



## DIGITAL BANKING AGREEMENT

Revised February 2020.

This Digital Banking Agreement (“Agreement”) will be effective as of the first day we make the Services accessible to you. Unless otherwise stated, any reference to the Agreement shall include any applicable schedules, enrollment forms and exhibits to the same, as well as applicable user guides, user manuals, set-up forms and other user materials, including digital terms and information.

**Consent to this Agreement covers electronic records, including consumer disclosures provided by Bank of Marin. For this electronic service enrollment process Consent by any one authorized user will be effective for all authorized users on the account(s) related to the Digital Banking Services. Subject to your right to withdraw consent, this Consent allows you to receive communication in electronic form. If you choose not to agree by exiting the enrollment form, you will not be eligible to enroll in Digital Banking Services.**

**NOTICE TO CONSUMER ACCOUNT HOLDERS: This Agreement includes disclosures applicable to consumer accounts as provided under the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E. Read this document carefully and retain a copy for your records.**

This Agreement is in addition to and subject to other agreements between Bank of Marin and you, including but not limited to (as applicable), your Bank of Marin Deposit Agreement and Disclosure Statement, Bill Payment, eDocument, Mobile Deposit and Text Banking Terms and Conditions, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the other agreements between you and us, this Agreement will control.

### Available Services

Subject to system limitations and the approvals set and established for your Account(s), with the Services you may be able to:

- Obtain limited Account information, including recent transactions;
- Transfer funds between linked Accounts, including lines of credit but excluding certificates of deposit (“Book Transfers”);
- Initiate external transfers to your eligible accounts at other financial institutions (“External Transfers”);
- Transfer funds to and from loan accounts;
- Use People Pay to externally pay people;
- Initiate check stop-payment instructions;
- Re-order checks;
- View check images, statements, notices and tax forms;
- Download account information in various formats;
- Download (or “export”) Account information for transfer to specified financial software programs and/or spreadsheets. (Note: we are not responsible for the accuracy of data or for its integration with financial software);
- Initiate bill payments (“Bill Payments”);
- Consent to receive electronic periodic Account statements and opt out of paper statements (“eDocuments”);
- Access the Services using your mobile phone, including mobile check deposits and card manager, subject to additional separate terms (“Mobile Deposits”);
- Use Text Banking on your Mobile Device
- Initiate wire transfers to yourself or to third parties (“Wire Transfers”);
- Originate automated clearing house (“ACH”) Entries, available to business accounts only (“ACH Entries”);
- Manage alerts;
- Use Money Manager; and
- Communicate directly with us via the digital banking secure message center.



Some of the above services may be restricted or unavailable depending on whether the Account is a consumer account or business account. Services performed during nightly processing may not succeed when applied to your actual balance at the end of the nightly processing.

## General Terms

*Definitions.* Except as otherwise defined in this Agreement, the following are defined terms used in this Agreement:

- An “*account*” means any deposit account you maintain with us and can include all accounts and products you use with us. Your “*Account*” refers to the account(s) you have designated as the account accessible to the Services.
- The “*Administrator*” for business accounts is the person you designate and authorize to create, maintain and control on your behalf subsequent User identification codes, or “*User IDs*,” passwords and tokens, including assigning and revoking access privileges for each User to use the Service and providing new and subsequent passwords to those Users.
- An “*authorized representative*” is a person with authority of any kind with respect to an Account, and includes Administrators and Authorized Users.
- An “*Authorized User*” or “*User*” is a person authorized by the Administrator and who uses a password to access a Service. The Administrator (and not the Bank) controls the designation of Users and the access or other limitations (if any) placed on a User’s use of the Services. For purposes of using the Services, an Authorized User includes the Administrator.
- Your “*available balance*”, “*available funds*”, “*current balance*”, “*accessible balance*” and similar words mean the balance in your Account as determined under our funds availability policy.
- A “*business*” is anyone other than a consumer who owns an Account with respect to which a Service is requested. A business includes a sole proprietor, corporation, partnership, Limited Liability Company, unincorporated association or any person not a consumer.
- A “*business account*” shall mean an account that is not established primarily for personal, family or household purposes, or is otherwise not a “*consumer account*” under the EFTA.
- “*Communication(s)*” means instructions and actions from you (or attributable to you under this Agreement or otherwise) received by us through the Services.
- A “*consumer account*” shall mean an account that is established primarily for personal, family or household purposes, and is subject to the EFTA as a “*consumer account*.”
- “*Deposit Account Agreement and Disclosure Statement*” or “*Deposit Agreement*” means the agreement between you and us that governs the use of your Account including the deposit account agreement, checking and saving plan disclosure, any funds availability agreement, electronic funds transfer agreement or disclosure, line of credit agreement, our schedule of fees and charges, and related documents.
- A “*password*” means the confidential identification number selected by you for identification purposes in connection with the use of our Digital Banking Services.
- A “*payment order*” is a payment order as defined under Section 11103(a)(1), as amended or revised, of the California Commercial Code, and includes a Communication received by us instructing us to pay, or to cause another bank to pay, a fixed or determinable amount of money to a you, to a third party or to any other beneficiary.
- Your “*Security Codes*” are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Codes may be used to access Accounts and to use the Services. The Security Codes include any supplemental or alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.
- The “*Service(s)*” and “*Digital Banking Service(s)*” are the digital banking interface and the banking services described in this Agreement.
- “*Setup Form*” means the setup form for Digital Banking for business customers only. Setup Form” means the Setup requirements for the Digital Banking system.
- “*Supporting Documents*” refers to supporting materials made available by us and includes any schedules, and exhibits, user guides, user manuals, set-up or enrollment forms and other user materials, including online terms and information.
- The word “*includes*” means “*including but not limited to*” the examples given.



- The word “may,” when used in reference to us, means at our option and sole discretion. Action (or inaction) that we “may” take is authorized by you and allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- The words “we,” “us,” “our,” “Bank” and similar terms are used to refer to Bank of Marin.
- The words “you,” “your,” and similar terms are used to refer to the person entering into this Agreement and to the each person who is an owner of or has an interest in an Account together with the owner’s authorized representatives.

*Agreement for Services.* We may act on requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner (including joint owners) or their authorized representatives. Each time you use our Services or you permit any other person to use our Services, you are agreeing to the terms and conditions that we have set out in this Agreement, including any instructional materials regarding the Services, including instructions presented to you at our website, as amended. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service. If you are a natural person and you are at least 18 years or older, you authorize us to obtain information about you from others (including credit reporting agencies) as part of our review of your enrollment application and from time to time thereafter. You agree to provide us with information as we request, from time to time.

You expressly agree that you are not a money service business, and you agree to take no action that would result in your being deemed or treated as a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business.

*Eligible Accounts.* If you wish to add a new Account to, or remove an existing Account from, Service access, you must call us at (866) 626-6004. We are not, however, obligated to establish access to any or all of your Accounts, and not all Services may be available with all Accounts. Some Services may not be available without special application to and approval by us, or may be limited to specific types of Accounts.

