

**Bank of Agriculture & Commerce  
ECC Bank  
Electronic Banking Services Agreement**

This Agreement is revised and effective as of July 2, 2009.

This Agreement (“Agreement”) governs your use of the Bank of Agriculture & Commerce and the ECC Bank, a Division of Bank of Agriculture & Commerce, Simply e Electronic Banking Services (“Services”).

Please read this Agreement carefully. By clicking “I Agree” below, or using the Services, you are agreeing to the terms of this Agreement and you are authorizing the Bank to provide you access to your Accounts and Electronic Services through the Services.

**Definitions**

In this Agreement, the words:

- “We”, “us”, “our”, “the Bank” and “Bank” means Bank of Agriculture & Commerce and ECC Bank, a Division of Bank of Agriculture & Commerce, and any of its affiliates or direct or indirect subsidiaries.
- “You” or “your” means the owner of Accounts, any delegate of an owner or an authorized representative.
- “Accounts” means each Bank product you have with us which is accessible through the Service. Accounts may include deposit accounts, loans, lines of credit and any other products or accounts you maintain with us.
- “Consumer” means a natural person who has accounts for which Electronic Services are used primarily for personal, family, or household purposes.
- “Electronic Service” means each of the variety of products and services you may access, use, or enroll in through the Services. It also includes any product or service with a separate agreement that incorporates this Agreement by reference.
- “Business Day” means Monday through Friday, excluding Saturday, Sunday and federal banking holidays.
- “Include” and “including” when used at the beginning of a list, indicates that the list contains examples; the list is not exclusive and the items in the list are intended only as illustrations. They are not the only possible items that could appear in the list.

**Agreements**

The following are considered part of this Agreement:

- the terms or instructions appearing on a screen when using the Services
- the Bank’s rules, procedures and policies, as amended from time to time, that apply to each Electronic Service and each Account;
- current rules and regulations of any funds transfer system or payment system used in connection with an Account or Electronic Service; and

- state and federal laws and regulations, as applicable.

In addition to this Agreement, you may have a separate agreement for each of your Account and Electronic Services. Each of your Accounts and Electronic Services will continue to be subject to any other agreement that applies to it. Unless this Agreement specifically states otherwise, if those other agreements conflict with this Agreement, the other agreement will control with respect to the Account or Electronic Service it is associated with but only to the extent to resolve the conflict.

### **Use of the Service**

Subject to all the terms and conditions of this Agreement, you may use the Services to:

- access your Accounts;
- obtain Electronic Services; and
- perform authorized transactions.

Authorized transactions include, but are not limited to, obtaining balance information, transaction history and other information. Balances and transaction history may only reflect activity conducted through the close of the previous Business Day.

At our sole discretion we may:

- change the types of Accounts and Electronic Services available through the Service;
- introduce new features to the Service or eliminate features from the Service.

You agree and understand that you are solely responsible for

- acquiring and maintaining a computer or other electronic device to access the Services
- all costs associated with accessing the Electronic Service and your Accounts.
- all telephone and other equipment, software (other than any software provided by us) and services you need to access the Services.

For Accounts owned by more than one person, each owner individually has the right to provide us with instructions, make any decision, obtain any information or to make any request associated with their Accounts.

Any requirement of verifying two or more signatures on checks, if such a requirement exists, does not apply to electronic or telephone transfers, and you release us from liability when making these kind of transfers. 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. This provision controls and takes precedence over any conflicting provision in any other agreements you have with us.

## **Accessing Accounts and Electronic Services**

To access your Accounts and Electronic Services through our Website you must:

- establish a username;
- establish a password;
- have the required hardware and software; and
- comply with any other security procedures and policies we may establish from time to time.

If you enroll for the Services, all Accounts on which you are an account owner will be linked and displayed. Accounts that are linked together will appear on the Account Summary page without regard to who else may have an ownership interest in each Account. If you open an additional account at a later date, we will link your new account to the Services.

## **Service Hours**

Access to your Accounts and Electronic Services is available 7 days a week, 24 hours a day, except during system maintenance and upgrades or due to circumstances beyond our control. During these times, for banking services you may use our Customer Service Department at 877-226-5820, our telephone banking system at 800-944-8782 (inside California) or 209-944-1830 (outside California), our automated teller machine (“ATM”), or one of our branches to obtain information about your Accounts. Our Customer Service Department is available to assist you from:

Monday through Thursday: 8am to 5pm Pacific Standard Time

Friday: 8am to 6pm Pacific Standard Time

Saturday: 9am to Noon Pacific Standard Time

(Closed federal holidays and Saturdays following a Friday federal holiday or preceding a Monday federal holiday.)

