

# Merrick Bank Time Deposit Account Contract – Terms and Conditions May 12, 2025

## 1. THE ACCOUNT CONTRACT

Thank you for selecting Merrick Bank (the “Bank”) for a Time Deposit Account (the “Account”). The Bank opens Certificate of Deposit accounts that have no certificate, known as Time Deposits. Time Deposit Accounts are non-negotiable. This Time Deposit Account Contract-Terms and Conditions and the Merrick Bank Privacy Notice (collectively, the “Account Terms”) set forth the terms governing the Account. Please keep a copy of the Account Terms for future reference.

If we use “we”, “us”, or “our” we are referring to the Bank. If we say “you” or “your(s)” we mean the Account owner(s).

You agree to keep funds on deposit with us until the Maturity Date. By opening the Account, you agree to all of the Account Terms, which also incorporates, by reference, any supplemental provisions and disclosures we provide concerning the Account.

We reserve the right to waive or suspend enforcement of any of the Account Terms. Any such waiver or suspension does not affect the Bank’s right to subsequently enforce any provision or provisions previously waived or suspended.

**IMPORTANT NOTE: If, in addition to the Account, you have another product or service with us, separate terms and conditions apply to those products and services and you must communicate with us as specified in the documentation for those products and services. The Account Terms apply only to the Account, and not any of our other products or services.**

## 2. HOW TO CONTACT US

Should you need to contact us directly, you may do so by:

- A. Logging onto Merrick Bank’s online banking system for deposit accounts - Banno -Requires an account and valid login credentials.
- B. Calling 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST
- C. Sending us mail via the U.S. Postal Service to: Merrick Bank Deposit Services, P.O. Box 4952, Springfield, MO, 65808

## 3. ONLINE BANKING

We require all Accounts and Account owners to be enrolled in Merrick Bank’s online banking system for deposit accounts - Banno. Banno enables you to securely view Account details and Account history, receive notices, statements, and communicate with the Bank. See also our “Web Site and Mobile App Terms and Conditions” for additional information.

Failure to maintain your Banno account access and login credentials does not release you from these Account Terms.

#### **4. TO OPEN THE ACCOUNT**

##### **IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the United States government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an Account. In some cases we may also be required to ascertain the identity of the beneficial owners of certain accounts. What this means for you: When you open an Account, we will ask for your name, address, date of birth, and other information that will allow us to identify you or the beneficial owners of the Account. We may also ask to see your driver's license and/or other identifying documents.

##### **IMPORTANT INFORMATION ABOUT VERIFYING YOUR ELIGIBILITY – NOTICE REGARDING CONSUMER REPORTING AGENCY AND OTHER INFORMATION**

In connection with verifying your identity and eligibility for the Account, we may review your consumer report, credit history, or other information. By asking us to open an Account, you authorize us to obtain a consumer report, credit history information, or other information to process your request or for any other legitimate purpose. Based on this review, we may open an Account for you, but we reserve the right to decline your Account request if we are not able to verify your personal information to our satisfaction.

All Account Owners must:

1. Apply from within the U.S. and from a U.S. based IP address; and
2. Be at least eighteen (18) years of age; and
3. Be a permanent resident of the United States (U.S.); and
4. Have a Social Security Number; and
5. Have a U.S. street address (not just a P.O. Box); and
6. Have a U.S. bank account to initiate and receive ACH funding transactions; and
7. Be enrolled in Banno.

##### **IMPORTANT INFORMATION ABOUT ACH AUTHORIZATION**

By linking an account you own at another financial institution, you authorize Merrick Bank to initiate a debit from your eligible checking or savings account for the amount you have specified on your application. You understand that this authorization will remain in effect until cancelled by Merrick Bank, your depository financial institution, or yourself by contacting 1-866-638-6851 before 3:00 PM ET on the Date Authorized.

#### **5. CASH, CHECKS AND WIRE TRANSFERS**

We do not accept cash, checks or wire transfers.