Eligible Accounts include the following types: checking, money market, savings and time deposits. In some cases, we may allow loans and lines of credit to be linked, in which case you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. Certificates of deposit are time deposits where early withdrawals may result. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use.

You agree to review the configuration of your Account(s) at commencement of the Services, and periodically thereafter, and, for business accounts (as applicable), to restrict User access to Accounts and to specific Services on these Accounts in accordance with your risk assessment.

*Prerequisites for Enrolling in the Digital Banking Services.* Prior to enrolling in the Services, you should verify that you have the required technology necessary to access the Services and to retain a copy of this Agreement. In order to enroll in the Services:

- You must have the required hardware and software needed to access the Services;
- You must have an eligible account with us;
- Your account with us must be in good standing;
- If you are an individual, you must be at least 18 years of age or 13 years of age with a parent or guardian signature; and
- If you enroll for our bill payment services, your payee must be in the United States.

*Sufficient Funds.* You must have sufficient available funds in your Account to cover the amount of any transaction that would be charged to your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds or available credit in your Account. We may hold (or “freeze”) funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient



funds for completing the Service. If we do hold funds, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions). If you do not have sufficient or available funds or credit, you may be charged an overdraft or other fee (such as fees for returned checks or other electronic items), as set forth herein and in the Service Fees and Charges Section of this Agreement. Nothing in this Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend you money.

*Compliance with Laws and Rules.* You agree to comply with all state and federal laws, rules and regulations applicable to you and to your use of the Services (the “Laws”), including the operating rules of all systems used to provide Services to you (the “Rules”), and to provide evidence reasonably satisfactory to us of the same if requested by us. You agree not to use the Service for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, you agree and acknowledge that the Services may not be used by you in violation of the laws of the United States, including sanction laws administered by the Office of Foreign Asset Controls. You acknowledge and agree that the software you use to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations. You agree and certify that neither the software nor any direct product thereof is being or will be used by you for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- The terms or instructions appearing on a screen when using a Service;
- Our Deposit Agreement, and our rules, procedures and policies;
- Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for bill payments facilitated through the ACH;
- Applicable state and federal laws, rules and regulations; and
- The rules of other funds transfer systems when used in connection with a Service.

Nothing in this Agreement relieves you of any obligation you may have under the Laws or the Rules, and this Agreement is deemed modified to the extent necessary to allow or require you to comply with the same. You will implement and maintain procedures, including retention of legal or compliance services, to ensure that you are able to comply with all current and future Laws and Rules, including any changes to them. We are not obligated to provide information, updates or notice of or regarding the Laws or the Rules, even if we are aware of the same and of the potential for material impact on you and your use of the Services, and your indemnification and other obligations to us are not relieved or reduced by our not providing the same to you. If we do provide information, updates or notices of or regarding the Laws or the Rules to you, we are not responsible for the accuracy of the same and may discontinue doing so at any time.

*Electronic Records and Signatures.* When any Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been “a writing” and authenticated by you “in writing” for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been “signed” and to constitute an “original” when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and “signed” documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our written request, you agree to manually sign or place your signature on any paper original of any record or “signed” document which we provide to you containing your purported signature.

*Transfer Limitations.* For certain types of transactions/transfers from a money market or savings account, you are permitted to make no more than six transfers and withdrawals, or combination of them, per calendar month or statement cycle, to another account or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, including by check, draft, debit card or similar order by



you and payable to third parties. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Services, or any combination of the foregoing. Refer to the Service Fees and Charges Section of this Agreement.

### **Cut-Off Hours**

A Communication received by us after the cut-off time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us and the time we receive it. Cut-off hours vary depending on the applicable Service and may be changed by us from time to time. For more information on our current cut-off hours, refer to your separate agreements for Services accessible through the Digital Banking Service, as applicable, or contact us at 866-626-6004.

### **Computer Equipment and Software to Access the Services**

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment.

To use the Services, you must have a sufficiently powerful computer hardware and appropriate software. Some Services may require you to download software from a third party; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to maintain the confidentiality of your password at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services. Encryption of data transmissions does not guarantee privacy. Data transferred via the Services is encrypted in an effort to provide transmission security. Notwithstanding our efforts to insure that the Services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers (including transfer requests and electronic mail) occur openly on the Internet. This means that the data transfers potentially can be monitored and read by others. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein, resulting from such wireless connectivity. For business accounts (as applicable), you agree to implement and maintain administrative, technical and physical safeguards to protect against unauthorized access to or use of any Account information which you may access or store on your computer or other data storage systems.

### **Privacy and Confidentiality**

All information gathered from you in connection with using the Service will be governed by the provisions of our privacy policy, as well as our online privacy policy, which you agree to review by accessing on our website.

In addition, we will disclose information to third parties about your Account or the transfers you make:

- Where it is necessary for completing transfers;
- In order to verify the existence and condition of your Account for a third party, such as a credit bureau or merchant;
- In order to comply with government agency or court orders; or
- If you give us your written permission.



## **Linking Accounts**

Accounts which are “linked” under the Services must have a common owner. Any signer on any linked Account, acting alone, is authorized by you to access and use Services for any other linked Account, whether or not that person would be authorized to transact on the other linked Account in the absence of this Agreement.

Notwithstanding the foregoing, you represent and warrant that you have authorization from the Account owner to engage in each Service used by you affecting an Account that is linked. You make this representation and warranty at the time the Accounts are linked and each time you use a Service to access or transact on an Account. These representations and warranties are in addition to any others contained in this Agreement or in any supplemental agreements that may be required by us.

## **Login Credentials**

Except as otherwise provided in this Agreement for business accounts, during your enrollment for the Services, you are required to select or will be assigned certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and electronic communications in your name. These may include a customer number, logon name, and password. These credentials will give access to your Accounts through the Service.

You agree to change all passwords with sufficient frequency so as to protect confidentiality. We recommend no less frequently than once per year.

You agree to keep all passwords confidential. Passwords should not be easy to guess: for example, your children’s or pet’s names, birth dates, addresses or other easily recognized identification related to you. It is also recommended you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited. The term “Security Codes” will include any supplemental authentication tools that are used by you.

## **Contact In Event of Unauthorized Transfer**

If you believe your password has been lost or stolen:

Call us at 866-626-6004 Or write us at: Bank of Marin  
P.O. Box 2039  
Novato, CA 94948-2039

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your account without your permission. For consumer accounts, refer to the section below titled “**Provisions Specific to Consumer Accounts**” for more information concerning errors and unauthorized transactions.

## **Notices and Contacting Us**

### ***Written Notice***

You may send any notice or communication that you are required or permitted to give the Bank under this Agreement by U.S. mail, to: Bank of Marin, P.O. Box 2039, Novato, CA 94948-2039. To the extent permitted by applicable law, any such notice or communication, regardless of how delivered to us, will not be effective until we receive and have had a reasonable opportunity to act upon such notice or communication.