## **Terminating Access**

Your Services remain in effect until they are terminated by you or the Bank.

You may cancel access to your Accounts and Electronic Services at any time by contacting Customer Service at 877-226-5820. You may also write us at P.O. Box 1140, Stockton, CA 95201-1140 or email us. If you cancel your access any unprocessed transactions will be canceled. If you close all of your Accounts your access to your Accounts and Electronic Services will be terminated.

We may terminate your access to the Services at any time for any reason. We are not required to reinstate or reactivate your access to the Services.

## **Funds Transfers**

A transfer completed through the Service before the transfer cutoff time on a Business Day will be posted to your Account the same day. All transfers completed after the

transfer cutoff time on a Business Day or at any time on a day that is not a Business Day, will be posted on the next Business Day. The transfer cutoff time is 4:00pm Pacific Standard Time.

### **Limitations on the Number of Certain Withdrawals**

If your account is a Money Market account or Savings account, no more than 6 transfers or withdrawals are permitted during your monthly statement cycle to another account or to a third party by means of a preauthorized or automatic transfer, or telephone agreement or by check, draft, debit card or similar order and payable to third parties.

For these accounts, a “transfer” includes any transfer to a third party including an order received through an automated clearing house (ACH) and any transfer to another of your accounts at the Bank (including transfers initiated via modem, fax and personal computer) unless the transfer is initiated at an automated teller machine, by mail, your messenger or in person at the Bank.

### **Contact by the Bank or Affiliated Parties**

No Bank employee nor any company affiliated with the Bank will contact you via email or telephone requesting your username and/or password. If you are contacted by anyone requesting this information, contact us immediately at 877-226-5820.

### **Reporting Unauthorized Transactions**

Immediately report any unauthorized transactions on your Accounts to Customer Service at 877-226-5820. You may also write to us at P.O. Box 1140, Stockton, CA 95201-1140.

### **Download Services**

The Electronic Services includes the ability to download information into Personal Financial Management Software (e.g. Quicken®)

When you use this download feature, you understand and agree that:

- not all of the information in your Accounts can be downloaded;
- information you can download may not include all of your account activity;
- statements generated by us are the official record of account transactions, positions and balances, and that the information you download is for tracking purposes only and should not be considered an official record;
- the account information will not necessarily reflect activities and transactions that have not yet been completed or settled and will only reflect the account information in your Accounts at the exact point in time that you download the information;
- account information in your Accounts may reflect transactions as of a prior time period and may not be current as of the point in time that you download such information;

- the account information that you download will not be automatically updated by us, and that you will have to update the Account information by downloading more current information from your accounts;
- we are not liable for any loss, damages or expenses of any kind as a result of your reliance upon the Account information in your Personal Financial Management Software, which for example, as stated above, may not be the most updated information and it may not include pending transactions;
- you assume all risk that any Account information you download and store in your Personal Financial Management Software may be accessed by unauthorized third parties;
- if you send the information in a manner that is not secure, or if you take the Account information out of our secure computers by downloading it, we are no longer responsible for the security and confidentiality of that information, and that the responsibility is now yours;
- we are 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 Personal Financial Management Software; and
- any Account information that you download is done 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 a computer or other electronic device.

You agree and understand that we make no warranties and have no liability as to:

- the accuracy, completeness, availability or timeliness of the Account information, text, graphics, or other items in the Account information that you can download through the download service;
- the errors or omissions in the delivery or transmission of the Account information from us to you (and “you” includes delivery to your Personal Financial Management Software and/or your computer);
- the download service’s fitness for a particular purpose and non-infringement of any third party rights;
- unauthorized access to your Accounts or to your account information and any misappropriation, or alteration, of your account information or data, to the extent the unauthorized access results from your acts or omissions;
- your inability to use the download service and access your Accounts (including but not limited to failure of electronic or mechanical equipment, interconnect problems with telephone providers or Internet Service providers (“ISPs”), acts of God, strikes or other labor problems); and
- any other matter relating to the download service.

