized user(s) that you wish to have access to. The Authorization must be signed by an account holder or an authorized signer of each eligible account to be enrolled in Commercial Online Banking.

## **7. APPOINTMENT OF ADMINISTRATOR AND AUTHORIZED REPRESENTATIVES**

By accessing Commercial Online Banking, you agree that you have the right to provide us with instructions, make any decision, obtain any information or make any request associated with the account(s) and related Commercial Online Banking Services which are the subject hereof. By designating any individual as an Administrator or Authorized Representative through the Online Banking System, you agree that each Administrator or Authorized Representative will be acting as your agent and will be bound by this Agreement and any separate agreement governing your account(s). All transactions that an Administrator, Authorized Representative or fiduciary performs on an account(s) or through the Online Banking System, including those you did not want or intend, are transactions authorized by you. Such transactions include, but are not limited to, including, but not limited to, accessing E-Statements and transferring funds between your account(s) and any of the Administrator or Authorized Representative's accounts which may be linked within the Administrator or Authorized Representative's Online Banking Services Access ID. You are solely responsible for those transactions, and we are not responsible for them. You also agree that we are not responsible for any of your acts or omissions or any acts or omissions of your Administrator or Authorized Representatives or any fiduciary acting on your behalf.

### **a. Appointment of Administrator**

You are required to designate, as an administrator, a person who will be the primary contact for purposes of communicating with us regarding Commercial Online Banking (the "Administrator"). The Administrator must have the authority to determine individual(s) authorized to access and use Commercial Online Banking on your behalf ("Authorized Representative(s)"). The Administrator shall have separate user credentials, where required by Commercial Online Banking, for each Authorized Representative, as well as the user privileges on each Authorized Representative's authority to access information and conduct transactions, subject to any maximum limitation imposed by us. You are responsible for familiarizing all Authorized Representatives with the provisions of this Agreement.

**You are solely responsible for the actions of your Administrator, the authority he or she gives**

**to Authorized Representatives to act on your behalf, and the actions of the Authorized Representatives.** You may remove and replace your Administrator from time to time by submitting a change in writing to us. Any changes to your Authorized Representatives' privileges shall be you or your Administrator's sole responsibility, and any such change shall be within you or your Administrator's sole control and shall not impose any additional duty or liability on us. **You understand and acknowledge that by appointing an Administrator, you are conferring to such Administrator total control over the accounts. By executing this Agreement, you unequivocally assume all risks involved in appointing an Administrator and Authorized Representatives and agree to indemnify and hold us harmless from any and all claim(s) and/or losses resulting from the wrongful acts or omissions of an Administrator or any Authorized Representative.**

**b. Authorized Representative(s)**

You represent that each Authorized Representative has general authority from you to access information and give instructions including general authority over the movement of your business's funds and accounts as evidenced by the banking resolution, partnership declaration and/or other agreements, certifications or instruments you have provided to FBC; and that FBC has full authorization from you to rely and act upon these instructions. By designating any individual as an Authorized Representative, you agree that each Authorized Representative will be acting as your agent and will be bound by this Agreement and any separate agreement governing your account(s). All transactions that an Authorized Representative or fiduciary performs on an account(s) or through Commercial Online Banking, including those you did not want or intend, are transactions authorized by you. You are solely responsible for those transactions, and we are not responsible for them. You also agree that we are not responsible for any of your acts or omissions or any acts or omissions of any of your Authorized Representatives or any fiduciary acting on your behalf. You agree that you, and not we, are responsible for supervising all of your Authorized Representatives and monitoring the actions they take on your behalf, whether or not we provide tools for managing their authority. You are responsible for deleting and/or blocking any security device used by or assigned to an Authorized Representative that is no longer employed by you. If you revoke or change the authority of an Authorized Representative using the Online Banking System, only transactions that you did not want or intend and that the Authorized Representative performs after you change their authorization, and we have a reasonable opportunity to act on that notice, will be considered unauthorized transactions. **THE BANK WILL HAVE NO LIABILITY TO YOU FOR UNAUTHORIZED PAYMENTS OR TRANSFERS MADE USING THE ACCESS CODES YOU HAVE OBTAINED THAT OCCURS BEFORE YOU HAVE NOTIFIED US OF POSSIBLE UNAUTHORIZED USE AND WE HAVE HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE.** If additional assistance is needed FBC can be contacted at the number provided below. However, as to the removal of the former Authorized Representative and the addition of new Authorized Representative(s), it is the

responsibility of the account owner to notify us. The required notice must be given separately from any other notices given to other FBC departments or banking centers, by calling us at 1-847-897-7600. You may also email or write to us at:

First Bank Chicago  
Treasury Management  
633 Skokie Blvd Suite 240  
Northbrook, Illinois 60062  
Fax: 1-847-272-7141  
tmanagement@firstbankchicago.com

You are responsible for ensuring that each Administrator and Authorized Representative maintain the confidentiality of his or her Access ID, Password, and security token, and other security information. You agree that each Administrator and Authorized Representative will access and use each account, and the Online Banking System, in accordance with the authority given to the Administrator and Authorized Representative by the delegating owner (i.e., the account owner, authorized signer or Administrator). Each time an Administrator and Authorized Representative accesses, views, or transacts on an account or through the Online Banking System, you represent and warrant to us that the Administrator and Authorized Representative's action is authorized by the delegating owner. If we receive conflicting instructions, or if we believe that an account's security or our security may be at risk as a result of an Administrator or Authorized Representative, we may at our sole discretion terminate the Administrator and Authorized Representative's access to the Online Banking System, the Online Banking Services, or an account, or prevent the individual from being an Administrator or Authorized Representative, without prior notice to you or any account owner.

The authority of an Administrator or Authorized Representative will terminate: (a) when we are notified by an owner through the appropriate channel that the Administrator or Authorized Representative's authority is terminated and we have a reasonable opportunity to act on the notice, (b) when we are notified by an owner that the owner appointing the Administrator or Authorized Representative ceases to be an account owner and we have a reasonable opportunity to act on the notice, (c) in the case of sole-proprietor business accounts, upon our receiving written notice of the death or incapacity of the delegating owner from a court of competent jurisdiction or from a source that we consider official and reliable and we have a reasonable opportunity to act on the notice, or (d) at our sole discretion if an account owner or any Administrator or Authorized Representative breaches any provision of this Agreement.

## **8. RESTRICTIONS ON USE**

You agree not to use Commercial Online Banking for any illegal, fraudulent, unauthorized or improper manner

or purpose and to use it only in compliance with all applicable laws, rules and regulations, including all applicable state, federal, and international Internet, data, telecommunications, telemarketing, "spam," and import/export laws and regulations. Without limiting the foregoing, you agree that you will not use or allow anyone to use Commercial Online Banking to transmit or disseminate: (i) junk mail, spam, or unsolicited material to persons or entities; (ii) material that infringes or violates any third party's intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any service provider or any of its clients or subscribers; or (iii) material or data, that is illegal, or material or data that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable. You agree not to use Commercial Online Banking in any way that would: (a) knowingly transmit viruses, trojan horses, worms, time bombs, cancelbots, or other computer programming routines that intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of Commercial Online Banking to impersonate another person or entity; (c) be false, misleading or inaccurate; or (d) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers. You agree that you will not attempt to (v) access any software or services for which your use has not been authorized; or (w) gain unauthorized entry or access to Bank's computer systems or the computer systems of others; or (x) use or attempt to use a third party's account; or (y) interfere in any manner with the provision of Commercial Online Banking or the software, the security of Commercial Online Banking or the software, the computer networks connection to Commercial Online Banking, or other Clients of Commercial Online Banking or the software, or other clients of Commercial Online Banking or the software; or (z) otherwise abuse Commercial Online Banking or the software.

## **9. SECURITY**

### **a. Generally**

FBC utilizes a comprehensive security strategy to protect your accounts and transactions conducted over the Internet and has established security procedures that include the use of layered security, multi-factor authentication, and out of band authentication (the "Security Procedures") to be used in connection with some features. In addition to Bank's security procedures, Bank uses a Secure Socket Layer ("SSL") encryption technology for all components of the Online Banking System. By entering into this Agreement and using the Online Banking Services, you acknowledge and agree that this Agreement sets forth Security Procedures for electronic banking transactions which are commercially reasonable. You agree to be bound by instructions, whether authorized or unauthorized, which we implement in compliance with these Security Procedures, unless you have given us prior notice of possible unauthorized use (and we have a reasonable opportunity to act on such notice). You also agree to comply with all of our present and future Security Procedures with respect to transactions and services covered by this Agreement. This includes, but is not limited to, protection of Access IDs, Passwords, Secure Access Codes, and other personal and business information. Our Security

Procedures are contained in this Agreement and in other written procedures we may provide to you.

The Security Procedures can include access codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, and other services and software ("Security Device"), designed to verify the authenticity of the instructions, payment orders, funds transfers, and other communications (each, a "Communication") sent by you or on your behalf. You acknowledge that you have been provided with the Security Procedures and/or Security Devices for use with Commercial Online Banking. If you select other certain Security Procedures to use in connection with Commercial Online Banking and those Security Procedures provide less protection against unauthorized transactions or activity than other Security Procedures offered by us in connection with Commercial Online Banking, the Security Procedures selected by you shall be deemed commercially reasonable to the same extent as the Security Procedures offered by us that provide greater protection. We reserve the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time.

You understand you are responsible for safeguarding your Access ID, Password, AAI, and other Security Devices. You understand that Bank will rely on access via the Access ID, Password, AAI, and other Security Devices as confirmation that you have authorized all activity conducted in the Online Banking System following such authenticated access to the Online Banking System, including, but not limited to, any deposit, account debits or credits, external transfers, Bill Payment transactions, or any other charges or fees incurred by your use of Online Banking System. FBC shall have no obligation, liability or control, either directly or indirectly over said Security Procedures or your failure to maintain said Security Procedures. You agree not to give, disclose or make available your Password or other means to access your account to any individuals. You are responsible for all transfers and payments you authorize using Commercial Online Banking. If you permit other persons to access your Commercial Online Banking, if you provide or allow access to your Password or other means to access your account, you are deemed to have consented to their access to your Business Accounts and you are responsible for any and all transactions that they initiate or authorize, even if he or she exceeds your authorization. If you believe that your Password or other means to access your accounts through Commercial Online Banking has been lost or stolen or that someone may attempt to use Commercial Online Banking to access your Business Accounts without your consent or has transferred money without your permission, you must notify us at once by calling Treasury Management at 847-897-7600 during the hours of 8:30 a.m. to 5 p.m. CST Monday thru Friday. If we accept any unauthorized payment order, transfer or other instruction made using your device and it was accepted in good faith, it was made in compliance with Security Procedures, it occurred before you notified us of possible unauthorized use and we have not had a reasonable opportunity to act on that notice, we shall have no liability to you.