You authorize us to, and you agree that we may, send any notice or communication to you via paper or electronic means. These include a change in terms notice, termination of a Service or Services notice, and rejection or acceptance of a payment transfer instruction. Electronic means may include e-mail (to your e-mail address, as it appears on the



Bank's records), postings on our website, and postings through our Secure Message Center, referenced below. You agree that notice or communication via electronic means will be effective and deemed delivered to you when we make the notice of communication available to you in such a manner. You agree to notify us promptly about any changes in your e-mail or mailing address. Further, you acknowledge and agree that no such change will be effective until we have had a reasonable opportunity to act upon such notice.

### ***Secure Message Center***

Secure messages may be sent to us concerning this Agreement or the Services by using the Messages option in the Digital Banking Service. We will not be expected to act upon requests or instructions sent to us by Secure Message until we actually receive your message and have a reasonable opportunity to act upon it. In this respect, you understand that, though technically received, such messages are not always immediately read and may go unnoticed for a significant period of time. Consequently, such messages will not be deemed to have been received until read by an appropriate Bank representative.

You agree not to rely on Messages if your request or instruction needs a prompt response or reaction from us. For example, if you need to stop payment on a check, to report a lost or stolen card or to report an unauthorized transaction from one of your Accounts, you should contact Bank immediately by calling your branch or us at 866-626-6004.

### **Check Stop Payment Services**

You may request a stop payment on a check issued on your Account(s) by completing the information required through the Digital Banking Service system as part of the check stop payment Service and submitting all the required information to us ("Check Stop Payment"). All Check Stop Payment requests will be subject to our current policy. For significant or material items, contact us by coming to one of our branches or by telephone in addition to using the Services for Check Stop Payment. You are responsible for reviewing all information available to you to determine whether the check has already been paid, including your Account statements. Information available online may not include sufficient historical information to verify whether the check has been paid. Your receipt of a Check Stop Payment confirmation via the Service, or acceptance of your request via the Service, does not conclusively represent whether or not the check has already been paid. In any event, we must receive your Check Stop Payment request sufficiently in advance to provide us with a reasonable opportunity to process your request in sufficient time prior to presentation of the check. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment. Refer to the Fee Schedule for the fees applicable to the Check Stop Payment Service.

You must give us timely, complete, and accurate information as prompted by the Service, including the check date, payee, EXACT amount of the check, and the check number. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check.

You may use the Check Stop Payment Service to stop payment on checks that you have written against your Accounts. If you wish to cancel or amend any other Service transaction, you should contact your branch; you will be subject to any limitations or inability to stop applicable to that Service.

You may not use the Check Stop Payment Service to stop payment on any ACH/EFT transaction, point-of-sale ACH/EFT transfer; any cashier's check, certified check or other official institution check you have purchased from us or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

A Check Stop Payment request against a check is effective only against the check that is described in the Check Stop Payment request information provided through the Check Stop Payment Service; and does not cancel or revoke any authorization for future or recurring ACH/EFT transfers by you or by the same biller or originator. A Check Stop



Payment request is effective for six (6) months only and will expire automatically, at which time you are responsible for any renewal desired by you for another six (6) month term.

### **Mobile Banking**

*Access to Mobile Banking.* To access and utilize the Mobile Banking Services, you will need a compatible Wireless Access Device. You are responsible for obtaining and maintaining the compatible Wireless Access Device required to use the Mobile Banking Service. Once you download and install our designated and approved mobile application your designated accounts linked to your Digital Banking User ID and password will be accessible through your Wireless Access Device. To access Mobile Banking service and functions, your Wireless Access Device must be Internet enabled and connected to the Internet through your mobile communications service provider. In order to properly use the Mobile Banking Services, you should review and follow the instructions provided in our Digital Banking system. You agree to accept responsibility for learning how to use the Mobile Banking Services in accordance with the Digital and mobile application instructions and agree that you will contact us directly if you have any problems with Mobile Banking Services. You also accept responsibility for making sure that you know how to properly use your Wireless Access Device. If you obtain a different Wireless Access Device, you will be required to again download and install our approved mobile application to that different Wireless Access Device, under the same terms set forth in this Agreement, as amended. You agree to delete all such software from your Wireless Access Device promptly if the licenses or this Agreement terminate for any reason. We reserve the right to change, add to, or terminate services with our third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Services by other licensors and third-parties.

### *Hardware and Software.*

To the extent the Digital Banking Service involves our having granted you software license ("software") usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Mobile Banking Service in connection with your use in accordance with this Agreement. The Mobile Banking Services do not involve the sale of software. Nothing in this Agreement will entitle you to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, you agree to immediately uninstall our designated and approved mobile application which had been downloaded to your Wireless Access Device. Without limiting the generality of the foregoing, you agree not to: (a) make the Mobile Banking Service available or allow use of the Mobile Banking Service in a computer bureau service business, or on a timesharing basis, or (b) otherwise disclose or allow use of the Mobile Banking Service by or for the benefit of any third party. You acknowledge that your license to use any software that may be required for the Mobile Banking Service is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by you or otherwise provided to you. By enrolling in portions of the Mobile Banking Service relating to those software systems and programs, and by downloading and installing Mobile Banking software, you will be evidencing your acceptance of the terms and conditions of those licenses. We may also condition your use of the Mobile Banking Service upon you affirming such licenses by the use of "I Accept" dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

*Mobile Banking Service Limitations.* The availability, timeliness and proper functioning of the Mobile Banking Services depends on many factors, including your Wireless Access Device location, wireless network availability and signal strength, and the proper functioning and configuration of hardware, software, and your Wireless Access Device. Neither we nor any of our service providers warrants that the Mobile Banking Service will operate without interruption, and neither we nor our service providers shall be liable for any loss or damage caused by any unavailability of the Mobile Banking Services, including service interruptions, delays, or loss of personalized settings. Neither we nor any of our service providers assumes responsibility for the operation, security, functionality or availability of any Wireless Access Device or mobile network which you utilize to access the Mobile Banking Services.

THE DIGITAL BANKING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR





MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY OR COMPLETENESS.

You agree to exercise caution when utilizing the Digital Banking Services on your Wireless Access Device and use good judgment and discretion when obtaining or transmitting information.

*Relationship to Third Party Agreements.* You agree that, when you use Mobile Banking Services, you remain subject to the terms and condition of your existing agreements with any unaffiliated service providers, including, but not limited to your mobile service provider. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of the Mobile Banking Services (such as data usage or text messaging charges imposed on you by your mobile service provider), and you agree to be solely responsible for all such fees, limitations and restrictions. You also agree that only your mobile service provider is responsible for its products and services. Accordingly, you agree to resolve any problems pertaining to your Wireless Access Device or mobile services with your provider directly.