#### **6. ACCOUNT OWNERSHIP**

The ownership of the Account is set forth on the Account application (the "Application") in which you designated the type of Account and identified the Account Owner or Primary Owner, as the case may be, as defined in the Application. We may not offer all types of forms of ownership that may be available to you under applicable state law. We reserve the right to reject or to close an account in our sole discretion without being required to supply an explanation. We reserve the right to reject or to close an account even though we may have accepted an initial deposit or taken preliminary steps to open an account. It is your responsibility to select the proper type of account you wish to open or maintain. Ownership of the Account cannot be changed during the Term. The Bank may accept or reject at its sole discretion any proposed assignment, transfer or pledge of the Account or any interest therein. The Bank will pay the principal amount and interest earned on

the Account only to the person(s) named on the Bank's records as owner of the Account. Instructions regarding the Account will be accepted at the discretion of the Bank. Except as otherwise agreed or provided herein, the Bank may accept instructions for, and in relation to, the placement, maintenance, roll-over, withdrawals and other instructions regarding the Account received from time to time in writing, by fax, telephone or electronically (where permitted) which purport to be from any owner of the Account or authorized representative of any owner.

## 7. TYPES OF ACCOUNT OWNERSHIP

**We offer Accounts in the name of one person, or joint accounts in the names of more than one person with rights of survivorship or payable-on-death features as specified by Utah law.** The Application designates the account type applicable to your Account. We reserve the right to request a social security number or other identifying information for each beneficiary that you designate. If you establish a payable-on-death Account, the Account belongs to you during your lifetime and your beneficiaries have no interest in, and no access to, the Account until your death. Upon your death (or in the case of a joint Account, on the death of the last surviving joint Account owner), all of the funds in the payable-on-death Account will be owned by the beneficiary or beneficiaries. If there is more than one beneficiary, in our sole discretion and subject to our right of setoff and security interest (if any), we will pay the funds in a payable-on-death Account to your beneficiaries as instructed by you and recorded in our records, or pay the funds by issuing a check in the name of all beneficiaries, and giving the check to any one beneficiary. We have no obligation to notify any beneficiary of the existence of a payable-on-death Account or the vesting of an interest in such an Account. Certain state law restrictions may apply to payable-on-death Accounts. You are solely responsible for complying with applicable law in establishing a payable-on-death Account. We make no representation that designating your Account as payable-on-death is advisable. You should consult an attorney or other qualified estate planning professional before designating your Account as payable-on-death. It may be appropriate or advisable to obtain spousal or domestic partner consent if you reside in a community property state (for example, AZ, CA, ID, LA, NV, NM, TX, WA or WI) if a spouse or domestic partner is not named as the sole beneficiary.

## 8. UNACCEPTABLE TYPES OF ACCOUNT OWNERSHIP

We do not offer Accounts having the following types of ownership:

- A. Business accounts.
- B. Individual Retirement Accounts.
- C. Uniform Transfer/Gifts to Minor Act Accounts.
- D. Accounts where the tax reporting number is not a Social Security Number.
- E. Accounts in the name of a municipality or other governmental entity.
- F. Accounts in the name of a trust, fiduciary, or estate.
- G. Accounts in the name of owners subject to backup withholding under IRS rules.

## 9. DEATH OR INCOMPETENCE OF OWNER(S)

In case of death or incapacity of an Owner or Primary Owner, we must be notified promptly. In the case of an individual Owner, if we determine an Owner has died or has been declared legally incompetent, we may place a hold on the Account to retain funds and refuse to accept deposits or permit withdrawals until we know and have verified the identity of the successor. Upon our receipt of satisfactory proof of death or adjudication of incompetence (e.g., certified copy of court order, death certificate, or other official record) of an Account Owner or Primary Owner, the Bank may close the Account and distribute funds to any surviving or competent Owner or other authorized representative, as directed in writing from a personal representative, executor, administrator, conservator, or guardian representing the Owner or the Owners estate, and we shall be entitled to rely on all information supplied and representations made in such written notice all as allowed by law and as determined in our reasonable discretion. Each Account Owner, or any authorized representative of any Account Owner, agrees to provide to us such evidence of death or incompetence as reasonably requested by us or as contemplated by law.

## 10. UNCLAIMED PROPERTY LAWS

State laws require us to close the Account and transfer your money to the state if we are unable to locate you after the Account is dormant for a specified period of time. If the Account becomes dormant, we may try to locate you at the address and telephone number shown in our records. After a specified period of time, if we are still unable to locate you, we are required to surrender the funds in the Account to the state, in accordance with state law, as

unclaimed property. If this occurs, the Bank does not have control of your funds. You may be able to reclaim them, but you may be required to apply to the state for return of your funds. To the extent permitted by law, the Bank may charge a reasonable service charge for processing unclaimed property. Once your funds are surrendered to the state, the Bank no longer has any liability or responsibility with respect to the funds.