*FBC employees will not contact you via email, phone or otherwise requesting your Access IDs, passwords or other security device. If you are contacted by anyone requesting this information, please contact us immediately at 1-847-897-7600.*

You authorize us to follow any instructions entered through Commercial Online Banking notwithstanding any dual or multiple approval requirement identified on the signature card or other documents relating to your Business Account. You agree and intend that the authorization of transactions through Commercial Online Banking shall be considered the same as your written signature in authorizing us to perform any actions relating to the transactions requested. You also agree that use of your Password is the agreed Security Procedure to access Commercial Online Banking and that such Security Procedure is commercially reasonable. You agree to keep your Password confidential, to prevent unauthorized access to your account(s) through Commercial Online Banking, and to prevent unauthorized use of Commercial Online Banking. You agree not to give your password or make it available to any person or entity who is not authorized to access your accounts for the purpose of performing the transactions within Commercial Online Banking or who intends or may use Commercial Online Banking for the purpose of accessing and compiling account data for such person's or entity's own commercial gain. You should change your Password frequently. You should avoid using your ATM/Debit Card personal identification number (PIN) as your Password. If your access to Commercial Online Banking is blocked or if you forget your password, you must contact Treasury Management at 847-897-7600. We may issue you a new Password. You understand that for security purposes, we may require you to periodically change the password used to access your accounts through Commercial Online Banking. Additionally, if you fail to log on to Commercial Online Banking for an extended period, we reserve the right to disable your online access.

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

Even if a communication is given in compliance with the applicable Security Procedures, we may, at our discretion, delay the execution of that communication until we are able to verify the authenticity of the communication by any means reasonably acceptable to us including, without limitation, placing a telephone call to any person who is either an authorized signer on your account or who you have authorized to initiate or confirm communication (by course of dealing or otherwise). We shall not be

liable to you or any other person for such delay, provided that we acted in good faith. We shall have no duty to discover, and shall not be liable for, your errors or omissions.

**b. Use of Security Tokens**

You agree that Bank, in its sole discretion, may issue and require the use of security tokens (“Security Tokens” or “Tokens”) and security token software in association with the Online Banking Services for use of identification authentication. In the event Tokens are issued, Tokens will be issued by Bank to your Administrator and Authorized Representative(s). You are responsible for safe keeping and authorizing the use of Tokens. You must notify Bank immediately upon Token(s) being lost, stolen or misused. You authorize Bank to take all reasonably appropriate action with respect to lost, stolen, or misused Token(s) including, but not limited to, deactivation of the Online Banking Services and/or Token(s). You shall be responsible for costs associated with new or replacement Security Tokens. You authorize Bank to disable Tokens not activated for more than 30 consecutive days from the date you receive the Tokens. You are also responsible for downloading, installing, and updating any software that Bank may require in connection with Security Tokens.

You must use reasonable efforts to enforce the terms associated with the Tokens. You will be solely responsible for use regarding Tokens and any violations of the restrictions on use as set forth in this Agreement. Customer agrees that in the event of any breach of the terms of this Agreement, you will indemnify Bank against claims and losses arising from your actions that cause Bank to be in violation of the terms of this Agreement.

Customer is strictly responsible for establishing and maintaining the security procedures to safeguard against unauthorized transactions. Customer warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any Access ID, Passwords, AAI, PINs, codes, Tokens, security devices and related instructions provided by Bank in connection with the security procedures. If Customer believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Customer agrees to notify Bank immediately followed by Customer’s written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

Customer agrees that it, and not Bank, have control over their computer systems: accordingly, Customer assumes all liability related to connecting and securing telephone line to the proper computer as well as complete control over the physical security of their hardware. Customer is solely responsible for the accurate creation, modification, and deletion of the account information maintained on Customer’s personal computer and used for money transfer. Customer is solely responsible for

access by its employees of the data files maintained on Customer's computer.

Notwithstanding any security procedure, which may from time to time be in effect for detecting errors in transactions covered by this Agreement, we have no duty to discover or report to you any such errors. Neither shall we be liable to you for the failure of such security procedure to detect such errors, regardless of the manner in which we apply such security procedures.

## **10. COMMERCIAL ONLINE BANKING FEATURES**

The following are some of the services and features available with Commercial Online Banking. Some of these services and features are optional and will require additional disclosures, agreements and authorizations. If there are features that you wish to have and you have not already made arrangements for them to be available to you, please contact Treasury Management who will gladly assist you.

- View Balance and Recent Activity;
- Internal Bank Transfers, either one-time or on a recurring basis;
- Alert Services;
- Stop Payment Requests;
- Third Party Software Connectivity;
- Bill Payment Service (optional);
- Receive E-Statements
- Commercial Mobile Banking (optional); and
- Commercial Mobile Capture (optional)

Separate terms and conditions acceptance is required for Commercial Mobile Banking and Commercial Mobile Capture.

We may discontinue providing Commercial Online Banking in its entirety or parts of it at any time.

### **a. View Balance and Recent Activity (Included Feature)**

Commercial Online Banking provides you with the ability to view balance and other account information. However, since some information and transactions are not processed by the Bank until after the close of its Business Day, your online view is not necessarily a real time reflection of your Business Account(s). Some transactions may not be reflected online until the next Business Day. In addition, posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Balances or recent activity shown also may differ from your records because it may not include current deposits not yet processed. Shown or displayed account balances also may reflect funds that are not subject to immediate withdrawal. (See the Bank's policy on funds availability, titled "Your Ability to Withdraw Funds" for more information on when deposited funds will be available

for withdrawal). All transactions made through Commercial Online Banking will appear on your account statement. The payment or deposit amount and transaction date will be reflected for each transfer made through Commercial Online Banking.

**b. Internal Bank Transfers (Included Feature)**

Commercial Online Banking allows you to transfer funds between your enrolled eligible Business Accounts. Transfers may be scheduled for the same day or for a future date. Same day transfers will be posted as pending transactions when initiated. Transfers initiated prior to the Bank cutoff will be effective the same Business Day. Transfers initiated after the Bank cutoff will be effective the next Business Day. A future dated transfer may be scheduled as a one-time request or a recurring request. Future dated transfers will be initiated on the scheduled date requested (even if the scheduled date is not a Business Day). E.g. In the example below a transfer is being scheduled on Tuesday, to be initiated on a future date, Saturday. This future dated transfer will be initiated on Saturday, which is not a Business Day.



We are under no obligation to inform you if Commercial Online Banking does not complete a payment or transfer due to insufficient funds or credit in your Business Account with which to process the requested transaction. In the event that a requested transfer cannot be completed due to insufficient funds or credit, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Commercial Online Banking.

You agree that you will have sufficient available funds in the designated Business Account to cover all transfers on the date scheduled. If the Business Account does not have sufficient available funds on the scheduled transfer date, we may elect not to initiate one or more of the transfers. If the transaction is completed, it may cause an overdraft in your Business Account in which case you shall be liable for the overdraft and any overdraft fees. There may be limits set on the dollar amount of the transactions you can make using Commercial Online Banking. These limits may change from time to time in accordance with applicable laws and regulations and at our discretion.

**c. Alerts Service (Included Feature)**

Your enrollment in Commercial Online Banking and /or Mobile Banking (the "Service") includes

enrollment to receive transaction alerts and notifications (“**Alerts**”). Alerts are electronic notices from us that contain transactional information about your **FBC** account(s). Alerts may be provided by **FBC** within the following categories:

- **Mandatory Alerts** provide you with important account notifications, such as information about changes to your Online Banking password, PIN, or login information. If **FBC** chooses to offer Mandatory Alerts, you will not have the option to suppress these Mandatory Alerts.
- **Account Alerts** provide you with notification of important account activities or when certain changes are made to your Service accounts, such as scheduled payments made, scheduled payments cancelled and mobile deposits. If **FBC** chooses to offer Account Alerts, they may be automatically activated for you. Although you may suppress these Account Alerts, we strongly recommend that you do not do so because they provide important information related to your Service accounts.
- **Additional Alerts** must be activated by you to be enabled. These Additional Alerts can be accessed from the Alert menu within Commercial Online Banking and if available the Alert menu within **FBC** Commercial Mobile Banking.

Account Alerts and Additional Alerts must be managed and/or added online through the Service. You cannot maintain all Alerts through your mobile device. We may add new Alerts from time to time, or cancel old Alerts. We usually notify you when we cancel Alerts, but are not obligated to do so. In addition, we may require you to agree to new or revised terms regarding any additions or modifications. FBC reserves the right to terminate its Alerts service at any time without prior notice to you.

Methods of Delivery. We may provide Alerts through one or more channels (“**Endpoints**”): (a) a mobile device, by text message, (b) a mobile device, by push notification; (c) an email account, by an email message; or (d) your Commercial Online Banking message in-box, by an email message. You agree to receive Alerts through these EndPoints, and it is your responsibility to determine that each of the service providers for the EndPoints described in the (a) through (c) above supports the email, push notification, and text message Alerts provided through the Alerts service. Please be advised that text or data charges or rates may be imposed by your EndPoint service provider. Alert frequency varies by account and preferences. You agree to provide us a valid mobile phone number or email address so that we may send you Alerts. If your email address or your mobile device’s number changes, you are responsible for informing us of that change. Your Alerts will be updated to reflect the changes that you communicate to us with regard to your primary and secondary email addresses or mobile device number.

**Alerts via Text Message.** To stop Alerts via text message, text **“STOP” to 99588 at any time**. Alerts sent to your primary email address will be unaffected by this action. To restore Alerts on your mobile phone, just visit the Alerts tab in Commercial Online Banking and click the box next to your mobile number for the Alerts you would like to receive again. For help with SMS text alerts, text **“HELP” to 99588**. In case of questions please contact Treasury Management at **847-897-7600**. Our participating carriers include (but are not limited to) AT & T, SprintPCS, T-Mobile, U.S. Cellular, Verizon Wireless, Metro PCS.