*Security of Data in Transmission and Storage.* You expressly acknowledge that any wireless access to your Accounts may not be secure and, as such, you assume the risk associated with unauthorized access to the Mobile Banking Services and any information contained therein, resulting from such wireless connectivity. You assume all risk that any information you download or otherwise stored on your Wireless Access Device may be accessed by unauthorized third parties. Without limiting the foregoing, you acknowledge that your Wireless Access Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

We are not responsible for the security and confidentiality of information when 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 Wireless Access Device. You agree that 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 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 on an electronic device.

YOU AGREE TO CONTACT US TO TERMINATE THE MOBILE BANKING SERVICE IMMEDIATELY IN THE EVENT YOUR DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY YOU.

*Account Ownership/Accurate Information.* You represent that you are the legal owner or an authorized user of the accounts and other financial information which may be accessed via the Mobile Banking Services. You represent and agree that all information you provide to us in connection with the Mobile Banking Services is accurate, current and complete, and that you have the right to provide such information to us for the purpose of using the Mobile Banking Services. You agree not to misrepresent your identity or your Account information. You agree to keep your Account information up to date and accurate. You represent that you are the only authorized user of the Wireless Access Device that you will be using to access the Mobile Banking Services.

*User Security.* You agree not to give or make available the Mobile Banking Services log-in, password or other security codes (collectively "Security Codes") to any unauthorized individuals. You are responsible for all transfers or other transactions you authorize using the Mobile Banking Services. If you permit other persons to use your password, you are responsible for any transactions they conduct.

### **Mobile Deposit**

The Mobile Deposit Service feature enables you to use your Wireless Access Device to create electronic images of the front and back of certain Original Checks (defined below) and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition ("MICR") line, to us for review and processing in accordance with this Agreement. The Mobile Deposit Service is subject to this



Agreement as well as the separate Mobile Deposit Terms and Conditions entered into between you and us. In the event of any inconsistencies between this Agreement and the separate Mobile Deposit Terms and Conditions, the terms of the Mobile Deposit Terms and Conditions will control.

### **Manage Account Alerts**

The account alerts (“Alerts”) feature is a convenience tool that permits you to request automated notification in specific situations. Alerts do not replace standard communications you receive from us concerning your Accounts. If you elect to receive Alerts by text messaging from us, you acknowledge that such messages will be automatically sent to your wireless access device. You assume all responsibility for the secure receipt of the text messages and acknowledge that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting your access, including your Internet service provider(s), phone operator(s), and other relevant entities. We do not guaranty the delivery or the accuracy of the contents of any Alert. We will not be liable for losses or damages arising from: (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; or (iii) your use or reliance on the contents of any Alert for any purposes. We reserve the right to terminate any request from you for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. You may stop or suspend Alerts at any time.

### **Additional Services**

The following additional services may be available to you upon our prior approval and subject to additional terms and conditions as provided below.

#### ***Bill Payment Service***

The Bill Payment Service allows you to make payments to third parties by providing instructions to us through the Digital Banking Service. The Bill Payment Service is subject to this Agreement as well as the separate Bill Payment Terms and Conditions entered into between you and us. In the event of any inconsistencies between this Agreement and the separate Bill Payment Terms and Conditions, the terms of the Bill Payment Terms and Conditions will control.

### **Text Banking**

The Text Banking feature enables you to use your Wireless Access Device to access Digital Banking using Texting. Text Banking is subject to the Text Banking Enrollment and Terms of Use, the BOM Deposit Agreement and Disclosure Statement and this Agreement as well as the terms and conditions of your supported carrier

### **People Pay**

The People Pay feature enables **Bank of Marin** to post transactions generated by People Pay through your **Bank of Marin** VISA® Debit Card to another account at a U.S. financial institution or another Debit Card. You understand and agree that **Bank of Marin** uses the networks indicated on your VISA® Debit Card for People Pay transactions. All payments to another person made through People Pay are subject to all terms and conditions within this Agreement and all other agreements associated with your accounts.

In addition, you understand that you may receive funds through the People Pay service from a payment generated by another individual. You hereby acknowledge that the receipt of money from another person is subject to the terms and conditions of other agreements between you and **Bank of Marin**.



### *Connected Services*

Connected Services, such as Direct Connect or Web Connect (to the extent made available by us), allow you to use of the Digital Banking Service offered by us and made accessible through your use of the offered Connected Service with Quicken® and QuickBooks®. Connected Services are internet based services that are compatible with Quicken® and QuickBooks®, and enable you to access your Accounts and certain electronic services online. Any Connected Services used by you are subject to this Agreement as well as the separate terms and conditions entered into between you and us for that service. In the event of any inconsistencies between this Agreement and the separate Connected Services terms and conditions, the terms of the Connected Services terms and conditions will control.

### *Money Manager*

With our fully interactive Money Manager on-line Service, you may monitor any of your financial account relationships from any of your Accounts maintained with us or from any other account held by you at another financial institution, assuming, of course, that the financial institution has the ability to and permits you to release your financial information to Money Manager and us.

Money Manager is an account management service that aggregates different accounts held with us or other financial institutions into one convenient place. It includes tools that help you analyze your personal finances using the account information that you provide to us but is not set up for you to conduct transactions of any kind.

You direct us to access your Account(s) and account(s) from your other financial institutions, and we electronically transfer certain financial data to Money Manager but there is no communication back to us or other financial institutions. You understand and agree that, in order for you to use the Money Manager Service, it is necessary for us to access your other financial institutions Websites and databases containing information regarding your Accounts and financial relationships as designated by you, on your behalf, to retrieve information as requested or authorized by you. By using the Money Manager Service, you agree to authorize us to access such account(s) to retrieve such information as requested or authorized by you, or for any other purpose authorized by this Agreement. You represent and warrant that the information you are providing us with is true, correct and complete. You represent and warrant to us that you have the right to authorize and permit us access to your account(s), you assure us that by disclosing the information to us and by authorizing us to use such information to access your account(s), you are not violating any third-party rights. You hereby authorize and permit us to use any information submitted by you to us (such as account passwords and user names) to accomplish these purposes and to configure Money Manager to be compatible with the account(s). You understand and agree that at all times your relationship with each third-party account is independent of us and your use of Money Manager.

You authorize us and our service providers to access the third-party Websites and accounts you designate to retrieve account information on your behalf, and you appoint us as your agent for this limited purpose. You agree that your other financial institutions are entitled to rely on the authorizations granted by you to us when you accepted the terms and conditions of this Agreement.

**YOU AGREE AND ACKNOWLEDGE THAT WHEN WE ACCESS AND RETRIEVE INFORMATION FROM THE THIRD-PARTY WEBSITE, WE ACT AS YOUR AGENTS, AND NOT THE AGENTS OR ON BEHALF OF THE THIRD-PARTY.**

The Money Manager Service is subject to this Agreement as well as the separate Money Manager Terms and Conditions entered into between you and MoneyDesktop. In the event of any inconsistencies between this Agreement and the separate Terms and Conditions, the terms of the MoneyDesktop Terms and Conditions will control.