## 11. TERMS SPECIFIC TO YOUR ACCOUNT

- A. **Interest Rate.** The Interest Rate is the interest rate the Bank pays on the Account from the Business Day funds are received by us ("Funding Date") to the date that is the earlier of the Maturity Date or the date on which the Account is closed, whichever is earlier (subject to any provisions in the Account Terms concerning forfeiture of interest).
- B. **Issue Date.** The Issue Date is the date we approve your Application. The Issue Date is earlier than the Funding Date because of the time it takes to receive funds after we approve your Application.
- C. **Annual Percentage Yield ("APY").** The APY reflects the annualized total amount of interest payable on the Account, based upon a daily compounding of the interest. The APY is calculated based upon the CD Term, at the time the Account is opened and assumes that all principal and interest will remain in the Account until the Maturity Date. Any delays in funding or withdrawal of interest or principal before the Maturity Date will reduce earnings.
- D. **Balance Computation Method.** The Bank uses the daily balance method to calculate the interest on your Account. This method applies a daily periodic rate to the principal in the Account each day.
- E. **Daily Compounding.** Interest is compounded on a daily basis from the Funding Date.
- F. **Monthly Crediting.** Interest is credited to the Account on a monthly basis on approximately the same date each month as the date on which the Account was opened. After the Account is opened you may request that we send you interest monthly via ACH.
- G. **Interest Accrual.** Interest begins to accrue on the Business Day your ACH deposit is received by us.
- H. **Fees.** The Bank reserves right to charge for certain services provided from time to time pursuant to the Chart of Service Fees below. All fees will be charged against interest then principal balances in the Account.
- I. **Grace Period.** The Grace Period is ten calendar days after the Maturity Date. Should the tenth day fall on a non-Business Day, the end of the Grace Period shall be the next Business Day.

## 12. BUSINESS DAY

Except as noted in Section 24 below, a Business Day is a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C 6103(a).

## 13. TIME DEPOSITS

- A. The Account is considered opened on the Issue Date and funded on the Funding Date.
- B. The minimum amount that must be deposited to open an Account is \$25,000.
- C. The maximum account balance is limited to a balance of \$250,000. Any interest accrued and paid to the account is exempt from this maximum balance limit.
- D. **Minimum Daily Balance to Obtain APY.** Your Account must maintain a minimum principal balance of \$25,000 each day, and you must elect to compound the interest that accrues on the Account, to obtain the disclosed APY.

- E. The initial funding of the Account must be made via Automated Clearing House (ACH) transfer, and must be made in U.S. Dollars from an account owned by the Account owner(s). We do not accept cash, checks, money orders, wire transfers or international wire transfers for deposit. ACH transfers are processed under the Operating Rules of the National Automated Clearing House Association ("NACHA") and you agree to be bound by and to comply with the NACHA rules.
- F. In order to ensure that the Bank has properly verified your identity, we will place a temporary hold on the Account until we have completed our verification procedures.
- G. You may link the Account to a deposit account you have with another bank. You can do this online when you establish the Account with us or anytime during the life of the Account. Any account you link to the Account must be with a U.S. financial institution. When returning funds to you after the Maturity Date or for any other reason, the funds will be returned via ACH only to a linked account.

#### **14. CLOSING THE ACCOUNT**

You can close the Account without penalty during the Grace Period subject to the Account Terms. We may close the Account at any time, for any reason and without advance notice. In addition, funds in the Account being closed may be subject to a brief temporary hold to allow outstanding transactions to clear and for any necessary processing procedures to be performed.

#### **15. AUTOMATIC ACCOUNT RENEWAL**

The Account will automatically renew at Maturity, unless we receive instructions from you electing not to renew the Account. The new Term will be equal in length to the original Term of the Account, at the Bank's then-current interest rate and APY for the type and Term of the Account, will apply.

You may request to deposit additional funds to the Account within the Grace Period. Interest begins to accrue on the additional funds on the Business Day your ACH is received by us. The minimum allowable deposit is \$25,000 and the additional deposits cannot cause the balance in the Account to exceed the maximum Account balance limit of \$250,000. Any interest accrued and paid to the Account is not included in the calculation of the maximum balance limit.

You may request to withdraw a portion of the funds from the Account within the Grace Period, provided that doing so does not cause the principal balance in the Account to fail to meet the minimum amount to open an Account as defined above.