Limitations. **FBC** provides Alerts as a convenience to you for information purposes only. An Alert does not constitute a bank record for the deposit or credit account to which it pertains. We strive to provide Alerts in a timely manner with accurate information. However, you acknowledge and agree that your receipt of any Alerts may be delayed or prevented by factor(s) affecting your mobile phone service provider, internet service provider(s) and other factors outside **FBC’s** control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold **FBC**, its directors, officers, employees, agents, and service providers liable for losses or damages, including attorneys’ fees, that may arise, directly or indirectly, in whole, or in part, from (a) a non-delivery, delayed delivery, or the misdirected delivery of an Alert; (b) inaccurate or incomplete content in an Alert; or (c) your reliance on or use of the information provided in an Alert for any purpose.

Alert information. As Alerts delivered via SMS, email, and push notification are not encrypted, we will never include your passcode or full account number. You acknowledge and agree that Alerts may not be encrypted and may include your name and some information about your accounts, and anyone with access to your Alerts will be able to view the contents of these messages.

**d. Stop Payment Requests (Included Feature)**

You acknowledge that the “Stop Payment” feature is an alternate entry system for issuing Stop Payment orders on single paper checks between you and the Bank. Subject to and with your express understanding that a stop payment request does not ensure that a payment can or will be stopped, we will accept online requests to stop payment on any check, except for cashier’s checks, official checks, teller’s checks or other cash equivalent items. This service may not be available to cancel payments scheduled through Bill Payment. Stop payments cannot be placed on debit card transactions and they will not be accepted. We will process requests received prior to the posted cutoff time of 10 a.m. CST on the same Business Day received. Requests received after the posted cutoff time will be processed on the next Business Day. We must receive a stop payment request at a time and manner that will give us a reasonable opportunity to act upon it prior to presentment of the item. Please review your transaction history and previous statements to verify that the check has not cleared.

Stop payment requests are not effective if, either before or within 24 hours of when the stop payment order was placed, we have already cashed the item or become otherwise legally obligated for its payment. Stop payment requests are processed electronically. We will assume no responsibility if any information provided to us is incorrect, incomplete or in a manner that would result in the check being paid (i.e., incorrect check number, amount, account number or date). Once placed, the stop payment order will remain in effect for six (6) months from the date when it was made. You may renew the stop payment order for an additional six-month (6) period when the expiration date arrives. You are responsible for monitoring the expiration of stop payments. No notice will be provided to you that a stop payment is expiring. A fee will be charged for each stop payment and extension thereafter. For a complete list refer to our Schedule of Fees on our website.

**e. Third Party Accounting Software (Included Connectivity Feature)**

Commercial Online Banking offers the ability for you to connect information about your accounts with the third party accounting software of your choice (such as QuickBooks® and Quicken®). If such functionality is supported by your third party accounting software, you may download your account activity from Commercial Online Banking or you may access your account information directly through the third party software. Many third party accounting software products offer the option to download your account activity from Commercial Online Banking or Express Connect, which may automatically download transactions from the bank. If you wish to use those products you are responsible for separately purchasing the third party accounting software. You are subject to the software separate license agreement when you use such third party accounting software. FBC does not own, operate, or control such third party accounting software and is not responsible for such software. Bank is not liable for any failure or performance of such third party accounting software. We make no warranties and accept no liability for defects, deficiencies or limitations in such software.

- (i) By using the third party accounting software, you understand and agree that:
  - (1) The information you download is for tracking purposes only and should not be considered an official record. Statements generated by FBC are the sole official record of account transactions, positions, and balances. We do not guarantee the information shown in the third party accounting software and make no representations, warranties, or guarantees regarding such information;
  - (2) The account information will not reflect banking or financial activities and transactions that have not yet been completed and will only reflect the account information at the time that you download the information;

- (3) It is your responsibility to update your downloaded account information to your software application;
  - (4) Use of third party accounting software involves the electronic transmission of information through third-party connections. Because we do not operate or control these connections, we cannot guarantee the reliability, privacy, or security of these data transmissions;
  - (5) FBC makes no warranty that your third party accounting software will be uninterrupted, timely, secure, or error-free;
  - (6) You assume all risk for the possibility that any account information you download and store in your software application may be accessed by unauthorized third parties;
  - (7) If you send the information in a manner that is not secure, or if you take the account information out of FBC's secure computers by downloading it, FBC is no longer responsible for the security and confidentiality of that information, and the responsibility becomes solely yours (or may be shared with others, such as your software application provider);
  - (8) FBC is not responsible for the security and confidentiality of the account information if you: (i) use wireless connections to download your account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded; or (ii) allow other persons access to your software application; and
  - (9) Any account information that you download is processed at your own risk and you are solely responsible for any damage that might occur to the computer (or other electronic device) to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage in an electronic device or other electronic device.
- (ii) In addition to limitations of liability contained elsewhere in this Agreement, you agree that FBC will not be liable to you for any loss, damages, or expenses of any kind resulting from:
- (1) Your inability to use or download the third party accounting software;
  - (2) The accuracy, timeliness, loss, or corruption of account information;

- (3) Unauthorized access to your account information and any misuse, or alteration, of your account information or data, to the extent the unauthorized access results from your acts or omissions;
- (4) Your inability to access your account information due to any force majeure event, including, but not limited to, failure of electronic or mechanical equipment, interconnect problems with telephone providers or Internet service providers, acts of God, strikes, or other labor problems; or
- (5) Your reliance upon the downloaded information in your third party software application.

**f. Bill Pay Service (Optional Feature)**

In addition to other features, Commercial Online Banking can, at your option, include a Bill Pay Service. The Bill Payment service allows you to schedule payments for current, future, and recurring bills from your business account with us.

You may use the Bill Payment Service to direct us to make payments from your designated account to the Payees you choose in accordance with this Agreement. The terms and conditions of this Agreement are in addition to the agreements, disclosures and other documents in effect from time to time governing your deposit account with us.

Bill Pay Service means the bill payment service that First Bank Chicago makes available through Commercial Online Banking with CheckFree® and is also a Service under the Agreement.

**(i) Applicability**

The agreement between you and the Bank governs your use of the Bill Payment Service. The Bill Payment Service can only be accessed through Commercial Online Banking. Your use of the service indicates you agree to the terms of this Agreement. Please read the Agreement carefully and in its entirety. With Commercial Online Banking you may access accounts and transaction information and order transfers of funds among your eligible account(s) for Bill Payment purposes. Not all First Bank Chicago accounts are eligible for electronic transfers using the Service.

**(ii) Payment Scheduling**

The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer Business Days from the current date)Therefore, the application will not permit

you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling payments you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Biller statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, you must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period.

**(iii) The Service Guarantee**

Due to circumstances beyond the control of the Service, particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to your account. The Service will bear responsibility for any late payment related charges up to \$50.00 should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement.

**(iv) Payment Authorization and Payment Remittance**

You represent and warrant that you are acting with full authority for the applying entity, and that you are duly authorized to execute this Agreement on behalf of the applying entity. By providing the Service with names and account information of Billers to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions that it receives through the payment system. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Biller directives.

When the Service receives a Payment Instruction, you authorize the Service to debit your Account and remit funds on your behalf so that the funds arrive as close as reasonable possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Account for payments returned to the Service by the United States Postal Service or Biller, or payments remitted to you on behalf of another authorized user of the Service.

The Service will use its best efforts to make all your payments properly. However, the Service shall incur no liability and any Service Guarantee shall be void if the Service is unable to complete any payments initiated by you because of the existence of and one or more of the following circumstances:

- (1) If you did not properly follow the instructions for making a bill payment.
- (2) If you fail to promptly notify Bank after you learn that you have not received credit from a "Payee" for a bill payment.
- (3) If you do not have sufficient funds in your account to make the bill payment on the date a payment is scheduled to be sent.
- (4) If you do not allow adequate time between the dates a bill payment is scheduled to be sent and the due date.
- (5) For the failure of any Payee to correctly account for or credit the bill payment in a timely manner.
- (6) For any bill payment you authorize that contains an error with regard to the identifying information of the payee, including the refusal of any such unintended payee to return any funds transferred as a result of such error.
- (7) For changes to a third party's account name or number or that identifying information if funds are being transferred to the account of that third party, unless you have advised the Bank of the change sufficiently in advance.
- (8) If Bank has placed a "hold" on any funds in your deposit account(s) in accordance with Bank's rights under applicable laws or any other agreements between you and Bank.
- (9) If a court order, such as a garnishment or other legal process, prevents Bank from taking a transfer.
- (10) If Bank has a reasonable basis for believing that you know or should know that unauthorized use of your Access ID, Password, AAI, other Security Procedure, or account(s) has occurred or may be occurring.
- (11) If you default under this Agreement or any other agreement with Bank.
- (12) If Bank or you terminate this Agreement.
- (13) Circumstances beyond control of the Service (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Service has taken reasonable precautions to avoid those circumstances.

Provided none of the foregoing exceptions are applicable, if the Service causes an incorrect amount of funds to be removed from your Account or causes funds from your Account to be directed to a Biller which does not comply with your Payment Instructions, the Service shall be responsible for returning the improperly transferred funds to your Account and for directing to the proper Biller any previously misdirected transactions, and, if applicable, for any late payment related charges.

**(v) Payment Methods**

Service reserves the right to select the method in which to remit funds on your behalf to your Biller. These payment methods may include, but may not be limited to, an electronic to check payment, or a laser draft payment (funds remitted to the Biller are deducted from your Account when the laser draft is presented to your financial institution for payment).

**(vi) Payment Cancellation Requests**

You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment. Once the Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted.

**(vii) Stop Payment Requests**

The Service's ability to process a stop payment will depend on the payment method and whether or not a check has cleared. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact Customer Service. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the First Bank Chicago Schedule of Fees.

**(viii) Prohibited Payments**

Payments to Billers outside of the United States or its territories are prohibited through the Service.

**(ix) Exception Payments**

Tax payments and court ordered payments may be scheduled through the Service; however such payments are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from your scheduling of these types of payments. The Service Guarantee as it applies to any late payment related charges is void when these types of payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, mis-posted or misdirected payments will be the sole responsibility of you and not of the Service.