### *Wire Transfer Services*

To the extent approved by us, the Wire Transfer Service allows you to transfer funds from your Account(s) at the Bank to an account or beneficiary at another financial institution. The Wire Transfer Service is subject to this Agreement as well as a separate Wire Transfer Service agreement entered into between you and us. In the event of any inconsistencies between this Agreement and the separate Wire Transfer Service agreement, the terms of the Wire Transfer Service agreement will control. For Consumer accounts, wires cannot be initiated through Digital Banking, only at a branch.

### *ACH Service*

To the extent approved by us, the ACH Service allows you to initiate credit and/or debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA"). The ACH Service is subject to this Agreement as well as a separate ACH Service agreement entered into between you and us. In the event of any inconsistencies between this Agreement and the separate ACH Service agreement, the terms of the ACH Service agreement will control.

### *Transfer Services*

Subject to the terms of this Agreement, you may only transfer funds between your linked Accounts with us, excluding certificates of deposit, or transfer funds to your external accounts with other financial institutions within the United States. You must not use the Service to transfer funds to or from an account that you do not own. Transactions posted to your Account as of a certain business day may not be reflected in account balances reported by the Service until the following business day. Information on transfers to or from your accounts with us will be reflected on your periodic statements, will be available to you online, and can be obtained by calling us at 866-626-6004. We do not provide any other notice of the receipt, transmittal or debiting of funds transfers.

*Scheduling Fund Transfers.* You may instruct us to initiate single or recurring fund transfers on any business day (the "Transfer Process Date"). If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the following business day. To initiate a transfer, you must specify the account to be debited, the account to be credited, the transfer amount, and the Transfer Process Date. For consumer customers, refer to the section below entitled "**Provisions Specific to Consumer Accounts**" for additional information and terms concerning the right to stop the payment of a preauthorized payment.

*External Transfers for consumer accounts only).* Before you can transfer funds to or from an account you maintain at another financial institution, the account must be set up and verified through our Digital Banking website. Set-up for these accounts may require you to verify one or more micro-deposits to or withdrawals from to the account. Depending on the transfer type and your actions, it may take several days for an account to be set up and verified. Each time you instruct us to transfer funds to or from an account you maintain at another financial institution, you warrant to us that you are an owner of that account, that you are authorized to use the Service for that transaction, and that no other person's authorization is required. We may charge your account for the transfer amount as early as the Transfer Process Date and credit the funds to an omnibus account our vendor uses to process transactions.

*ACH Authorization For External Transfers.* You agree and acknowledge that when you use the External Transfer Service to initiate ACH transfers to or from your accounts at other financial institutions, you authorize us to initiate an ACH transaction to your external account. You agree and acknowledge that the origination of all ACH transactions to your account must comply with U.S. law. Also, you agree that the rules governing the ACH credits and debits will not apply to any type of transfer request for which the ACH was not actually utilized.

You agree and acknowledge that we are not required to give you next day notice after our receipt of any ACH credit for a rejected or returned transfer request; instead, notification is sufficient by posting the re-credited amount to the applicable deposit account used for the debit and listing it on your periodic statement.



Credit given by us to you with respect to an ACH request is provisional until we receive final settlement for such entry through a federal reserve bank. If we do not receive final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to your account in connection with the ACH request. Funds credited to your account as a result of ACH debits originated by you with us may be held until the fourth business day following the credit to your Account.

You must provide accurate information regarding your External Transfer requests, including external account routing number and account number. If you describe any beneficiary or institution inconsistently by name and account or identifying number, we and other institutions may process the ACH request solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution. We may also process an incoming ACH request based on the account number, rather than on any inconsistent name reflected in the ACH request.

*Erroneous Transfer Instructions.* You assume sole responsibility for accurately describing transfer amounts, dates, accounts, financial institutions, and addresses. We are not responsible for confirming such information, or for identifying or refusing to process duplicate transfer instructions. If you give us a transfer instruction that is incorrect in any way, you agree that we may charge your account for the transfer whether or not the error could have been detected by us. We are not obligated to detect or correct errors in your transfer instructions.

*Rejecting Transfer Instructions.* We may reject transfer instructions with or without cause or prior notice. We may reject a transfer instruction, for example, if you do not have sufficient available funds to cover the transfer or the transfer instruction is unclear, ambiguous or incomplete. If we reject a transfer, you may need to re-enter the information if you wish to make the transfer at a later date.

*Changing or Cancelling Transfer Instructions.* You may cancel a Transfer at any time until it begins processing (as shown in the Service). We will, to the extent permitted by law, make reasonable attempts to return any unclaimed, refused, refunded, prohibited, or denied transfer to your Account or your account at another financial institution that we debited for an External Transfer. If this is unsuccessful (for example, if your account at the other financial institution has been closed) we will make reasonable attempts to otherwise return the funds to you. We may also require you to present your request in writing within fourteen (14) days after contacting us by telephone. The charge for each such request will be the charge for such service as set out in our Fee Schedule provided to you.

### ***Loan Transfers***

*Eligible Loan Transfer Accounts.* Accounts eligible for loan transfers (“Loan Transfers”) will be determined in our discretion. You agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized pursuant to this Agreement. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements.

*One-Time Advance/Payment.* You can use the Loan Transfer feature to make recurring and non-recurring “on-us” loan Account advances (“Loan Advance(s)”) and payments (“Loan Payment(s)”). The Loan Transfer will be processed on the Loan Transfer processing date (“Loan Payment Processing Date”); provided that the Loan Payment Processing Date selected by you is a business day and you submit your one time Loan Transfer instruction prior to the Loan Transfer cutoff hour for that date. If you select a Loan Payment Processing Date that is not a business day or submit your Loan Transfer instruction after the Loan Transfer cutoff hour for that date, then the Loan Payment Processing Date may be the next business day. Loan Advances will only occur to the extent there are sufficient available funds on the eligible loan Account, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the loan Account.

*Loan Payments.* You may designate the Loan Payment as a regular installment or an interest/principal only payment. If funds transferred will be applied as a reduction in principal only, funds will be applied as unscheduled reductions of principal and as such will not satisfy the installment obligations under the payment schedule for the loan Account or pay accrued interest. If funds transferred will be applied as a regular installment payment, you are responsible for



ensuring that you initiate an Loan Payment instruction in time for the payment to be received by us before its due date. We are not responsible for any damages, costs or fees you may suffer if you do not allow sufficient time between the Processing Date and the due date.

*Loan Transfer Changes and Cancellation.* You may change or cancel a Loan Transfer instruction via the Service as long as you submit the change or cancellation request prior to the loan transfer cutoff time for that date and you follow the Loan Transfer instructions provided by the Loan Transfer feature for changes and cancellations.