#### **16. PAYMENT OF INTEREST**

We will credit Interest to the Account on a monthly basis on approximately the same date each month as the date on which the Account was opened. If you elect to have interest paid to another financial institution, such payments will not be considered a withdrawal from the Account for early withdrawal penalties.

The stated APY is based on the interest remaining on deposit until maturity. A withdrawal will reduce earnings.

## 17. BACKUP WITHHOLDING

IRS regulation requires the Bank to have a correct Social Security Number (SSN) on every Account, or to withhold a percentage of the interest paid as provided in current IRS regulations. If the Account is owned by a single individual, the Account Owner must certify to the Bank, in writing and under penalty of perjury, the Account Owner's SSN and further certify that the Account Owner is not subject to backup withholding. If the Account is owned jointly by two or more Account Owners, the Account Owners must designate a Primary Account Owner, and the Primary Account Owner must certify to the Bank in writing that the Primary Account Owner's SSN is accurate and further certify that the Primary Account Owner is not subject to backup withholding. If the Bank does not receive these certifications within thirty days after the date on which the Account is opened, the Bank may close the Account, return all funds on deposit to the Account Owner(s), and all accrued interest will be forfeited.

If at any time after the Account is opened the IRS informs the Bank that the SSN for the Account does not match IRS records for the SSN associated with the name of the Account Owner or the Primary Account Owner (as the case may be), the Bank may require the Account Owner or the Primary Account Owner to recertify the SSN of the Account Owner or Primary Account Owner to the Bank, in writing. If the Account Owner or the Primary Account Owner does not provide this recertification promptly to the Bank, the Bank reserves the right to close the Account before its Maturity Date. Any such Account closing may be treated by the Bank as an early withdrawal of principal, subject to the applicable penalty for early withdrawal.

## 18. PENALTY FOR EARLY WITHDRAWAL

Except when a withdrawal is due to the death or the adjudication of incompetence of the Owner, or for the payment of monthly interest to another financial institution as set forth elsewhere in these Account Terms, no withdrawals of principal are allowed before the Maturity Date.

Subject to applicable law, we are not required to give our consent to any withdrawal from the Account before the Maturity Date. If we consent to a proposed withdrawal before the Maturity Date, you must withdraw the entire balance of the Account and we will charge the early withdrawal penalty and deduct it from the Account balance. Any interest accrued but not yet credited will be applied as a credit to the Account balance. The early withdrawal penalty is the dollar amount equal to the number of day's interest, based on the Term of the Account below, the Account balance, and the interest rate in effect on the Account at the time of withdrawal.

Term	Early Withdrawal Penalty
364 days or less	90 days' interest*
Between 365 days and 1,459 days	180 days' interest*
1,460 days or longer	270 days' interest*

\* Or seven days' interest, whichever is greater.

## 19. TRANSFERRING ACCOUNTS

The Account is not transferrable and cannot be assigned by any Account owner. We may assign our interest in the Account at any time.

## 20. STATEMENTS/NOTICES/PAYMENTS

Any notice or other communication sent by the Bank will be sent to the most recent email address for the Account Owner or Primary Account Owner, as the case may be, as reflected on the books and records of the Bank. Each Account Owner agrees to promptly advise the Bank of any change in that Account Owner's email, telephone number or mailing address. Except as otherwise expressly agreed to by the Bank and all of the Account Owners, payments made by the Bank to the Account Owners with respect to the Account shall be by ACH sent to only linked accounts.

We will provide all statements, notices or other communications via secure electronic communication channels. We will provide paper statements and notices as requested for a fee.

## 21. ADDRESS CHANGES

You must notify the Bank immediately of any changes in your permanent residence, email address, or mailing address by:

- A. Logging onto Merrick Bank's online banking system for deposit accounts - Banno - Requires an account and valid login credentials.
- B. Calling 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST
- C. Sending us mail via the U.S. Postal Service to: Merrick Bank Deposit Services, P.O. Box 4952, Springfield, MO, 65808

## 22. CLAIMS/RIGHT OF OFFSET

When we have the right to offset any funds in the Account against any obligation that any Account Owner owes us, we will place an administrative hold on such funds pending offset. This right of offset applies to any consumer-purpose debt owed by any Account Owner to the Bank, unless the Account is specifically pledged to the Bank as collateral for repayment of the debt. The Bank may apply all funds in a jointly owned Account to satisfy a debt owed to the Bank by any one of the Account Owners. If the Bank uses principal from the Account to satisfy any debt owed to it, the withdrawal is subject to the applicable penalty for early withdrawal.