**(x) Bill Delivery and Presentment**

This feature is for the presentment of electronic bills only and it is your sole responsibility to contact your Billers directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

- (1)** *Information provided to the Biller* – The Service is unable to update or change your personal information such as, but not limited to name, address, phone numbers and e-mail addresses, with the electronic Biller. Any changes will need to be made by contacting the Biller directly. Additionally it is your responsibility to maintain all usernames and passwords for all Biller sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. The Service may, at the request of the Biller, provide to the Biller your e-mail address, service address, or other data specifically requested by the Biller at the time of activating the electronic bill for that Biller, for the purposes of the Biller informing you about Service and/or bill information.
- (2)** *Activation* – Upon activation of the electronic bill feature the Service may notify the Biller of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Biller. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Biller reserves the right to accept or deny your request to receive electronic bills.

- (3) *Authorization to obtain bill data* – Your activation of the electronic bill feature for a Biller shall be deemed by us to be your authorization for us to obtain bill data from the Biller on your behalf. By providing us with such information, you authorize us to use the information to obtain your bill data.
- (4) *Notification* – The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of the new electronic bills. The time for the notification may vary from Biller to Biller. You are responsible for ensuring timely payment of all bills.
- (5) *Cancellation of electronic bill notification* – The electronic Biller reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation for your electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) days, depending on the billing cycle of each Biller. The Service will notify your electronic Biller(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.
- (6) *Non-Delivery of electronic bill(s)* – You agree to hold the Service harmless should the Biller fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.
- (7) *Accuracy and dispute of electronic bill* – The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Biller. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Biller directly.

This agreement does not alter your liability or obligations that currently exist between you and your Billers.

**(xi) Exclusions of Warranties**

THE SERVICE AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**(xii) Disclosure of Account Information to Third Parties**

It is our general policy to treat your account information as confidential. However, we will disclose information to third parties about your account or the transactions you make ONLY in the following situations:

- (1) Where it is necessary for completing transactions;
- (2) Where it is necessary for activating additional services;
- (3) In order to verify the existence and condition of your account to a third party, such as a credit bureau or Biller;
- (4) To a consumer reporting agency for research purposes only;
- (5) In order to comply with a governmental agency or court orders; or,
- (6) If you give us your written permission.

**(xiii) Failed or Returned Transaction**

In using the Service, you are requesting the Service to make payments for you from your Account. If we are unable to complete the transaction for any reason associated with your Account (for example, there are insufficient funds in your Account to cover the transaction), the transaction may not be completed. In some instances, you will receive a return notice from the Service. In each case, you agree that:

- (1) You will reimburse the Service immediately upon demand the transaction amount that has been returned to the Service;

- (2) For any amount not reimbursed to the Service within fifteen(15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed;
- (3) You will reimburse the Service for any fees imposed by your financial institution as a result of the return;
- (4) You will reimburse the Service for any fees or costs it incurs in attempting to collect the amount of the return from you; and,
- (5) The Service is authorized to report the facts concerning the return to any credit reporting agency.

**(xiv) Alterations or Amendments**

This Agreement, applicable fees and service charges may be altered or amended by the Service from time to time. In such event, the Service shall provide notice to you. Any use of the Service after the Service provides you a notice of change will constitute your agreement to such change(s). Further, the Service may, from time to time, revise or update the applications, services, and/or related material, which may render all such prior versions obsolete. Consequently, the Service reserves the right to terminate this Agreement as to all such prior versions of the applications, services, and/or related material and limit access to only the Service's more recent revisions and updates. In addition as part of the Service you agree to receive all legally required notifications via electronic means.

**(xv) Service Termination or Cancellation or Suspension**

In the event you wish to cancel the Service, you may have the ability to do so through the product, or you may contact Treasury Management 1-(847) 897-7600 during customer service hours; and/or write us at:

First Bank Chicago  
Treasury Management  
633 Skokie Boulevard Suite 240  
Northbrook, IL 60062  
tmanagement@firstbankchicago.com

Any payment(s) the Service has already processed before the requested cancellation

date will be completed by the Service. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled. The Service may terminate or suspend Service to you at any time. Neither termination nor suspension shall affect your liability or obligation under this Agreement.

**(xvi) Biller Limitation**

The Service reserves the right to refuse to pay any Biller to whom you may direct a payment. The Service will notify you promptly if it decides to refuse to pay a Biller designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

**(xvii) Returned Payments**

In using the Service, you understand that Billers and/or the United States Postal Service may return payments to the Service for various reasons such as, but not limited to, Biller's forwarding address expired; Biller account number is not valid; Biller is unable to locate account; or Biller account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to your Biller, or void the payment and credit your Account. You may receive notification from the Service.

**(xviii) Information Authorization**

Your enrollment in the Service may not be fulfilled if the Service cannot verify your identity or other necessary information. In order to verify ownership of the Account(s) and/or Billing Account, the Service may issue offsetting debits and credits to the Account(s) and/or Billing Account, and require confirmation of such from you. Through your enrollment in the Service, you agree that the Service reserves the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that the Service reserves the right to obtain financial information regarding your account from a Biller or financial institution (for example, to resolve a payment posting problem or for verification).

**(xix) Disputes**

In the event of a dispute regarding the Service, you and the Service agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you and the Service

which supersedes any proposal or prior agreement, oral or written, and any other communications between you and the service relating to the subject matter of this Agreement. If there is a conflict between what an employee of the Service or Customer Service Department says and the terms of this Agreement, the terms of this Agreement will prevail.

**(xx) Assignment**

You may not assign this Agreement to any other party. The Service may assign this Agreement to any future directly or indirectly, affiliated company. The Service may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties.

**(xxi) No Waiver**

The Service shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Service. No delay or omission on the part of the Service in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver on any rights or remedies on future occasions.

**(xxii) Governing Law**

The Bill Pay provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of law's provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect.

**(xxiii) Bill Pay Security Procedures**

As part of Bill Pay, the Bank employs various security and authentication technologies ("Security Procedures") to ensure that you are communicating directly with the Bank, and also to ensure that your computer is communicating with a legitimate Bank computer. Such Bank authentication procedures and technologies include, but are not limited to, use of Access IDs, Passwords, AAI, and other security credentials that Bank may require you to provide at Bank's sole discretion. Such

security credentials are required as a component of Bill Pay authentication procedures that Bank may employ, including, but not limited to, security questions and responses and/or use of other hardware-based and software-based security and authentication tools, programs and procedures. You are responsible for establishing and maintaining procedures reasonably adapted to insure the confidentiality and security of the Security Procedures. YOU UNDERSTAND AND AGREE THAT YOU WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER ALL YOUR ACCESS IDS AND PASSWORDS AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL YOU WOULD USE FOR CASH, OR A MECHANICAL CHECK-SIGNING MACHINE, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES. If you have reason to believe that any Security Procedure has or may have become known by unauthorized persons, you shall immediately notify the Bank by telephone and confirm such oral notification in writing to the Bank within twenty-four (24) hours of the oral notification. The Bank will replace the Security Procedures in accordance with the Bank's standard security requirements related to the applicable Service(s). To the maximum extent permitted by applicable law, you will be solely liable for all transactions, including funds transfer instructions and other communications, initiated before the Bank has received such notification and has had a reasonable opportunity to act on such notification. The Bank reserves the right to change any or all of the Security Procedures offered and/or used at any time by giving oral or written notice to you. You agree that your use of Bill Pay after the Bank provides notice of such changes constitutes your acceptance of the new Security Procedures. You acknowledge that the purpose of Security Procedures is to authenticate the identity of the person initiating the action, not to detect errors in any transmission or content. The Bank is not agreeing to any security or other procedure for the detection of errors. You represent that for Bill Pay, you consider the Security Procedures to be commercially reasonable with respect to the size, type, and frequency of funds transfers you anticipate issuing and the information which will be transmitted.

For any other circumstances beyond the control of the Bank that prevented the bill payment, despite reasonable precautions that Bank has taken, including, but not limited to, circumstances such as telecommunications outages, power outages, equipment failures, postal strikes, delays caused by other financial institutions, fires, and floods.

THE FOREGOING SHALL CONSTITUTE THE BANK'S ENTIRE LIABILITY AND

YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL THE BANK BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR BILL PAY.

**g. Electronic Statements E-Statements**

Commercial Online Banking is set up to deliver your account statements to you electronically. By agreeing to Commercial Online Banking and having your bank statements sent electronically, you are also agreeing to notify Treasury Management immediately by telephone at (847) 897- 7600 of any change in your email address or any errors or complications relating to your electronic receipt or access of your bank statements.

By enrolling in, Commercial Online Banking you will:

- (i) Receive periodic account statements and disclosures electronically – You authorize the Bank to provide to you electronically your periodic account statements and any other disclosures that we might send to you with your account statements, such as Business Account Disclosure Statements, Privacy Notices or other required disclosures relating to your accounts. We will no longer send you paper statements through the mail for those accounts enrolled in Commercial Online Banking. E-Statement Error Resolution disclosures are available on the First Bank Chicago website at [www.firstbankchicago.com/Disclosures](http://www.firstbankchicago.com/Disclosures). E- statements will be available online for a minimum of 365 days from the date of issuance. Check images can also be accessed online. Both E-Statements and check images may be downloaded or printed for permanent retention.
- (ii) Have the right to withdraw consent to have records provided electronically, including any consequences or fees associated with doing so – To discontinue electronic delivery, you may email your request to [tmanagement@firstbankchicago.com](mailto:tmanagement@firstbankchicago.com) or you can request discontinuance by calling Treasury Management at (847) 897- 7600. Please allow up to 45 days for us to implement your request, and after such time you will no longer receive your statements electronically. We will not charge any fees for discontinuing electronic delivery of statements and we will resume delivery of your paper statements by U. S. Mail. **Delivery of paper statements by U.S. Mail may be subject to a fee according to our Schedule of Fees.**
- (iii) Have the right to obtain a paper copy of the record upon request – You may request

that we mail you a paper version of a statement, disclosure, notice, records or other information that you received electronically. If you request a paper copy of a statement or any other documents that you receive electronically, you may be charged a fee according to our Schedule of Fees. To request a paper copy of any document relating to your account, you may call Treasury Management at (847)-897-7600 or stop by any FBC location for assistance.

- (iv) Agree to the hardware and software requirements for access and retention of the electronic information – The hardware and software requirements enable you to receive and retain your bank statements and/or notices electronically. These are discussed below in the Access Requirements section.
- (v) Agree that we may treat your submission of an invalid email address, the subsequent invalidation of your email address, emails that are returned as “undelivered”, or cancellation of participation in Commercial Online Banking as a withdrawal of your consent to receive electronic statements.
- (vi) You acknowledge and agree that your consent to E-Statements is being provided in connection with a transaction that is subject to the federal Electronic Signature in Global and National Commerce Act, and that you and we both intend that the Act apply to the fullest extent possible to validate our ability to conduct business with you by electronic means.