*Provisional Credit.* You agree that any credit by us to you for any Loan Transfer is provisional until we have received final settlement for such Loan Transfer. We may delay availability of provisional credit at our discretion. If final settlement is not received, we are entitled to and you agree to pay a refund of the amount credited; we may charge your account for the amount due.

### **Security Interest in Accounts**

Except as may be limited or restricted by applicable law, you grant us a security interest in all accounts or other deposits (whether general or special) of yours at the Bank, to secure your obligations to us under this Agreement. This security interest will survive termination of this Agreement. We may hold any funds on deposit with us by you after termination of this Agreement for up to 90 days following the expiration of any return or chargeback rights or, if later, until any other claims to such funds have expired.

### **Third Parties**

You acknowledge and agree that we may arrange to provide software, if required, and/or may arrange for the Services covered by the Agreement to be performed or provided by third parties, including our affiliates. You further agree that any such party is a third-party beneficiary of the Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Agreement as if it were us, including, without limitation, the limitations on liability and the indemnities described in the Agreement. Our ability to provide certain Services may be dependent upon our ability to obtain or provide access to third-party networks. In the event any third-party network is unavailable or we determine in our sole discretion, that we cannot continue providing any third-party network access, we may discontinue the related Service or may provide the Service through an alternate third-party network. In such situations, we will have no liability for the unavailability or delay of access.

Notwithstanding the limitations described above pertaining to third parties, if you authorize a third party to access the Services on your behalf, you will be solely responsible and liable for all actions and inactions of said third party. You expressly assume the risks associated with providing Service access rights to your agents or third-party vendors, including but not limited to the risk of unauthorized or erroneous transactions. We will not be responsible, nor have any liability whatsoever for any services you receives from your agents or third-party vendors. We reserve the right to require you to agree to additional terms and conditions as a condition precedent to your use of any agent or third-party vendor in connection with your access to the Services.

### **Audit and Inspection**

For business accounts, we reserve the right, with prior notice to you, to enter upon your premises from time to time during regular business hours to verify that your operations and procedures are in compliance with the terms of the Agreement.

In connection with any such audit, you agree to furnish us with any documentation or information as is reasonably necessary to establish your compliance with the terms of the Agreement. If it is determined by us that additional procedures or controls need to be implemented by you, you agree to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.



In connection with our entry on your premises for the purpose of conducting an on-site audit or inspection, or in connection with providing support to you, we shall not be liable or responsible to you or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into your system, including any which allegedly delay, alter or corrupt your data, whether related to the transmission of check images or other data or whether caused by the equipment, software, Internet service providers, Internet browsers, or other parties providing communication services to or from us to you.

### **Service Fees and Charges**

Except as otherwise provided in this Agreement, our current fees and charges are shown on the Fee Schedule provided to you at account opening and thereafter from time to time. We may impose new fees and charges, or increase or change existing fees and charges. We will provide advance notice of these changes to you if required by law. Other fees may be assessed and billed separately by your Internet and/or telephone service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then-current fee schedule.

If you do not use this Service for any 12-month period, we reserve the right to discontinue your Service without notice to you. To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-deferred deposit.

### **Business Days**

Except to the extent otherwise provided in this Agreement and for the purpose of this Agreement, our business days are Monday through Friday, except federal bank holidays and state holidays that we may observe.

### **Hours of Operation; Interruption in Services; Changes**

You will generally be able to use Services seven days a week, 24 hours a day. However, a Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by law).

### **Harm to Computer Systems/Data**

You agree that we will not be liable for viruses, worms, Trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental or consequential damages that may result from such harmful components.

### **Disclaimer of Warranty**

We make no warranty of any kind, express or implied, including any implied warranty or merchantability or fitness for a particular purpose, in connection with Services provided to you under this Agreement. We do not and cannot warrant that Services will operate without errors, or that any or all Services will be available and operational at all times. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided "as-is," without warranty of any kind. We make no representation and specifically disclaim any express or implied warranties to users of any third parties, including but not limited to, warranties as to accuracy, timeliness, completeness, merchantability, or fitness for any particular purpose.



### **Services Not Substitute for Legal, Tax, or Financial Advice or Planning**

You acknowledge that the Services, Bank, its employees and service providers are not intended to provide legal, tax or financial advice or planning. The Service are merely a tool for use to assist your independent decision-making and have not been designed in contemplation of your specific needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, you represent that you will have obtained appropriate and independent legal and tax advice regarding the same, as you deem appropriate.

### **Uploaded Content, Linked Sites and Advertisements**

From our website or using the Services, you may be able to access uploaded content provided or operated by third parties. Unless we tell you otherwise in writing, we do not operate or control any such content or any of the information, products or services on such linked websites. You acknowledge and agree that: (i) you access such content and linked sites at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, content on our website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) we make no endorsement of, and assume no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and Services, you may be exposed to content that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. You agree to hold us harmless in connection with all of the foregoing.

We reserve the right, but shall have no obligation, to reject, move, or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including viruses, that may interfere with the operation of our website. We may, but have no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. We shall have the right, but not the obligation, to disclose content to any third party if required by law or if we believe reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any content violates rights of third parties; or (d) protect our rights, property, or personal safety, or those third parties.

### **Third Party Content**

We may receive, process, and make available to you content that we receive from you and others. In this regard, we are merely a passive conduit for such content, although we reserve the right to block or remove any content that we believe violates this Agreement. We assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that you or others provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. We will not have a duty to interpret or evaluate any content transmitted to us or through our website or Services, except to the limited extent, if any, set forth in this Agreement. We will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on our website, even if we have reason to know of its existence. Use of any content you obtain from our website is at your own risk.

### **Our Intellectual Property**

You acknowledge and agree that the software and content used by us in the operation of our website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by us on our website and as part of the Services and our name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by us and our licensors.





As such, you will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

You may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property (ii) use of our website, Services or Intellectual Property, or (iii) access to our website Services or Intellectual Property. Further, you may not (a) create derivative works of any portion or element of our website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology we incorporate in our website or the Services; (d) modify or erase any copyright or trademark notice we place at our website; (e) unless otherwise permitted by us for use in connection with a Service, engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of our content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via our website; (g) frame our website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing our name, trademark, URL, product name or Intellectual Property. You agree to comply with the terms of any license agreement we make available to you with any software.

### **User Conduct**

You agree not to use the Service or the content or information in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) 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; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.

### **No Commercial Use or Re-Sale**

You agree that the Service is only for the personal use of the individuals authorized to access your Account information with us. You agree not to make any commercial use of the Service or resell, lease, rent or distribute access to the Service.