If the Bank is served with any notice of garnishment or of attachment, tax levy, injunction, restraining order, subpoena, or other legal process relating to the Account, the Bank will comply with the terms of such notice without notice to you. The Bank may charge a fee, and may assess this fee against the Account or any other account an Account Owner maintains with the Bank, to the fullest extent permitted by applicable law. Levies and garnishments are subject to the Bank's right of offset to the fullest extent permitted by applicable law.

If the Bank receives conflicting claims to funds in the Account and cannot, in good faith, determine the rights of the claimants to the funds, the Bank may, at its discretion: (1) restrict the Account and deny access to all; (2) refer all or any portion of the funds from the Account to the court of judgment; or (3) hold the funds, without liability to anyone, pending resolution of the claim to the Bank's satisfaction.

## 23. AMENDMENTS

We may alter, amend or supplement the Account Terms at any time. In such event, the Bank will send notice of such alteration, amendment or supplement to the Account Owner(s) in accordance with the Account Terms, and in accordance with applicable state and federal law. You may receive a copy of the most current Account Terms by calling us at 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST, writing to us at Merrick Bank, P.O. Box 4952, Springfield, MO 65808 or by visiting our website [www.merrickbankcds.com](http://www.merrickbankcds.com).

## 24. ELECTRONIC FUNDS TRANSFER

We may provide you with electronic funds transfers ("EFT") services, including the initial deposit to the Account and preauthorized transfers of interest from the Account. For these services, you authorize the Bank to charge and deduct from the Account any and all charges applicable to the EFT service(s) the Bank may provide to you as set forth in the Account Terms. We may restrict your access to any EFT service(s) at our sole discretion and for any or no reason.

*Preauthorized Payments.* You may arrange to have the interest earned and posted to the Account withdrawn from the Account and sent via ACH to a financial institution you designate.

- A. **Right and Procedure to Stop Preauthorized Payments.** If you have instructed Merrick Bank to make regular interest payments from your Account, you can stop these payments by:
  - Logging onto Merrick Bank's online banking system for deposit accounts - Banno - Requires an account and valid login credentials.
  - Calling 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST
  - Sending us mail via the U.S. Postal Service to: Merrick Bank Deposit Services, P.O. Box 4952, Springfield, MO, 65808



We must receive your request at least three business days before the payment is scheduled to be made. In addition, if you call, we may require that you put your request in writing and deliver it to us within fourteen calendar days after you call.

- B. **Refusal to Pay a Preauthorized Transfer or Payment.** If, because your Account has insufficient funds to cover a transfer or payment, we may refuse to make the transfer or payment. We will mail or deliver to you, on or before the next business day, a notice of our refusal to pay the transfer or payment.
- C. **Telephone Transfers.** You may arrange to have your interest payments transferred via EFT by contacting the customer support call center at 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST. Unless required by law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission or leave by voice mail or on a telephone answering machine.
- D. **Our Liability for EFT Transactions.** If we do not complete a transfer 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, there are some exceptions. We will not be liable, for instance, if, through no fault of ours, you do not have enough money in your Account to make the transfer, or if circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken. There may be other exceptions stated in our agreement with you.
- E. **Periodic Statements/Notice of Preauthorized Payments.** You will get a monthly account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly). You will receive a notice for all Preauthorized Payments that vary in amount.
- F. **Confidentiality.** We will disclose information to third parties about your account or the transfers you make: (i) where it is necessary for completing transfers, (ii) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, (iii) in order to comply with government agency or court orders, or (iv) if you give us your written permission.
- G. **Business Day.** For purposes of this Section 24 and Section 25 below, a “business day” is any day on which we are open to the public for carrying on substantially all business functions.

## 25. YOUR LIABILITY FOR UNAUTHORIZED TRANSACTIONS, REPORTING AND DISPUTING ERRORS

- A. **Your Liability for Unauthorized Transactions.** You must promptly notify us if you believe that an electronic fund transfer has been made to or from the Account without your permission. To report unauthorized transfers, call us immediately at 1-866-638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST.