## **Using Email**

The Services provides email forms for you to ask questions about your Accounts or give comments on the Services. These email forms are accessible after you sign on to the Services. Email is not a secure form of communication and you should not include confidential information in the email. You cannot use email to initiate transactions on your Accounts. For transactions, please use the appropriate functions within the Services or call Customer Service at 877-226-5820.

## **Fees**

There is no monthly service charge for accessing your accounts or for paying bills. Fees and charges disclosed separately apply. Please consult other agreements and fee schedules applicable to your accounts to determine which fees may apply.

Depending on the Electronic Services used, you might incur a charge for:

- normal account fees and service charges;
- payments or transfers made through the Services from a savings or money market account resulting in an excess transaction fee;
- using features of the service such as stop payment request, statement copy requests, research requests, and check copy requests; or
- NSF item, returned item or overdraft or similar fee if you schedule payments or transfers and your available balance is not sufficient to process the transaction on the date scheduled.

## **Security**

Use of the Services requires a username and a password, and/or such other security and authentication techniques as we may require from time to time, to access your Accounts and Electronic Services. We may also require additional security procedures or activation of specific Internet browser features.

You are responsible for actions that may be taken by anyone using the Services after signing in with your username and password. We will rely and act upon instructions received under your username and password.

You are responsible for keeping your username and password confidential. For security purposes, we recommend you:

- memorize your username and password and do not write it down;
- do not share your username and password with anyone;
- use a password that cannot be guessed by anyone;
- change your username and password regularly;
- take all necessary steps to protect your username and password; and
- sign off from the Services and close your browser when your session is complete to prevent unauthorized persons from accessing your Accounts and Electronic Services.

Your password:

- Can be changed within the Services or by calling Customer Service at 877-226-5820
- Must have the minimum number of characters we may specify from time to time and must include at least one letter and one number. Your password is case-sensitive.

If you believe that your password has been lost or stolen, that someone has accessed your Account or Electronic Services without your permission, or if you suspect any fraudulent activity on your Account, you agree to immediately notify Customer Service:

- by calling 877-226-5820:
  - Monday through Thursday - 8am-5pm Pacific Standard Time
  - Friday - 8am-6pm Pacific Standard Time
  - Saturday – 9am-Noon  
(Closed federal holidays and Saturdays following a Friday federal holiday or preceding a Monday federal holiday.)
- or writing to us at P.O. Box 1140 Stockton, CA 95201-1140

In the event of unauthorized use of your username and password, you may be liable for losses, to the extent permitted by law, unless you fulfill your responsibilities under this Agreement.

## **Privacy**

We are committed to protecting your privacy. All information gathered from you in connection with using the Services will be governed by the provisions of the Bank's Privacy Policy, including the Online Privacy Policy.

## **Responsibilities**

In addition to responsibilities outlined elsewhere in this Agreement, your responsibilities under this Agreement include, but are not limited to, the following:

- not using the Services for any illegal purposes;
- complying with all regulations, policies and procedures of networks through which you access and use the Services;
- not using the Services for any activity or use that may disrupt the Services or the networks through which you access or use the Services;
- not accessing or attempting to access any Electronic Services or Accounts for which you have no access authorization, or duplicate, modify, distribute, or display any of the data or files from any such Accounts;
- providing true, accurate, current and complete information about yourself as requested; and
- not misrepresenting your identity.

## **Disclaimer of Warranties**

To the fullest extent permitted by law, we make no warranties of any kind for the Services, either express or implied, including but not limited to, implied warranties of merchantability or fitness for a particular purpose. We do not warrant that the Services will be uninterrupted or error free, that defects will be corrected, or that our Website that makes the Services available is free of viruses or other harmful components.

### **Limits on our Liability**

In no event will the Bank or any of its officers, directors, shareholders, parents, subsidiaries, affiliates, agents, licensors, or third-party service providers be liable for any consequential (including without limitation, loss of data files, profit or goodwill or the costs of procurement of substitute goods or service) indirect, incidental, special or punitive damages, whether in an action under contract negligence or any other theory, arising out of, or in connection with, this Agreement, the Service, or the inability to use the Service, even if advised of the possibility of such damages.

### **Indemnification**

Except to the extent that we are liable under the terms of this Agreement or another agreement governing the applicable Account or Electronic Service, you agree to indemnify, defend, and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from and against any and all claims, demands, liabilities, damages, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses (including, but not limited to, reasonable attorney's fees) arising from use of the Services by you or any third party.