### **Purchase**

Our website or Services may permit you to purchase goods and services from various online or offline merchants, retailers, vendors, suppliers, services, or individuals (collectively, "Merchants"). The web pages from which you conduct such transactions may bear our logos, names, trademarks or service marks, or brand identity. Nonetheless, we have no responsibility for any of your transactions with any such Merchants, and make no guarantees, representations or warranties regarding any of them. We shall not be responsible for any loss or damage you or anyone else incurs as a result of such transactions or Merchants.

### **Cumulative Remedies**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, ordinance or otherwise.

### **Delays/Force Majeure**



The obligations of the Bank shall be suspended to the extent and for so long as such obligations are hindered or prevented from being performed on account of labor disputes, war, riots, civil commotion, acts of God, fires, floods, failure of suppliers and/or subcontractors to perform, failure of power, restrictive governmental law and/or regulations, storms, accidents or any other cause which is reasonably beyond the control of the Bank.

### **Severability**

Wherever possible, each provision of this Agreement shall be interpreted in a manner which makes the provision effective and valid under applicable law. If applicable law prohibits or invalidates any part or provision of this Agreement, that particular part or provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

### **Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any statements, promises or inducements made by either party or agent of either party that are not contained in this written Agreement or other documents referenced by this Agreement, including the Deposit Agreement.

### **Choice of Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California, except where preempted by federal law.

### **Amendment of this Agreement**

We may amend, add to or change this Agreement (including changes in its fees and charges, or Services. We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.

### **Waiver.**

We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future.

### **Assignment.**

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or to any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unenforceable at our election.

### **Termination; Suspension; Delay.**

We may terminate or suspend this Agreement and any service provided hereunder at any time. We will provide electronic or written notice of termination to you. Except to the extent restricted by law, we reserve the right to terminate or to discontinue support of any Service, or delay or refuse processing any transaction, without notice. You may terminate this Agreement upon 30 days written notice to us. Termination of this Agreement will not affect any rights we may have, or any obligations you may have, as to any transaction or Services caused or attempted by you before termination.



### **Provisions Specific to Business accounts**

This Section applies only to business accounts as defined in this Agreement. You are responsible for and bound by any Communication we receive in your name through a Service if the Communication: (a) comes from an authorized representative, Administrator or Sub-User; or (b) is authenticated using security procedures, described herein, even if not authorized by you; or (c) is legally binding on you under the laws of agency, contract or otherwise.

*Authorized Representatives.* In order to originate payments or other transactions under this Agreement, if you are a business customer you must designate at least one Administrator who will be responsible for creating and maintaining subsequent User IDs and passwords on your behalf, including assigning and revoking access privileges for Users and providing new and subsequent passwords to those Users.

We will provide your Administrator, through United States postal mail or another delivery service selected by us with a User ID and password. The Administrator will, on your behalf, authorize Users to use one or more of the Services.

You understand that the Administrator has the capability of providing administrative privileges identical to that of the Administrator to any User, including the ability to create and maintain subsequent User accounts and assigning and revoking access privileges. If the Administrator grants these privileges to a User, that User will also be considered an Administrator. Each User, including the Administrator, will be required to use his or her password each time he or she accesses the Services.

You acknowledge that any Administrator will have the ability to control security levels such as Service access and Service transaction limits, including without limitation the ability to assign dollar amount limits to transfers of funds.

The Administrator will have the authority on your behalf to electronically accept and approve any agreements and amendments to agreements by and between you and us, including but not limited to this Agreement.

We will be entitled to rely on the designations made by your Administrator and will not be responsible for matching the names of the Users designated by the Administrator to names or titles listed in your banking resolutions or on the signature cards for your Accounts.

You agree to consider, and as appropriate, implement each of the following additional recommendations:

Assign a unique User ID and a unique password for each Authorized User individual who is granted access to the Services on your behalf. Passwords must not be shared. Each Administrator's use of his or her Administrator's User ID should be limited to performing administrative functions. Should an Administrator use any of the Services, such as by initiating a payment or funds transfer, he or she should, instead, use a separate individually assigned User ID.

*Responsibility For Communications In Your Name, Whether Or Not Authorized By You.* The passwords are security procedures. You agree that we may use the security procedures to verify the authenticity of Communications that are received by us in your name. If we verify the authenticity of a Communication or instruction received in your name using the security procedures, we may rely on it and you will be obligated on the Communication or instruction, whether or not it was authorized by you.

On the other hand, if a Communication or instruction was authorized by you or if you would otherwise be bound by it under this Agreement, you will be obligated on it even if we did not verify its authenticity using the security procedures and even if the security procedures would have prevented error. You agree that the security procedures are intended to verify authenticity and not to detect error.

*Responsibility For Security Procedures.* In addition to the passwords as security procedures, you may choose additional security procedures. We may from time to time offer supplemental security procedures, and you agree to consider them. You agree to follow any instructions we provide to you about using, storing or otherwise related to security procedures.



You agree to consider the size, type and frequency of the payment orders or other money transactions you will or intend to use Services to accomplish. You agree to consider the risks presented by the possibility of unauthorized access to these Services, including the risk loss to you that we may process Communications and instructions that are your responsibility even though they were not authorized by you. You agree to use Services only after determining, and only for so long as you continue to determine, that the security procedures are a commercially reasonable method of providing security against unauthorized payment orders or other Communications. You agree and acknowledge that the security procedures are commercially reasonable for you and that you will be bound by instructions or Communications in your name, as set forth above.

You agree to take appropriate steps to ensure that all passwords are protected and kept confidential, including that the Administrator and Sub-Users do not share or disclose passwords to third parties or with the Administrator or other Sub-Users. In your review of the Services, including those aspects of the Services pertaining to the issuance, use, and protection of passwords and security procedures, you agree to notify us if your use of the Services would necessitate or be better served by a level of security that exceeds that offered by the Services. If you fail to notify us, then you acknowledge and agree that the security procedures of the Services are appropriate for your needs and will provide you with a commercially reasonable degree of security against unauthorized use.

*Refusal To Process Communications.* We may delay or refuse to process any requested Service, including payment orders or other money transactions, or any other Communication from you. We may do so for any reason or for no reason. We may provide notice to you, but are not obligated to do so. We may delay or refuse processing, for example, if: (a) processing would or may exceed the available funds in your affected Account; (b) the Communication is not authenticated to our satisfaction or we believe it may not have been authorized by you; (c) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (d) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (e) processing would or may cause a violation of any Laws or Rules applicable to you or to us; or (f) for any other reason under this Agreement. In addition, we shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in our having exceeded any limitation upon our intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in our reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. You agree that we will have no liability to you or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.

*Limitations on Liability.* Unless otherwise required by applicable law, we are only responsible for performing Services as expressly stated in this Agreement, and will only be liable for material losses incurred by you to the extent such losses directly result from our gross negligence or intentional misconduct.

IN NO EVENT WILL WE OR ANY OF OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, 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 ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SERVICES, OR THE INABILITY TO USE THE SERVICES, IRRESPECTIVE OF WHETHER WE HAVE OR HAVE NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE MAXIMUM AGGREGATE LIABILITY OF US FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION, SHALL BE THE LESSER OF THE AMOUNT YOU ORIGINALLY PAID FOR THE SERVICE, PRODUCTS OR MATERIALS OR \$15,000.