## **11. ACCESS REQUIREMENTS**

In order to use Commercial Online Banking, your Access Device must meet certain minimum specifications you must have:

### **a. Internet Access**

Obtaining and maintaining adequate Internet access is your responsibility, and you are solely responsible for any computer virus or related problems that may be associated with the use of the Online Banking Services via the Internet.

### **b. A current version of an Internet browser**

For optimal experience Cookies and JavaScript may be enabled in the browser. The Bank requires that you use a web browser that supports adequate security measures including up-to-date encryption technology, anti-virus and spyware protection, and any additional security measures the Bank may require from time to time.

**c. A currently supported version of Adobe® Acrobat Reader**

Adobe Acrobat Reader can be downloaded free of charge at [www.adobe.com](http://www.adobe.com).

**12. WAIVER OF REQUIREMENT FOR TWO OR MORE SIGNATURES**

You agree that any requirement of verifying two or more signatures on any item, such as checks, will not apply to electronic or telephone transfers, and we will have no liability when making these kinds of transfers without the requisite verification. This means that any person who is an authorized signer on your account is authorized by you to individually make electronic or telephone transfers, even though that person's authority to transfer or withdraw funds from your account by some other means (e.g., by check) must be exercised jointly with one or more other persons.

**13. TEXT MESSAGING**

By enrolling in the Online Banking Services, you are providing Bank with your express consent permitting us to contact you as necessary to provide the Online Banking Services (including sending text messages and push notifications to your Mobile Device). Such activities may include, but are not limited to, providing account alerts, confirming account activity, confirming mobile remote capture deposits, undertaking fraud prevention, undertaking servicing, or for any other purpose as provided in this Agreement. You agree that we may send text messages and push notifications through your communication service provider in order to deliver them to you and that your communication services provider is acting as your agent in this capacity. We may use a telephone number, email address or other delivery location we have in our records for you or other such contact information as you may provide to us for these services so that we may send you certain information about your applicable account. You agree to immediately notify Bank if you cease using the mobile phone number or change the mobile phone number you have provided to Bank.

**14. ERRORS AND QUESTIONS**

In case of errors or questions about a transaction(s) in your accounts, you should as soon as possible notify us using one of the following methods:

- Telephone us at 847-897-7600 Monday – Friday 8:30 a.m. to 5:00 p.m. CST or;
- Fax to: 1-847-272-7141 or;
- Write us at:

First Bank Chicago  
Treasury Management  
633 Skokie Blvd, Suite 240  
Northbrook, IL 60062  
[tmanagement@firstbankchicago.com](mailto:tmanagement@firstbankchicago.com)

If you think your statement is incorrect or you need more information about a Commercial Online Banking transaction listed on your statement, we must hear from you as soon as possible. You must:

- Tell us your name and the account number for the account involved;
- Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
- Tell us the dollar amount of the suspected error.

We must hear from you no later than 30 days after we send or make the first statement available to you on which the error or problem appeared. You must exercise ordinary care to determine all payment orders or amendments to payment orders that we accept are issued in your name and are authorized, enforceable, in the correct amount, to the correct beneficiary, and not otherwise erroneous. If you discover (or with reasonable care should have discovered) an unauthorized, unenforceable, or erroneously executed payment order or amendment, you must exercise ordinary care to notify us of the relevant facts. The time you have to notify us will depend on the particular circumstances involved. However, such time period will not exceed 30 days. Failure to examine your statement and report any such errors to us within 30 days of when we first send or make the first statement available precludes you from asserting a claim against us for any such errors on items identified in that statement and as between you and us the loss will be entirely yours. If you do not provide us with timely notice you will not be entitled to interest on any refundable amount. If we can establish that you failed to perform either of these duties with respect to an erroneous payment and that we incurred a loss as a result of the failure, you are liable to us for the amount of the loss not exceeding the amount of your order.

## **15. SERVICE FEES AND ADDITIONAL CHARGES**

Any applicable fees will be charged regardless of whether Commercial Online Banking was used during the billing cycle. There may be a charge for additional transactions and other optional services. You agree to pay such charges and authorize us to deduct the calculated amount from your designated Business Account for these amounts and any additional charges that may be incurred by you (see the FBC Schedule of Fees). Those fees associated with your deposit accounts at the Bank will continue to apply. You are responsible for any and all access and Internet service fees that may be assessed by your telephone and/or Internet service provider for your use of Commercial Online Banking.

You authorize us to assess and deduct fees from your designated account for services provided under the Agreement as specified in writing by us by means of a bank statement, account analysis statement or fee letter; or as otherwise agreed by you and FBC. We may change the service fees, at any time without notice. You will be notified of any such change as required by applicable law, either by mail or by an electronic message. We may charge your account for any fees, charges, taxes or pass-through charges charged or incurred by us in respect of the provision of any service to or on behalf of you. You agree to reimburse the

Bank upon demand if such charges and fees are not paid when due. Without limiting the generality of the foregoing, you agree that we may impose a fee for research requested by you. You authorize us to deduct all fees from your primary account or, to the extent your primary account lacks sufficient funds, from any of your other accounts maintained by you with us. You also acknowledge that these fees are in addition to any costs you incur for the telephone service or Internet service provider you use to access Commercial Online Banking.

#### **16. NO OTHER USE**

You may use the Online Banking Services only for the use of your business, and may not reproduce, sell or distribute all or any portion of the information provided to you by the Online Banking Services.

#### **17. THIRD-PARTY SOFTWARE AND THIRD-PARTY CONTENT**

a. From time to time, we may offer third-party software tools and products that you may elect to install on your computer and/or access through the Online Banking System (collectively "Third-Party Software"). You are responsible for obtaining a valid and separate license agreement with the provider of the Third-Party Software. From time to time, we may also offer information, commentary, and tools supplied by companies that are not affiliated with us ("Third-Party Content"). All of the Third-Party Content in the Online Banking System is labeled as such, and may be available either in a frame, via a hyperlink, or simply posted in the Online Banking System. We do not own any interest in Third-Party Content. We do not edit, review, or endorse any Third-Party Content. You agree and understand that:

- (i) You assume all risk that any Third-Party Software you download and install, or any information you enter into the Third-Party Software, may be accessed by unauthorized third parties;
- (ii) If you use the Third-Party Software to transmit information, you and the Third-Party-Software provider are responsible for the security and confidentiality of that information; and
- (iii) That any Third-Party Software that you download is done at your own risk and you alone are responsible for any damage that might occur to the computer or other electronic device to which you download any Third-Party Software, or any loss or corruption of data that might occur as a result of the downloading or its installation in a computer or other electronic device.

b. You also agree that you are solely responsible for acquiring and maintaining a computer or other electronic device that has capabilities of handling and accessing the Third-Party Software, including any necessary equipment such as a modem, and that you are responsible for all costs

associated with accessing the Third-Party Software. You also agree that any Third-Party Software you download is provided to you “as is” and “as available” and any Third-Party Content you review or utilize is provided to you “as is.” You agree that we make no warranties and have no liability as to:

- (i) The accuracy, completeness, availability or timeliness of the information, text, graphics, or other items provided, stored, evaluated or processed through the Third-Party Software or Third-Party Content;
- (ii) The errors or omissions in the delivery or transmission of the Third-Party Software or Third-Party Content from us to you; and
- (iii) The Third-Party Software's or Third-Party Content's fitness for a particular purpose and non-infringement of any third-party rights.

c. You also agree that we will not be liable to you for:

- (i) Your inability to use the Third-Party Software;
- (ii) The accuracy, timeliness, loss or corruption, or mis-delivery, of any account information or any other information processed by the Third-Party Software; or
- (iii) Unauthorized access to your accounts or to your account information and any misappropriation, or alteration, of your account information or data as a result of your installation or use of the Third-Party Software.

With respect to Business Accounts and use of the Online Banking Services, if we fail or delay in making a transfer pursuant to your instructions, or if we make a transfer in an erroneous amount which is less than the amount per your instructions, unless otherwise required by law, our liability shall be limited to interest on the amount which we failed to timely transfer, calculated from the date on which the transfer was to be made until the date it was actually made or you canceled the instructions. We may pay such interest either to you or the intended recipient of the transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other. If we make a transfer in an erroneous amount which exceeds the amount per your instructions, or if we permit an unauthorized transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law, our liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest. If we become liable to you for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank of Chicago for each day interest is due, computed on the basis of a 360-day year.

## **18. DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES**

It is our general policy to treat your account information as confidential. However, we will disclose information to third parties about your Business Accounts or the transactions you make in the following situations:

- Where it is necessary for completing transactions;
- Where it is necessary for activating additional Commercial Online Banking features;
- In order to verify the existence and condition of your account to a third party, such as a credit bureau or biller;
- In order to comply with a governmental agency or court orders; or,
- If you give us your written permission.

You agree to view the Privacy Statement before initiating your first transaction under this Agreement, and you agree that your initiation of any transactions indicates that you have reviewed and agreed to the terms of the Privacy Statement.

## **19. TRANSACTION LIMITS**

### **a. Dollar Amount**

There may be limits on the dollar amount of the transactions you can make using Commercial Online Banking. These limits may change from time to time in accordance with applicable laws and regulations and according to our discretion.

### **b. Frequency**

There may be limits on the number of transactions you can make during a particular period using Commercial Online Banking. These limits are for security reasons and may change from time to time in accordance with applicable laws and regulations and according to our discretion.

### **c. Court Directed and Governmental Payments**

You acknowledge and agree that if you use Commercial Online Banking to make any payment of alimony, child-support, taxes, or other court-directed or governmental payments, fines, or penalties, or any payment to settle a securities transaction, that we may process or refuse to process any such payments in our sole and absolute discretion. In any event, to the fullest extent permitted by law, you assume all risk relating to the proper scheduling, initiation, processing, transmission, receipt, and application of such payments, and you release us from any and all claims, liabilities, and/or damages resulting from your making or attempting to make any such payments using Commercial Online Banking, whether such claims, liabilities and/or damages arise (or would arise) under this Agreement

or otherwise.

**d. United States Currency Only**

You may only make payments using Commercial Online Banking in the valid currency of the United States (U.S. Dollars).