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

- B. **Error Resolution Notice.** In case of errors or questions about your EFTs, telephone us at 1-866- 638-6851, Monday thru Friday, except holidays, 8:00 AM CST – 6:00 PM CST, or write to us at Merrick Bank, Attn: Disputes, P.O. Box 4952, Springfield, MO 65808 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than sixty days after we sent the FIRST statement on which the problem or error appeared. When contacting us for such purposes, we ask that you:
  1. Tell us your name and Account number (if any).
  2. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

3. Tell us the dollar amount of the suspected error. If you tell us orally, we may require that you send us your complaint or question in writing within ten business days.

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

For errors involving new Accounts (an Account is considered to be a new Account for the first thirty days after opening or funds are deposited into the Account, whichever occurs later), or foreign-initiated transactions, we may take up to ninety days to investigate your complaint or question.

For new Accounts, we may take up to twenty business days to credit your Account for the amount you think is in error.

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

## **26. FUNDS AVAILABILITY**

ACH credits received by the Bank are available when they are posted to your Account.

## **27. PRIVACY**

Please see the Bank's Privacy Policy, which is available on our website, [www.merrickbankcbs.com](http://www.merrickbankcbs.com), for an explanation of how we may use information about you provided by you or obtained in connection with the Account.

## **28. TELEPHONE MONITORING**

You agree that your telephone calls with our authorized representatives may be monitored and recorded.

## **29. NO FIDUCIARY OBLIGATION**

We assume no fiduciary obligation to you. This means that we do not act as your trustee or financial advisor, and we do not assume any responsibility for your Account beyond reasonable care.

## **30. FDIC INSURANCE**

The Bank is a member of the Federal Deposit Insurance Corporation (FDIC). The Account is insured to the extent permitted by the FDIC's rules and regulations. Please note that FDIC deposit insurance is generally limited to a maximum of \$250,000.00 per depositor (not per Account). For further information, please refer to the FDIC's brochure, Your Insured Deposit, available on the FDIC website [www.fdic.gov](http://www.fdic.gov).

## **31. WAIVER OF LIABILITY AND FORCE MAJEURE**

Unless we have acted in bad faith or are otherwise prohibited by applicable law, we are not liable to you for performing or failing to perform services under or in connection with these Account Terms. Without limiting the foregoing, the Bank will not be liable for delays or mistakes that happen due to reasons beyond our control, including, without limitation, acts of civil, military or banking authorities, national emergencies, insurrection, war, riots, acts of terrorism, failure of transportation, communication or water supply, or malfunction of or unavoidable difficulties with our equipment. If a court finds that the Bank is liable to you for what we did or did not do under or in connection with these Account Terms, you may recover from us only your actual damages, in an amount not to exceed the total interest paid by us to you under and in connection with these Account Terms during the six-month period immediately preceding the event giving rise to our liability. You agree that the dollar limitation described in the preceding sentence is reasonable, to the extent permitted by applicable law. In no event will the Bank be liable for consequential damages, extraordinary damages, or special or punitive damages.

### 32. APPLICABLE LAW

These Account Terms are meant to conform to all applicable state and federal laws and to all applicable regulations or enactments of appropriate federal and state regulatory agencies. They will be governed and interpreted in accordance with the law of the State of Utah except to the extent governed by Federal law. The Account is also subject to applicable operating circulars and operating rules of any clearinghouse or other association involved in transactions.

### 33. ARBITRATION AND CLASS ACTION WAIVER

This section is an agreement to arbitrate disputes ("Arbitration Agreement") that may arise as a result of the Agreement or your Account. Read this Arbitration Agreement carefully. You may reject this Arbitration Agreement by notifying us in writing within 60 days using the procedure set forth at the end of this section. If a dispute arises that is covered by this Arbitration Agreement, you will be required to resolve the dispute through Binding Arbitration if you or we request Binding Arbitration as set forth herein. This means that you will not be able to have the dispute settled by trial or before a jury or to participate in a class action in court or a class action or consolidated arbitration. Other rights that you would have if you went to court may not be available or may be more limited in arbitration, including your right to appeal.