You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with the Services. You acknowledge that Service fees have been established in contemplation of: (A) these limitations on our liability, (B) Your agreement to review statements, confirmations, and notices promptly and



to notify us immediately of any discrepancies or problems; and (C) Your agreement to assist us in any loss recovery effort.

We will not be obligated to honor, in whole or in part, any transaction or instruction or Communication which:

- Is not in accordance with any term or condition applicable to the relevant Service or Account;
- We have reason to believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to hold, dispute, restriction or legal process we believe prevents their withdrawal, transfer or availability;
- Would result in us exceeding any limitation of our net funds position established pursuant to present or future Federal Reserve guidelines;
- Would violate any applicable law, rule or regulation, or any guidance or directive of any federal or state regulatory authority;
- Is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- We have reasonable cause not to honor for our or your protection.

*Indemnification.* Except to the extent that we are liable under the terms of this Agreement, or of any agreement that otherwise governs your Account, you agree to indemnify and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from: (1) an Account; (2) the performance of a Service; (3) a third party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (4) any fraud, manipulation, or other breach of these terms; (5) any third party claim, action, or allegation brought against us arising out of or relating to a dispute with you over the terms and conditions of an agreement, purchase or sale of any goods or services; (6) your violation of any Law or Rule or of the rights of a third party; (7) your use, or the provision of Services or use of your Account by any third party; or (8) any transaction or instruction or Communication from you to us. 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 the prior written consent from us. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized representative. This indemnification provision survives termination of this Agreement.

*Data Retention.* You will retain data on file adequate to permit remaking or reconstruction of all requested Services (including payment orders or other money transactions) for one year following the date of the execution of the request to which such data relate, and will provide the data to us upon our request. You agree to determine promptly the accuracy of all records and information regarding a Service and to notify us immediately of any errors in such records or information. Nothing in this Agreement relieves you from: (a) any responsibility imposed by law, regulation or contract with regard to the maintenance of your business records, if any; or (b) any responsibility to perform audits and account reviews for your business customarily conducted by persons or entities whose businesses are similar to your business.

*Advice of Payment; Duty to Examine.* You agree to examine any records or monthly account statements promptly upon receipt. You will notify us immediately, and in no event later than 14 days after receipt of the record or account statement, whichever is earlier, of the existence of any errors, unauthorized transactions, or irregularities reflected on the record or on the account statement. If you fail to notify us of any such discrepancy with 14 calendar days of receipt of the record or statement containing such information, you agree that we will not be liable for any other losses resulting from your failure to give such notice or for any loss of interest with respect to a transaction that is or should have been shown. Except to the extent expressly limited by applicable law, if you fail to notify us of any such discrepancy within one year of receipt of such statement or report, you will be precluded from asserting the discrepancy against us. For purposes of this Section, you will be deemed to have "received" a periodic statement at the earlier of the time that: (a) we first make it available to you for pick-up; or (b) the statement or the information is mailed or otherwise made available to you electronically.



*Providing Personal and Financial Information.* You agree to provide true, accurate, current and complete personal and financial information about yourself and about your affiliates as requested. You agree to not misrepresent your identity.

*Collection.* If we initiate collection proceedings against you in an effort to recover any amounts owed, you agree to reimburse us for all costs and expenses, including attorneys' fees. "Attorneys' fees" includes reasonable charges for the time expended by in-house counsel.

*Corporate Authority; Partnership Authority.* If you are a corporation or LLC, the person signing this Agreement on behalf of the corporation or LLC represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation or LLC. If you a partnership, the person signing this Agreement for you represents and warrants that he or she is a general partner of the partnership, that he or she has full authority to sign for the partnership and that this Agreement binds the partnership and all general partners of the partnership. You shall give written notice to us of any general partner's withdrawal from the partnership.

### **Provisions Specific to Consumer Accounts**

**THE FOLLOWING PROVISIONS CONTAIN IMPORTANT CONSUMER DISCLOSURES UNDER THE EFTA.** The following provisions only apply to consumer accounts as defined under this Agreement and are not intended to confer any rights or benefits to business accounts or any accounts not established primarily for personal, family or household purposes. See the Deposit Agreement and Disclosure Statement for additional detail.

*Preauthorized Payments.*

*Right to Stop Payment and Procedure For Doing So.* If you have told us in advance to make regular electronic payments out of your Account, you can stop any of these payments. Here's how:

You may follow the directions provided in the Services, to stop the payment through the Services, or you may

Call us at 866-626-6004 Or write us at:      Bank of Marin  
P.O. Box 2039  
Novato, CA 94948-2039

in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. We will charge you a fee for each stop payment order you give. Refer to the Service Fees and Charges Section of this Agreement for fee details. A separate process will apply to the extent you wish to initiate check stop payment requests through the Services. Refer to "Check Stop Payment Services," above, for further details.

*Liability for Failure to Stop Payment of Preauthorized Transfer.* If you order us to stop one of these electronic payments 3 business days or more before the transfer is scheduled to be made, and we do not do so, we will be liable for your losses or damages.

*Consumer Liability.* Tell us AT ONCE if you believe your User ID and/or password has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account (plus your maximum overdraft line of credit, as applicable).

If you tell us within 2 business days after you learn of the loss or theft of your User ID and/or password, you can lose no more than \$50 if someone used your User ID and/or password without your permission.



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

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any funds you lost after the 60 days if we can prove that we could have stopped someone from taking said funds if you informed 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.

*Errors and Questions.* In case of errors or questions about your electronic transfers, telephone us at 866-626-6004 or write us at: Bank of Marin, addressed either to P.O. Box 2039, Novato, CA 94948-2039, , as soon as you can, if you think your statement is wrong or if you need more information about a transfer listed on the statement. We must hear from you no later than sixty (60) days after we sent you 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.
- The dollar amount of the suspected error.

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

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your Account for the amount you think is in error.

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

*Electronic Check Conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases; and (ii) pay bills.

*Financial Institution's Liability.* 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.
- The transfer would go over the credit limit on your overdraft line (if applicable).
- Circumstances beyond our control (e.g., fire, flood, power outage, equipment or technical failure or breakdown) prevent the transfer, despite reasonable precautions that we have taken.
- The computer or related system was not working properly and you knew about the breakdown when you started the transfer.
- Your funds are subject to legal process or other encumbrances restricting the transfer. There may be other exceptions stated in this Agreement and in other agreements with you.



***Documentation.***

*Periodic Statements.* 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.

*eDocuments.* You will receive account related documents and communication electronically. This may include *periodic account statements, account analysis statements, maturity notices, loan statements and notices, annual privacy notices, legal notices, tax documents* and all other notices relating to your account.