**e. Account Agreements**

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

**20. FAILED OR RETURNED TRANSACTIONS**

**a.** In using Commercial Online Banking, you are requesting we make payments for you from your eligible Business Account. If we are unable to complete the transaction for any reason associated with your Business Account (for example, there are insufficient funds in your Business Account to cover the transaction), the transaction will not be completed. In some instances, you will receive a return notice from us. In such case, you agree that:

- (i)** You will reimburse us immediately upon demand the transaction amount that has been returned;
- (ii)** For any amount not reimbursed to us within fifteen (15) days of the initial notification, a late charge equal to 1.5% per month of the transaction amount or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed;
- (iii)** You will reimburse us for the standard fee for returned items;
- (iv)** You will reimburse us for any fees & costs, including all reasonable attorney's fees and legal costs, that it incurs in attempting to collect the amount of the return from you; and,
- (v)** We are authorized to report the facts concerning the return to any credit reporting agency.

**21. ALTERATIONS AND AMENDMENTS**

The terms of this Agreement, applicable fees for use of Commercial Online Banking and service charges

may be modified or amended by us from time to time. In such event, we will provide notice to you of the changes. Any use of Commercial Online Banking after we provide you a notice of change will constitute your agreement to such change(s). Further, we may, from time to time, revise or update the applications, services, and/or related material, which may render prior versions obsolete. Consequently, Commercial Online Banking reserves the right to terminate your access all such prior versions of the applications used by or in connection with Commercial Online Banking, and limit access to only Commercial Online Banking's more recent revisions and updates. In addition, as part of your use of Commercial Online Banking, you agree to receive all legally required notifications by electronic means.

## **22. SERVICE TERMINATION, CANCELLATION, OR SUSPENSION**

This Agreement will remain in effect until it is terminated by you or FBC. In the event you wish to cancel your use of Commercial Online Banking, please contact Treasury Management by one of the following:

- Telephone us at 847-897-7600 Monday thru Friday 8:30 a.m. to 5 p.m. CST
- Write us at:

First Bank Chicago  
Treasury Management  
633 Skokie Blvd, Suite 240  
Northbrook, IL 60062  
Fax: 1-847-272-7141  
tmanagement@firstbankchicago.com

Any payment(s) that have been processed before the requested cancellation date will be completed by us. All scheduled payments including recurring payments will not be processed once your use of Commercial Online Banking is cancelled.

You must provide reasonable notice prior to the date on which you wish to have Commercial Online Banking terminated, but in no event less than seven (7) Business Days. We may require that you put your request in writing. If you have scheduled transactions with a transmit date within this period, you also must separately cancel those transactions. If we have not completed processing your termination request and you have not otherwise canceled a transaction, you will be responsible for transactions with a transmit date following our receipt of your notice of termination. If you would like to (a) connect to a different Business Account with us for use with Commercial Online Banking, or (b) add or remove an account with respect to the service, you must provide reasonable notice. Termination will not affect your liability or obligations under this Agreement accruing prior to the date of termination.

We may cancel this Agreement and terminate your use of the Online Banking Services for any reason, at any time, in Bank's sole discretion. We will use commercially reasonable measures to notify you in advance of any such termination, but FBC is not obligated to do so.

We reserve the right to terminate your access to the Online Banking System and/or the Online Banking Services, if you violate any terms of this Agreement (including the failure to pay fees under any applicable fee schedule) or any other agreement you have with us, and you agree that we may suspend or terminate your access to any one or more of your accounts and Services if you do so. We will not be required to reinstate or re-activate your access. Furthermore, if you close all of your accounts and terminate your Services, or withdraw from the Service, we may suspend or terminate your access without prior notice to you. In some cases, if you close your accounts, you may also lose access to your Online Banking Services and we may terminate your access to the Service. We will not be required to reinstate or re-activate your access. Also, if you have no open and eligible accounts linked to the Service, or do not use the Service for a period of 12 consecutive months, we may, in our sole discretion, terminate your access without prior notice to you.

### **23. LINKING ACCOUNTS OF ADDITIONAL BUSINESSES.**

If you are authorized to enter into an agreement for Commercial Online Banking for multiple businesses, and if you want to link the accounts for one business to the accounts for other businesses so that both can be accessed through Commercial Online Banking, you will need to complete an Authorization for each business entity. Upon doing so, you may link the enrolled accounts of more than one business, at your risk and that of the businesses, but not of FBC, so that you and any Administrator or Authorized Representative of any of the businesses use a common Access ID and password for all linked accounts. When you take such action you are certifying that you are properly authorized to access the eligible accounts of the different businesses and to use all the functions of Commercial Online Banking for each business. You further agree to notify us without delay if the authority of any Administrator or Authorized Representative for any accessible account is withdrawn, terminated, diminishes or otherwise changes in any manner. Until we are notified of any such change and have had a reasonable time to act on such notification, we accept no responsibility for and are not liable in any manner whatsoever for any damages you or a third party incur for actions taken by any Administrator or Authorized Representative.

### **24. ELECTRONIC COMMUNICATIONS WITH FBC**

To the extent you elect to communicate with us using email, the following provisions apply to those communications:

You agree and acknowledge that the information communicated via email to or from us may include information regarding any or all of the options that are part of Commercial Online Banking or other information we feel may be of added interest to you.

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

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

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

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

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

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

**25. REPRESENTATIONS, WARRANTIES AND LIABILITY**

**a. Virus Protection**

We are not responsible for any computer virus, problems or malfunctions resulting from a computer virus, or related problems that may be associated with accessing the Internet or your system. We recommend that you routinely update your virus software, apply all security patches for your operating service and install a firewall on your Access Device. We are not responsible for any errors or failures resulting from defects or malfunctions. WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING YOUR ACCESS DEVICE OR RELATED EQUIPMENT, OR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**b. Warranties Disclaimer**

**FIRST BANK CHICAGO MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE**

**ONLINE BANKING SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS UNLESS, AND THEN ONLY TO THE EXTENT, DISCLAIMING SUCH WARRANTIES IS PROHIBITED BY LAW. THE INFORMATION AND MATERIALS CONTAINED IN THE ONLINE BANKING SERVICES, ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE, INCLUDING TEXT, GRAPHICS, LINKS OR OTHER ITEMS ARE PROVIDED “AS IS,” “AS AVAILABLE”. BANK DOES NOT WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THIS INFORMATION AND MATERIALS AND EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THIS INFORMATION AND MATERIALS.**

**c. Our Liability for Failure to Complete Transactions**

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

- (i) If, through no fault of ours, you do not have sufficient collected funds in your Business Account to complete the transaction;
- (ii) If the Access Device, Internet connection method, or other equipment is not operating properly;
- (iii) If Commercial Online Banking is not working properly and you were aware of the malfunction when you initiated the transaction;
- (iv) If you do not properly follow all instructional materials provided in connection with Commercial Online Banking;
- (v) If you have not provided us with the correct payee name, address, account information, payment amount, or other instructions necessary to complete the payment.;
- (vi) If your funds are held or frozen, or a court order or other legal process prevents us from making a transaction;
- (vii) If your password has been reported lost or stolen;
- (viii) If we have reason to believe that a transaction has not been properly authorized or authenticated, or is fraudulent, erroneous, or illegal;

- (ix) If you have exceeded the limitations on frequency of transactions or dollar amount of transactions applicable to your eligible account(s);
- (x) If circumstances beyond our control (such as telecommunication or electrical outages and malfunctions, postal strikes or delays, computer service failures or natural disasters) prevent the transaction;
- (xi) If making a transfer would cause us to violate any law, rule, or regulation to which we are subject; or
- (xii) If any failure on our part was not intentional and resulted from a bona fide error not withstanding procedures to avoid such error, except for actual damages (which do not include indirect, incidental, special or consequential damages).

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

## **26. YOUR LIABILITY IN CASE OF LOSS, THEFT OR UNAUTHORIZED TRANSACTIONS**

You are liable for all transactions you initiate or authorize using Commercial Online Banking, even if the person you authorize exceeds your authority. If you allow any other person to use your password or Commercial Online Banking, you will have authorized that person to access your eligible accounts and you are responsible for all transactions that person initiates or authorizes. Tell us at once if you believe that your password has been lost or stolen or that an eligible account has been or may be accessed without your authorization. We may have to change your access codes or take additional steps to prevent further access by such person. Telephoning is the best method for limiting your potential losses. You could lose all funds in your eligible account(s). Our system supporting the Services is designed so that it may be operated only upon entry of valid access codes. Since we condition access upon entry of valid access codes, we will accept instructions for payments or other transactions from any person using valid access codes. This is so even if the person obtaining access:

- Is not a company representative;
- Exceeds your authority or that granted by any company representative;
- Does not have your authority;
- Has had his/her authority changed or revoked; or,
- Is an imposter or thief.

You agree to be bound by all transactions from any Business Account for which valid access codes were used. You authorize us to treat any instructions we receive using valid access codes as if the instructions had been made in writing and signed by the appropriate company representative. Unless there is substantial evidence to the contrary, our records will be conclusive regarding any access to, or action taken through, the Services. Notwithstanding the foregoing, we agree that you will not be responsible for transactions which

occur after you have notified us to block the access codes that were used to perform the transaction, and we have had a reasonable opportunity to do so. Thus, the sooner you notify us of a problem, the better you can keep your losses down.

You agree to promptly examine all account statements and any confirmations of payments which we may send or make available to you, and to promptly notify us as soon as possible but no later than 14 days of receipt of any such statement or confirmation.

If you believe your password has been lost or stolen or that someone has transferred or may access your eligible account(s) without your authorization, or if you think your statement is wrong or if you need more information about a transfer covered by this Agreement which is listed on the statement, please contact us by calling 847-897-7600 or:

First Bank Chicago  
Treasury Management  
633 Skokie Blvd Suite 240  
Northbrook, Illinois 60062  
Fax: 847-272-7141  
tmanagement@firstbankchicago.com

You agree to take any reasonable actions requested by us to prevent unauthorized transactions to your eligible account(s).

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

In connection with the account(s) that you are establishing or earlier established at First Bank Chicago, the Bank offers Positive Pay to you, a product which the Bank believes serves to reduce the possibility of any loss to you or the Bank as a result of fraudulent activity on your account(s).