In consideration for our willingness to provide you with an Account as set forth herein, you and we agree as follows:

Any claim, dispute or controversy ("Claim") by either you or us against the other arising from or relating in any way to the Account Terms or your Account, except for disputes concerning the validity, scope or enforceability of this Arbitration Agreement (which are for a court to decide), shall, at the demand of any party, be resolved by Binding Arbitration. However, we will not demand arbitration pursuant to this agreement to arbitrate in connection with any individual Claim that you properly file and pursue in a small- claims court of your state or municipality, so long as the Claim is pending only in that court. "Binding Arbitration" means an arbitration proceeding before the American Arbitration Association ("AAA") pursuant to the code of procedures of the AAA in effect at the time the Claim is filed (the "Arbitration Rules"). If the AAA is unable or unwilling to serve, and we cannot agree on a replacement, a court with jurisdiction shall select the arbitrator. Any arbitration proceeding will take place at a location within the federal judicial district that includes the most recent U.S. Mail address we have on file for you at the time the Claim is filed or at any other mutually acceptable location. Any party to the arbitration proceeding may enter judgment upon the arbitration award in any court having jurisdiction over the arbitration award and may have that judgment enforced by any court having jurisdiction over that judgment.

A demand for arbitration under this agreement to arbitrate may be made either before or after a lawsuit or other legal proceeding begins, and may be made in papers filed in the lawsuit (for example, a motion by the defendant to compel arbitration of claims asserted by the plaintiff in a lawsuit filed in court). However, any demand for arbitration that is made after a lawsuit or other legal proceeding has begun must be made within 90 days following the service of a complaint, third-party complaint, cross-claim or counterclaim or any answer thereto or any amendment to any of the above. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party asserting the Claim(s) to start the arbitration proceeding in accordance with the AAA's rules and procedures.

This agreement to arbitrate Claims shall be broadly construed and includes all controversies and claims of any kind between us. It also includes any disputes you have with our agents, contractors, employees, officers or assignees, any merchants with whom you use the Account, any credit reporting agencies to whom we report the Account or any other third party that has been involved or becomes involved with, or whose trademarks are used in connection with, any purchasing, marketing, soliciting, servicing or credit reporting activity relating to your Account. Moreover, it includes initial claims, counterclaims, cross-claims, third-party claims and federal, state, local and administrative claims and claims which arose before the effective date of this Arbitration Agreement. It also includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and claims for money damages and injunctive or declaratory relief.

The Claims covered by this agreement to arbitrate include, without limitation:

- Any disputes regarding: the Application you prepared in connection with the issuance of your Account; any

solicitation or advertising materials you received in connection with your Account; any activities relating to the maintenance or servicing of your Account; and any funds held by the Bank in connection with your Account;

- Any disputes arising from the collection of amounts you owe in connection with your Account or the manner of collection;
- Any disputes concerning the dollar amount of payments made or transactions posted to your Account;
- Any disputes concerning the processing of items or funds transfers sent to the Bank for the purpose of posting to your Account;
- Any disputes regarding information obtained by us from, or reported by us to, credit bureaus or others;
- Any disputes related to insurance or other services or products purchased from us in connection with your Account;
- Any disputes regarding communications involving telephones, automatic dialing systems, artificial or prerecorded voice messages, SMS text messages or facsimile machines; and
- Any disputes concerning the relationships resulting from this Cardholder Agreement, your Account or any of the foregoing.

**CLASS ACTION WAIVER:** TO THE EXTENT PERMITTED BY LAW, NO ARBITRATOR OR COURT MAY ORDER, PERMIT OR CERTIFY A CLASS ACTION, REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL LITIGATION OR CONSOLIDATED ARBITRATION IN CONNECTION WITH THIS AGREEMENT TO ARBITRATE. NO ARBITRATOR OR COURT MAY ORDER OR PERMIT A JOINDER OF PARTIES IN CONNECTION WITH THIS AGREEMENT TO ARBITRATE, EXCEPT FOR JOINDER OF ANY JOINT APPLICANT OR OTHER AUTHORIZED USER OF THE ACCOUNT, UNLESS BOTH YOU AND WE CONSENT TO SUCH JOINDER IN WRITING. BY ACCEPTING THIS ARBITRATION AGREEMENT, YOU AGREE TO WAIVE THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION, REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL LITIGATION OR CONSOLIDATED ARBITRATION RELATED TO THIS AGREEMENT OR YOUR ACCOUNT.

**JURY TRIAL WAIVER:** If you or we elect to arbitrate a Claim, YOU AND WE BOTH KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO HAVE A COURT OR JURY DECIDE THE CLAIM.

The arbitrator will be required to follow relevant substantive law consistent with the Federal Arbitration Act ("FAA") and applicable judicial precedent to arrive at a decision and shall be empowered to grant whatever relief would be available in court in an action for an individual Claim. Any award of punitive damages shall be subject to the constitutional limits that would apply in court. Where authorized by applicable law, the arbitrator's award may include attorneys' fees and other expenses. The arbitrator shall follow any applicable statute of limitations and privilege rules.