We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without our prior written consent.

### **Arbitration**

At your request or at the request of the Bank, any controversy between you and the Bank arising out of, or relating to, the Services shall be resolved either by arbitration or by reference, which will take the place of a trial before a judge and jury.

- Controversies involving one account, or two or more accounts with at least one common owner, will be decided by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.
- All other controversies will be decided by a reference under California Code of Civil Procedures section 638 and its related subsequent sections.

### **Notices and Communication**

Except as expressly provided otherwise in this Agreement, we will provide you notices and other information regarding your Account, Electronic Service, or the Services (collectively “Account Related Information”) through mail, electronically, or by other means available. This information will be sent to the postal or electronic address (“E-Address”) of the owner of the applicable Account or Electronic Service as reflected in our records, unless a different postal or electronic address has been specified in accordance with procedures we may establish from time to time. The E-Address may be an e-mail address, other Internet address, text messaging number, or other electronic access address provided to us in accordance with this Agreement. Any Account Related Information will be deemed to have been sent on the first Business Day following the date on it. Account Related Information that is held for pick-up or posted on our Website will be deemed to be delivered to you at the time that we make it available for pick-up or send notice in accordance with this Agreement that it is posted on our Website, as applicable. The person receiving the notice is responsible for providing copies of all Account Related Information to all joint owners, delegates, or other persons with access to the applicable Account or Electronic Service. We reserve the right at all times to communicate all Account Related Information to you through the U.S. Postal Service or overnight courier, at our sole option.

Unless otherwise required by applicable law, if we are required to provide you with information in writing, we may, at our option, send it electronically either:

- to your E-Address;
- by posting the information on our Website or to your online banking secure mailbox, and sending you a notice to your postal address or E-Address (either separately or as part of an account statement) telling you that the information has been posted and providing instructions on how to view it; or
- to the extent permitted by law, by posting the information to our Website. You agree that we may satisfy our obligation to provide you with an annual copy of our Privacy Policy by keeping it available for review on our Website.

Unless otherwise prohibited by the laws governing your Account or Electronic Service, this paragraph applies if two or more Account Related Information documents are returned or in the case of electronic notifications, the notice is returned as undeliverable. This means we may discontinue sending Account Related Information to you until you provide a valid postal or E-Address to us. Additionally, we may, at our sole option:

- destroy Account Related Information that is sent to you and returned to us as undeliverable;
- hold the Account Related Information for your Account for you to pick-up; or
- discontinue sending the Account Related Information through the delivery channel generating returns and utilize an alternative delivery channel.

You agree that you will notify us immediately in the event of a change to your address or E-Address. Address changes may be initiated:

- at your request. You may instruct us to change the address or E-Address to which we send notices or Account Related Information concerning your Account at any time;

- if we receive an address change notice from the U.S. Postal Service; or
- if we receive information from another party in the business of providing correct address information that the address in our records no longer corresponds to your address.

We may act on any instruction purportedly made on your behalf within a reasonable time after we received such instruction. Unless you instruct us otherwise, we may in our sole discretion change the postal or E-Address only for the account(s) you specify or for all or some of your other account(s) with us.

Any notice you send us will not be effective until we actually receive it and have a reasonable opportunity to act on it. If there is more than one owner on your Account, we may send Account Related Information to any one of them. You assume the risk of loss in the mail or otherwise in transit. Any notice or Account Related Information we send you will be effective when mailed, sent electronically or otherwise made available to you.

### **Amendments to this Agreement**

**Except as otherwise required by law, we may in our sole discretion change the terms of this Agreement from time to time and at any time. This may include adding new or different terms to, or removing terms from, this Agreement.** When changes are made we will update this Agreement on the Website. The Website will be updated on the effective date, unless an immediate change is necessary to maintain the security of the system or unless a law, rule or regulation requires that it be updated at an earlier time. If such a change is made, and it cannot be disclosed without jeopardizing the security of the system, this Agreement will be updated within thirty (30) days after the change. You will be notified as soon as possible when any changes are made which materially affect your rights such as changes regarding how your information is maintained or used, or changes to the terms of this Agreement. By continuing to use the Service after we send you notice of any change, you agree to the change. Changes to fees or terms applicable to Accounts are governed by the agreement otherwise governing the applicable account.