WHILE YOU ARE NOT REQUIRED TO ACCEPT AND OR USE THE PRODUCT, IF YOU CHOOSE NOT TO ACCEPT AND USE POSITIVE PAY IN CONNECTION WITH YOUR ACCOUNT(S), YOU SHALL BE RESPONSIBLE FOR ANY/ALL LOSSES THAT COULD HAVE BEEN PREVENTED IF YOU HAD ACCEPTED AND USED POSITIVE PAY, AND YOU AGREE THAT YOU WILL INDEMNIFY AND HOLD THE BANK HARMLESS FROM ALL LOSSES RESULTING FROM SUCH FRAUDULENT ACTIVITY, INCLUDING ALL LEGAL FEES AND COSTS THAT IT MIGHT INCUR, OTHER THAN LOSS RESULTING FROM THE BANK'S GROSS NEGLIGENCE.

Should you wish to start the onboarding process for Positive Pay, you may:

- Contact your Relationship Officer, or
- Contact Treasury Management at tmanagement@firstbankchicago.com or 1- 847-897-7600.

## **27. LIMITATIONS OF LIABILITY**

First Bank Highland Park agrees to use reasonable efforts to ensure full performance of the Online Banking Services. FBC will be responsible for acting only on those instructions sent through the Online Banking Services which are actually received and cannot assume responsibility for malfunctions in communications facilities not under its control that may affect the accuracy or timeliness of messages you send. FBC is not responsible for any losses or delays in transmission of instructions arising out of the use of any Internet service provider or caused by any browser software. Any information you receive from FBC can be provided only on a best efforts basis for your convenience and is not guaranteed. FBC is not liable for any deficiencies in the accuracy, completeness, availability or timeliness of such information or for any investment or other decision made using this information. FBC is not responsible for any computer virus or related problems which may be attributable to the Online Banking Services or to any services provided by any Internet Services Provider. In the absence of gross negligence or willful misconduct on the part of FBC, none of FBC, any of its affiliates or any of their respective officers, directors, employees or agents, is responsible for any direct, indirect, special, incidental or consequential damages arising in any way out of the use of the Online Banking Services. Because some states do not allow the exclusion of limitation of liability for consequential or incidental damages, in such states the liability of the foregoing entities and individuals is limited to the extent permitted by law. With respect to Bill Pay, FBC has no duty to monitor the payments that are made through the Online Banking Services. If 1) you are a business and one of your Administrators or Authorized Representatives uses your Bill Pay account to pay bills which are not yours, or 2) a person acting as a fiduciary on your behalf (e.g., a trustee, court-appointed guardian, or agent acting under a power of attorney) uses your Bill Pay account to pay bills which are not yours, you assume the entire risk of loss and indemnify and hold us, our directors, officers, employees and agents harmless from all loss, liability, claims, demands, judgments and expenses arising out of or in any way connected with such use.

We will make every reasonable effort to provide full performance of our online system, and on a timely basis to resolve disputes that may arise. We will only be responsible for acting on instructions that we actually receive. We cannot assume responsibility for any malfunctions or capacity reductions or other problems in your equipment or in public communications networks not under our control that may affect the accuracy or timeliness of transactions you perform. Our only liability is to correct errors within our control. We are not responsible or liable to you for any loss, damage or injury caused by our Bill Pay system. Neither will we be liable for any consequential, incidental, special, indirect or punitive loss or damage, including but not limited to dishonor of checks or other items or expenses which you may incur or suffer by reason of this Agreement or the services we provide, whether or not the possibility or likelihood of such loss, damage, or expense is known to us.

UNLESS OTHERWISE REQUIRED BY LAW, IN NO EVENT WILL FBC OR ITS AFFILIATES, OR OUR OR THEIR RESPECTIVE THIRD-PARTY PROVIDERS, PARTNERS, LICENSORS, EMPLOYEES,

DISTRIBUTORS, OR AGENTS BE LIABLE TO YOU FOR INCIDENTAL, INDIRECT, DIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING GROSS NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR ATTORNEYS' FEES, DAMAGES FOR TELECOMMUNICATION FAILURES, LOSS, CORRUPTION, SECURITY OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF PRIVACY, OR PECUNIARY LOSS ARISING OUT OF OR IN CONNECTION WITH (A) YOUR USE OR INABILITY TO USE (INCLUDING, BUT NOT LIMITED TO, ANY INTERRUPTION, INACCURACY, ERROR, OMISSION, FAILURE OF PERFORMANCE, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS OR LINE, OR SYSTEM FAILURE) THE ONLINE BANKING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE; (B) ANY ACT OR OMISSION BY US IN ADMINISTERING THE ONLINE BANKING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE; (C) THE PURCHASE OR USE OF ANY GOODS OR SERVICES OF MERCHANTS OR SUPPLIERS THROUGH THE ONLINE BANKING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE, OR (D) YOUR ACTS OR OMISSIONS OR ANY ACTS OR OMISSIONS OF ANY FIDUCIARY ACTING ON YOUR BEHALF (E.G., A TRUSTEE, COURT-APPOINTED GUARDIAN, OR AGENT ACTING UNDER A POWER OF ATTORNEY), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CLAIMS, OR LOSSES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. HYPERLINKS TO OTHER INTERNET RESOURCES ARE USED AT YOUR OWN RISK; THE CONTENT, ACCURACY, OPINIONS EXPRESSED, AND OTHER LINKS PROVIDED BY THESE RESOURCES ARE NOT INVESTIGATED, VERIFIED, MONITORED, OR ENDORSED BY FBC. THE LIMITATIONS OF DAMAGES SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN FBC AND YOU. FBC WOULD NOT BE ABLE TO PROVIDE THE ONLINE BANKING SERVICES WITHOUT SUCH LIMITATIONS. SOME STATES DO NOT ALLOW LIMITATIONS ON INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **28. INDEMNIFICATION**

You agree, at your expense, to defend, indemnify, hold harmless, protect and fully compensate FBC, its affiliates, and their respective officers, directors, employees, consultants, agents, distributors, partners, licensors and third-party providers from any and all claims, liability, damages, losses, expenses and costs (including attorneys' fees) caused by or arising from (a) a third-party claim, action or allegation of infringement based on your use of the Online Banking Services, or information, data, files or other content you submitted or uploaded; (b) any fraud, manipulation, or other violation of law by you; (c) a breach of this Agreement by you; (d) your acts or omissions; or (e) any third-party claim, action or allegation brought against FBC arising out of or relating to a dispute between its users over the terms and conditions of a contract or related to the purchase and sale of any Online Banking Services. For the avoidance of doubt, your obligations hereunder

shall extend to indemnification based on the acts and omissions of any fiduciary acting on your behalf (e.g., trustee, court-appointed guardian, or agent acting under a power of attorney). Additionally, if you are a business entity, your obligations hereunder shall extend to indemnification based on the acts and omissions of your Administrators and Authorized Representatives and any other employees, consultants and agents.

## **29. DOCUMENTATION OF TRANSACTIONS**

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

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

## **30. VERIFICATION**

You authorize us to investigate or reinvestigate at any time any information provided by you in connection with your application for Commercial Online Banking or the eligible account(s), and to request reports from credit bureaus and consumer reporting agencies for such purpose. You also agree that we may obtain information regarding your account in order to facilitate proper handling and crediting of your payments.

## **31. BUSINESS DAYS AND CUT-OFF TIMES**

A Business Day means Monday through Friday, except federal holidays. We have established Business Day cut-off times for the use of some features. We may change established cut-off times at any time without notice. We may treat communications received after such cut-off times established by us, as received on the following Business Day.

## **32. GENERAL FUNDS TRANSFER PROVISIONS**

### **a. Notice of Receipt of Funds Transfers**

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

**b. Credits from Funds Transfers are Provisional**

Subject to our Availability of Funds Disclosure, all credits to your accounts for funds transfers, which we receive, are provisional until we receive final settlement for the funds. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to your account for that transfer. In that situation, the person who originated the transfer to your account will not be deemed to have paid the amount of that transfer.

**33. CONFIDENTIAL INFORMATION AND PROPRIETARY DATA**

All information of a business nature disclosed by either party to the other in connection with the Agreement is confidential, including security devices and the Security Procedures (the "Confidential Information"). Neither party shall without the express written consent of the other, disclose or permit access to any such confidential information by any person, firm or corporation and each party shall cause its officers, employees, and agents to take such action as shall be necessary or advisable, to preserve and protect the confidentiality of disclosing such confidential information to persons required to have access thereto for the performance of the agreement, or to any other party to which we may be required by law to report such information. You agree to hold confidential and to use only in connection with Commercial Online Banking provided under the Agreement all information furnished to you by us or by third parties from whom we have secured the right to use Commercial Online Banking, including, but not limited to, our product and service pricing structure, service design, programming techniques or other unique techniques. FBC and your obligations and agreements under this paragraph shall not apply to any information supplied that: was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of the Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is authorized and agreed by the parties hereto that the performance of Commercial Online Banking is or might be subject to regulation and examination by authorized representatives of federal and state banking regulators, and you agree to the release of your reports, information, assurances, or other data as may be required by them under applicable laws and regulations. The circumstances under which we will disclose information about you or your accounts has been separately disclosed in our Privacy Policy and in other disclosures which have been provided. Our Privacy Policy may change from time to time and is available online and at banking locations.

You have a nonexclusive, nontransferable license to use Commercial Online Banking, user manuals and other implementation and reference guides and manuals, as in effect from time to time, and all other material and associated documentation that we supply to you pursuant to the agreement (collectively, "proprietary data"). You acknowledge that you are not purchasing title to the proprietary data and the proprietary data constitutes trade secrets; you will use reasonable care to keep the proprietary data confidential and will not disclose any proprietary data to any person. The obligation to keep the proprietary data confidential shall survive

termination of the agreement. You will not use, make or have made, any additional copies of the proprietary data, or any part of it, without obtaining the prior written consent from First Bank Chicago. You will not remove any identifying marks or copyright marks in or on the proprietary data. Upon the termination of the agreement, you may be required to return all the proprietary data to us or certify to us that you have destroyed all copies of the proprietary data in your possession.

#### **34. NOTICES**

Unless otherwise provided in any future relevant addendum or by applicable law, all notices to you may be delivered by hand, mail, private delivery service or (unless otherwise specified by us) by facsimile, electronic mail, or via Commercial Online Banking and shall be effective when received. Notices may be delivered to some clients in electronic format, including posting to our website, if requested and authorized, or appropriate. All notices delivered via mail to you shall be delivered to the address, facsimile or email address designated for you in our records. All notices to us shall be delivered to the attention of:

First Bank Chicago  
Treasury Management  
633 Skokie Blvd, Suite 240  
Northbrook, Illinois 60062

Each notice shall be addressed as specified in writing by the parties from time to time. Your continued use of Commercial Online Banking after amendment of this Agreement shall constitute an acceptance of the amended terms and conditions of this Agreement. If you do not wish to agree to the amended terms of this Agreement, you must immediately discontinue use of, and access to, Commercial Online Banking, and provide notice to FBC in accordance with the requirements of this Agreement.