You and we both agree that the transactions subject to this agreement to arbitrate involve interstate commerce and that this agreement to arbitrate shall be governed by and enforceable under the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

The cost of any arbitration proceeding shall be divided as follows:

- If you initiate arbitration, you will be responsible for paying one half of the filing fee, or \$125, whichever is less, when the demand for arbitration is made.
- If we initiate arbitration, we will be responsible for paying all arbitration costs.
- Regardless of who initiates the arbitration, you will not be responsible for any arbitration fees that exceed one half of the filing fee, or \$125, whichever is less, or the fees that you would have incurred if the Claim had been brought in court.

Notwithstanding the foregoing, if you believe the cost of arbitration may be too burdensome, you may seek a waiver of the filing fee under the applicable Arbitration Rules. If you seek, but do not qualify for such a waiver, we will consider a written request from you to advance all or part of the filing fee. Each party is responsible for the fees of its attorneys, experts, and witnesses unless the arbitrator awards them to a party. We will always pay any fees or expenses that we are required to pay by law or the Arbitration Rules or that we are required to pay for this Arbitration Agreement to be enforced.

The arbitrator's decision shall become final and binding after 30 days unless any party to the arbitration takes an appeal from the decision by making a written request to the AAA. The appeal panel, which will consist of three arbitrators, will consider all factual and legal issues anew, will conduct the appeal in the same manner as the initial arbitration, and will make decisions based on the vote of the majority. We will advance any fees and costs required by the AAA to commence any appeal and the appealing party will pay the arbitrator's fee. The appeal panel's decision shall be final and binding, except for any appeal rights provided by the FAA.

In the event of a conflict between the Arbitration Rules or the Account Terms, on the one hand, and this Arbitration Agreement on the other hand, this Arbitration Agreement shall govern. If any portion of this Arbitration Agreement, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. If a determination is made that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Agreement will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal. This Arbitration Agreement shall survive the closing or termination of your Account, voluntary payment of your Account or any part of it, any legal proceedings to collect money you owe, any bankruptcy by you and any sale or assignment by us of your Account.

You may contact the AAA to obtain information about arbitration, arbitration procedures and fees by calling the telephone number or going to the Internet website indicated below:

American Arbitration Association 120  
Broadway, 11th Floor  
New York, NY 10271 800-778-  
7879  
[www.adr.org](http://www.adr.org)

## RIGHT TO REJECT ARBITRATION

**YOU HAVE THE RIGHT TO REJECT THIS AGREEMENT TO ARBITRATE, BUT YOU MUST EXERCISE THIS RIGHT PROMPTLY.** If you do not wish to be bound by this agreement to arbitrate, you must notify us in writing within sixty (60) days after the date your Account is opened. You must send your request to: Arbitration Manager, Merrick Bank, Legal Department, P.O. Box 5000, Draper, Utah 84020- 5000. The request must include your Account number and a clear statement of your intent, such as "I reject the arbitration clause in the Merrick Bank deposit Account Terms." Your election to reject arbitration will not affect the other terms of your Account, nor will we close the Account as a result of your election to reject arbitration.

### 34. CHART OF SERVICE FEES

The chart below identifies the service fees we may charge to the Account. Except for fees for wire transfers, all fees are charged against interest first then the principal of the Account. Wire transfer fees are deducted against the amount of the wire transfer.

FEE TYPE	DESCRIPTION	AMOUNT
Wire Transfer (Domestic Only)	Fee to wire funds to another U.S. Financial Institution	\$25.00 per wire
Account Statements	Account statement mailed to customer on a periodic basis	\$5.00 per statement
Notices	Notices mailed to the customer on a periodic basis	\$5.00 per notice
EFT (ACH) Stop Payments	Fee for placing a stop payment on an Electronic Funds Transfer or ACH item	\$25.00 per stop payment
EFT (ACH) Returns	Fee for Electronic Funds Transfer or ACH items returned to the Bank for such reasons as invalid account, account closed, non-sufficient funds	\$25.00 per return
Checks	Fee to issue a check to close an Account	\$25.00 per check
Legal Filings (Garnishments, Levies and Other Court Orders)	Legal filings received by the Bank requiring Bank action	\$50.00 per filing