### **Governing Law**

Except to the extent federal law controls, disputes concerning the acceptance and handling by the Bank of Automated Clearing House (“ACH”) transactions will be governed by the internal laws of the State of New York as provided by the ACH rules. Except to the extent that the federal law controls, all other controversies will be resolved in accordance with the internal laws of the State of California.

### **Attorneys’ Fees and Expenses**

In the event of a lawsuit or an arbitration or reference proceeding, the prevailing party is entitled to recover costs and reasonable attorneys’ fees incurred in connection with the lawsuit or proceeding, as determined by the court, arbitrator or referee.

## **Assignment**

We may assign our interest in this Agreement. You may not assign or transfer this Agreement. We may also assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors or other third parties.

## **Proprietary Rights**

All content included or available on the Services, such as advertisements, text graphics, logos, button icons, images, audio clips, and software, is the property of the Bank, and/or third parties and is protected by copyrights, trademarks, or other intellectual and proprietary rights. The trademarks, logos, and service marks displayed on the Service (collectively the “Trademarks”) are the registered and unregistered trademarks of the Bank or third parties. Under no circumstances may you use, copy, alter, modify or change these Trademarks.

## **Entire Agreement**

This Agreement represents the agreement between you and the Bank regarding the Services and supersedes all previous and contemporaneous written or oral agreements. Each of the rules, terms, and conditions set forth in this Agreement stand alone. If any provision of this Agreement is held to be invalid or otherwise unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be invalidated or otherwise affected.

## **Failure to Act**

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

## **Headings**

Headings of this Agreement are for convenience only and are not to be deemed to be relevant in resolving any question of interpretations or construction of any section of this Agreement.

## **Additional Provisions Applicable Only to Consumer Accounts**

### *Electronic Funds Transfers*

The provisions in this section apply only to electronic fund transfers that debit or credit a consumer’s checking, savings or other asset account and are subject to the Federal Reserve Board’s Regulation E (an “EFT”). The Bank may, when applicable, rely on any exceptions to the provisions in this section that are contained in Regulation E. All terms

not otherwise defined in the Agreement which are defined in Regulation E will have the same meaning when used in this section.

Your liability for an unauthorized EFT or a series of related unauthorized EFTs will be determined as follows:

1. If you notify us within two business days after learning of the loss or theft of your password, your liability will not exceed the lesser of \$50 or the amount of unauthorized EFTs that occur before notice to us.
2. If you fail to notify us within two business days after learning of the loss or theft of your password, your liability will not exceed the lesser of \$500 or the sum of:
  - \$50 or the amount of unauthorized EFTs that occur within the two business days, whichever is less; and
  - the amount of unauthorized EFTs that occur after the close of two business days and before notice to us, provided we establish that these EFTs would not have occurred had you notified us within that two day period.
3. You must report an unauthorized EFT that appears on a periodic statement within 60 days of our transmittal of the statement to avoid liability for subsequent transfers. If you fail to do so, your liability will not exceed the amount of the unauthorized EFTs that occur after the close of the 60 days and before notice to us, and that we establish would not have occurred had you notified us within the 60 day period. You may, as applicable, also be liable for the amounts described in the immediately preceding section 1 or 2 above.
4. If your delay in notifying us was due to extenuating circumstances, we will extend the times specified in the immediately preceding paragraphs 1, 2 or 3 above to a reasonable period.
5. You may notify us in person, by telephone, by email, or in writing.

The telephone number and address to be notified when you believe that an unauthorized EFT has been or may be made are:

Telephone: 1-877-226-5820, Monday through Friday, excluding federal holidays  
Address: Bank of Agriculture & Commerce, ECC Bank, Customer Service, P. O.  
Box 1140, Stockton, CA 95201-1140  
Email: You can send an email by signing on to the Service

In Case of Errors or Questions About Your Electronic Transfers, call or write us at:

BANK OF AGRICULTURE & COMMERCE  
ECC BANK  
CUSTOMER SERVICE  
P.O. BOX 1140  
STOCKTON, CALIFORNIA 95201-1140  
Business Days: Monday through Friday  
Excluding Federal Holidays

Phone: 1-877-226-5820

Contact us immediately if you think:

- your statement or transaction record is wrong;
- you need more information about a transaction listed on your statement;
- an unauthorized person has discovered your username and/or password;
- someone has transferred or may transfer money from your account without your permission; or
- bill payment transactions have been made without your authorization.