#### **35. AGENTS**

You acknowledge and agree that some or all of Commercial Online Banking may be provided by an agent of FBC; provided, further, that we have no obligation to disclose the identity of any agent to you, or to obtain your consent prior to delivering any information to such agent. It is the intent of the parties to the agreement that the provisions of the agreement and any Commercial Online Banking terms will take effect equally to the benefit of any such agent of ours, or any successor, providing services pursuant to the agreement.

#### **36. AUTHORIZATION REPRESENTATION AND WARRANTY**

You represent and warrant to us that the person acknowledging these terms and conditions is duly authorized to enter into the agreement with us, and to execute any and all documents, including the Agreement.

#### **37. OVERDRAFT**

You agree not to use or attempt to use Commercial Online Banking to overdraw any eligible account, to engage in any transaction that is not specifically authorized and permitted. Such use or attempted use may result in the immediate cancellation of Commercial Online Banking and the eligible accounts, and may expose

you to possible legal action. We may honor instructions to initiate transactions on the same Business Day (whether received through Commercial Online Banking, ATM or point-of-sale (POS) terminals, checks or other means) in any order we determine, even if honoring a particular item or instruction results in an insufficient balance in the eligible account to honor other instructions that otherwise could have been honored. If there are insufficient funds in the eligible account to complete the transaction you have initiated, we may either refuse to honor the request, or complete the transaction and thereby overdraw the eligible account. In either event, you are responsible for any insufficient funds or overdraft charges that we may impose.

### **38. STATEMENTS OF REPRESENTATIVES**

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

### **39. ARBITRATION AND WAIVER OF JURY TRIAL**

**ALL DISPUTES OR CLAIMS PERTAINING TO COMMERCIAL ONLINE BANKING, AN ELIGIBLE ACCOUNT OR THE RELATIONSHIPS THAT ARISE THERE FROM, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, SHALL BE RESOLVED BY BINDING ARBITRATION UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA) AND THE FEDERAL ARBITRATION ACT IN TITLE 9 OF THE US CODE. ARBITRATION HEARINGS WILL BE HELD IN THE STATE OF ILLINOIS IN A CITY OF THE BANKS' CHOOSING. A SINGLE ARBITRATOR WILL BE APPOINTED BY THE AAA AND WILL BE AN ATTORNEY OR A RETIRED JUDGE WITH EXPERIENCE AND KNOWLEDGE IN BANKING TRANSACTIONS. ANY ISSUE CONCERNING WHETHER OR THE EXTENT TO WHICH A DISPUTE OR CLAIM IS SUBJECT TO ARBITRATION, INCLUDING BUT NOT LIMITED TO ISSUES RELATING TO THE VALIDITY OR ENFORCEABILITY OF THESE ARBITRATION PROVISIONS, SHALL BE DETERMINED BY THE ARBITRATOR. ALL STATUES OF LIMITATIONS OR OTHER DEFENSES RELATING TO THE TIMELINESS OF THE ASSERTION OF A DISPUTE OR CLAIM THAT OTHERWISE WOULD BE APPLICABLE TO AN ACTION BROUGHT IN A COURT OF LAW SHALL BE APPLICABLE IN ANY SUCH ARBITRATION, AND THE COMMENCEMENT OF AN ARBITRATION UNDER THIS AGREEMENT SHALL BE DEEMED THE COMMENCEMENT OF AN ACTION FOR SUCH PURPOSES. NO PROVISION OF THIS PARAGRAPH SHALL RESTRICT THE ABILITY OF ANY PERSON TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE UNDER APPLICABLE LAW OR THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE EXERCISE OF THOSE RIGHTS OR REMEDIES IS SUBJECT TO THE RIGHT OF ANY OTHER PERSON TO DEMAND ARBITRATION AS PROVIDED HEREIN. THE COMMENCEMENT OF LEGAL ACTION BY A PERSON ENTITLED TO DEMAND ARBITRATION DOES NOT WAIVE THE RIGHT OF THAT PERSON TO DEMAND ARBITRATION WITH RESPECT TO ANY COUNTERCLAIM OR OTHER CLAIM. A PERSON ENTITLED OR OBLIGATED TO DEMAND ARBITRATION SHALL BE PERMITTED TO ASSERT A DISPUTE OR CLAIM THAT IS BROUGHT ON BEHALF OF ANY OTHER PERSON AND**

**THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE OR CLAIM TO BE ARBITRATED AS, OR ON THE BASIS OF, A CLASS ACTION. SIMILARLY, AN ARBITRATION PROCEEDING UNDER THIS AGREEMENT MAY NOT BE CONSOLIDATED WITH OTHER ARBITRATIONS PROCEEDINGS. JUDGMENT UPON THE AWARD RENDERED IN ARBITRATION SHALL BE FINAL AND MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. IF A DISPUTE OR CLAIM IS NOT SUBJECT TO ARBITRATION FOR ANY REASON, THEN THE DISPUTE OR CLAIM SHALL BE DECIDED IN THE COURTS OF COOK COUNTY, ILLINOIS, WITHOUT A JURY.**

**YOU AND FBC, IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY.**

**YOU AGREE TO THE TERMS STATED ON EVERY PAGE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE ARBITRATION OF CLAIMS AND DISPUTES CLAUSE AS OF EFFECTIVE DATE ABOVE AND ACKNOWLEDGES RECEIPT OF THIS AGREEMENT.**

#### **40. OTHER AGREEMENTS**

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

#### **41. WAIVERS**

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

#### **42. ASSIGNMENT**

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

#### **43. DATA CAPTURE**

When you use Commercial Online Banking, the transaction or other information you enter will create an electronic audit trail. By using Commercial Online Banking, you consent to the capture of such data.

#### **44. CHANGE OF TERMS; ELECTRONIC DISCLOSURES.**

This Agreement and all other agreements and disclosures relating to your use of Commercial Online Banking may be changed or amended from time to time, but we will provide you with advance notice of such changes or amendments to the extent required by applicable law. You agree that we may send change of terms notices to you, as well as any disclosures required by applicable law via electronic messaging, and you will be deemed to have received such notices or disclosures three days after they are sent, whether or not you have retrieved them by that time. If you do not agree to any change or amendment, you must discontinue use of Commercial Online Banking to which the change or amendment relates, or cancel your access to Commercial Online Banking. By using Commercial Online Banking after any change or amendment, you agree to that change or amendment.

#### **45. NEW SERVICES**

We may introduce new features from time to time that are available through Commercial Online Banking. By using these new features after they become available, you agree to be bound by all terms and conditions applicable.

#### **46. APPLICABLE LAW**

Regardless of where you live or work or where you access Commercial Online Banking, this Agreement, any enrollment form, and your deposit relationship with us will be governed by the substantive laws (excluding laws of conflict) and regulations of the United States and the State of Illinois, including without limitation, the Uniform Commercial Code as adopted in Illinois from time to time. Any disputes arising from or related to this Agreement or use of the Online Banking Services shall be governed by the laws of the State of Illinois (without reference to conflicts of laws principals). In addition, any dispute arising from or related to your accounts with the Bank or the Online Banking Services shall also be governed by federal laws and regulations, Federal Reserve Bank Rules and Operating Circulars, local clearing house rules, Automated Clearing House rules, and general bank practices applicable to similar types of accounts.

#### **47. ENTIRE AGREEMENT**

This Agreement is the entire agreement between you and FBC regarding your use of the Online Banking Services. This Agreement supersedes any prior discussions and agreements between you and Bank regarding the Online Banking Services and any marketing or other similar material pertaining to the Online Banking Services delivered to you in writing or verbally, or obtained from the Website, Online Banking System, or Mobile App or the site of any Internet service provider.

#### **48. NO UNILATERAL ALTERATIONS TO THIS AGREEMENT OR ANY ENROLLMENT FORM BY YOU**

Neither this Agreement nor any enrollment form may in any way be altered by you without our expressed

written agreement. Any attempt by you to alter either this Agreement or any enrollment form without our express written consent shall be void and shall have no legal effect. You hereby agree to indemnify and hold us harmless from and against any and all claims, losses, liabilities, penalties, expenses and punitive and/or other damages (including without limitation reasonable attorneys' fees) directly or indirectly resulting from, relating to or arising in connection with any successful or unsuccessful attempt by you to alter either this Agreement or any enrollment form without our express written agreement.

**49. AREA OF SERVICE**

Commercial Online Banking and any application for deposit or other products at our website are solely offered to businesses operating in the United States of America (USA) and may not be accessed while outside the USA.

**50. INTERRUPTION IN SERVICES**

FBC may on a regular basis perform maintenance on Bank equipment or systems which may result in interruption of the Online Banking Services. FBC will not be liable to you as a result of any such interruptions.

**51. CONSTRUCTION OF DEFINED TERMS**

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

**52. HEADINGS**

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

**53. SEVERABILITY**

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

**54. CONSENT TO THIS AGREEMENT**

You acknowledge that you are responsible for complying with all terms of this Agreement and the terms governing any deposit account(s), loan account(s), or any other account(s) which you access using the Online Banking Services. **BY SELECTING "ACCEPT" AND USING THE ONLINE BANKING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT, ACCEPT THIS AGREEMENT WITHOUT MODIFICATION, AND WILL BE BOUND BY ALL THE TERMS AND**

**CONDITIONS OF THIS AGREEMENT JUST AS IF YOU SIGNED A PAPER VERSION OF THE AGREEMENT. FURTHERMORE, YOU UNDERSTAND THAT BY USING THE ONLINE BANKING SERVICES, YOU AGREE TO THE TERMS AND CONDITIONS AS THEY MAY BE AMENDED IN THE FUTURE. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU UNDERSTAND THAT YOU SHOULD NOT USE THE ONLINE BANKING SERVICES, INCLUDING, BUT NOT LIMITED TO, THE ONLINE BANKING SYSTEM, MOBILE APP, AND WEBSITE.**

**If you do not agree to the terms and conditions of this Agreement, you must exit enrollment in Online Banking and must not select “Accept.”**