We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared. Tell us:

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

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

We will determine whether an error occurred within 10 business days (20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (90 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. Your account is considered a new account for the first 30 days after the first deposit is made, unless each of you already has an established account with us before this account is opened.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

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

If we do not complete a transaction to or from your Account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, we will not be liable for not completing, in whole or in part, any transaction or instruction which:

- you do not have enough available funds in your account or available credit to cover the transaction or transfer;

- is not in accordance with any term or condition of this Agreement or any other agreement applicable to the relevant Electronic Service or Account;
- we have reason to believe may not be authorized by you or any other person whose authorization we believe is necessary or involves funds or other property subject to a hold, dispute, restriction or legal process we believe prevents the transaction or instruction;
- would violate any applicable rule or regulation of any federal or state regulatory authority;
- was not in accordance with any other requirement of our policies, procedures or practices;
- we have other reasonable cause not to honor for our or your protection;
- if scheduled system maintenance or circumstances beyond our control (such as power outage computer virus, system failure, fire, flood, earthquake, or extreme weather) prevented the transaction or transfer;
- if the Services were not working properly, and you knew about the malfunction when you started the transaction or transfer;
- if there are postal delays or processing delays by others; or
- other exceptions apply.

### *Limitation of Liability*

When you give someone your username and password, you are authorizing that person to use your Service, and you are responsible for all transactions that person performs while using your Service. All transactions that person performs, even those transactions you did not intend or want performed, are authorized transactions. If you notify us that the person is no longer authorized, then only transactions that person performs after the time you notify us are considered unauthorized.

Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions.

### **Additional Provisions Applicable Only to Business Accounts**

#### *Protecting Your Username and Password*

You agree that we may send notices and other communications, including username and password information, to the current address shown in our records, whether or not that address includes a designation for delivery to the attention of any particular individual. You further agree that the Bank will not be responsible or liable to you in any way if information is intercepted by an unauthorized person, either in transit or at your place of business. You agree to:

- keep your username and password secure and strictly confidential, providing it only to authorized signers on your account(s);
- instruct each person to whom you give your username and password that he or she is not to disclose it to any unauthorized person; and

- immediately notify us and select a new username and password if you believe your username and/or password may have become known to an unauthorized person.

The bank will have no liability to you for any unauthorized payment or transfer made using your password that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.

We may suspend or cancel your username and password even without receiving such notice from you, if we suspect your username and password is being used in an unauthorized or fraudulent manner.

By using the Services, you acknowledge and agree that this Agreement sets forth security procedures that are commercially reasonable. You agree to be bound by instructions, whether authorized or unauthorized, which we implement in compliance with these procedures, unless you have given us prior notice of possible unauthorized use as described and we had a reasonable opportunity to act on such notice.

#### *Limitation of Liability*

If we fail in making a payment or transfer pursuant to your instructions, or if we make a payment or transfer in an erroneous amount that is less than the amount per your instructions, unless otherwise required by law, our liability shall be limited to interest on the amount that we failed to timely pay or transfer, calculated from the date on which the payment or 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 payment or 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 payment or transfer in an erroneous amount that exceeds the amount per your instructions, or if we permit an unauthorized payment or 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 San Francisco for each day interest is due. Unless otherwise required by law, in no event will the Bank be liable to you for special, indirect or consequential damages, including without limitation, lost profits or attorney's fees, even if we are advised in advance of the possibility of such damages.

However, we will not be liable for not completing, in whole or in part, any transaction or instruction which:

- you do not have enough available funds in your account or available credit to cover the transaction or transfer;
- is not in accordance with any term or condition of this Agreement or any other agreement applicable to the relevant Electronic Service or Account;
- we have reason to believe may not be authorized by you or any other person whose authorization we believe is necessary or involves funds or other property subject to a hold, dispute, restriction or legal process we believe prevents the transaction or instruction;
- would violate any applicable rule or regulation of any federal or state regulatory authority;
- was not in accordance with any other requirement of our policies, procedures or practices;
- we have other reasonable cause not to honor for our or your protection;
- if scheduled system maintenance or circumstances beyond our control (such as power outage computer virus, system failure, fire, flood, earthquake, or extreme weather) prevented the transaction or transfer;
- if the Services were not working properly, and you knew about the malfunction when you started the transaction or transfer;
- if there are postal delays or processing delays by others; or
- other exceptions apply