

# The Deposit Agreement

## Important Information About Your Consumer Deposit Account

Thank you for banking with us. We hope you find this information useful.

**Using your account means you agree to these Deposit Terms.**

### 1. These Deposit Terms

**This Document.** This document named The Deposit Agreement (“Document”) and the Supporting Documents listed below are referred to as our “Deposit Terms.” Using your account means you agree to these Deposit Terms.

**Supporting Documents.** The following Supporting Documents will become part of these Deposit Terms when they are provided to you separately at account opening. The document(s) you will receive will depend upon the product(s) you select. The Supporting Documents may include:

- *Privacy Policy*
- *Deposit Terms and Conditions*
- *Cardholder Agreement*
- *Fee Disclosure*
- Additional documents depending on the products and services that are associated with your account.

If you cannot find the information you are looking for or if you need a new copy, let us know.

**Interpreting These Deposit Terms.** Where these Deposit Terms grant us certain rights, they should be considered to do so only to the extent permitted by law. These Deposit Terms should not be considered to imply that we may take actions prohibited by applicable law. Limitations on our liability in these Deposit Terms do not apply to the extent they are prohibited by applicable law.

Capitalized words contained in this Document are defined terms. Those terms and their meanings can be found in Section 13 of this Document. Additionally:

- This Document says we “may” do certain things. We may not be required to do those things.
- This Document uses the words “include,” “includes” and “including.” What follows those words are only examples, not a comprehensive or exclusive list of what is included. In other words, “including” means “including but not limited to.”
- This Document indicates we may “assume” certain things. You agree those things will be considered true unless you prove otherwise.
- The headings and captions in this Document are for your convenience. They are not part of our defined words.

**The Parties to This Document.** The words “you” and “your” refer to all persons named on the application for an account, on the account agreement/signature card for an account, on any cards for an account, or who sign or use any cards on an account. The words “we” and “us” refer to First National Bank of Omaha. First National Bank of Omaha has divisions that operate under various brand names. For specific information visit us online.

Please note: Milli, FNBO Direct, and First National Bank of Omaha are the same FDIC-insured institution. Deposits held under each trade name are not separately insured but are combined to determine whether the depositor has exceeded the \$250,000 federal deposit insurance limit. Milli deposits will not, however, qualify as “related deposit accounts” for purpose of satisfying minimum balance requirements for other First National Bank of Omaha product offerings.

**Relationship of Parties.** This Document is a contract. Please keep a copy of this Document in your records.

**Interest.** If you have an interest-bearing account, we will pay interest on the Available Balance. Interest rates may change. Certain conditions may need to be satisfied to earn interest. For example, you may be required to maintain a minimum balance. In some cases, applicable law may require us to withhold interest.

**Important Notice About Changes in Terms.** We may unilaterally change the terms applicable to your account. We may do this at any time, including after your account is closed. In addition:

- We will give you notice of changes as required by applicable law.

- Changes will be effective on the date we specify. Changes may apply to your existing balance and to future Transactions and balances.
- Changes will be effective automatically. Your consent or use of the account will not be necessary for a change to be effective.

Changes may involve the addition, deletion or modification of existing provisions. Changes may also address topics that are not already covered by these terms. Changes may also involve converting your account from one type of account to another.

## **2. Opening and Closing Your Account.**

**Opening Your Account.** We may ask third parties about you before we open your account. We may decline to open an account for any lawful reason.

### **Important information about procedures for opening a new account.**

To help the government fight the funding of terrorism and money-laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, physical address, date of birth, social security number and other information that will allow us to identify you. We will let you know if additional information is required.

**Closing Your Account.** You may close your account at any time for any reason. We may do the same. We may also suspend any or all of the activity on your account at any time for any reason. In these events, we may reject future deposits, transfers and withdrawals. These things may happen without advance notice. In some situations, we may suggest you close your account and open a new account.

We may also freeze activity on your account. These things might happen, for example, if you notify us of unauthorized activity. We may also do these things if we see suspicious activity or suspect a security breach has occurred. We are not liable for your losses if you refuse our suggestion to close your account.

**After Your Account is Closed.** After your account is closed, we may deduct any obligations you owe us before providing any balance to you. -You are responsible for contacting third parties you have authorized to make deposits to or transfers from your account. In addition:

- We will continue to have rights to be paid for any Item deposited.
- We are not liable for refusing Items or transfers received after account closure, even if sufficient funds are still available. We may or may not allow funds to remain in the account to cover those Transactions.
- Interest will no longer be earned.
- We may send you a check for the balance of your account.
- This may occur via regular mail and may take a number of days.

Issues may arise related to Transactions or other things that happened before your account was closed. If they do, these Deposit Terms and your obligations will continue to apply. If we receive a deposit, Item or transfer that would have posted to your account if it were open, we may still post it to your account. This may result in an Overdraft.

**Dormant Accounts.** If two consecutive statements are returned to us due to an invalid e-mail address and/or an invalid mailing address, and there is no activity by you on your account, we may consider your account dormant. If your account becomes dormant, we may cease sending statements.

**Escheatment.** In some situations, applicable state law may require us to turn over the funds from an account to the applicable state government. Those situations include a period of no activity on your account and no expressed interest by you on the account over a period of time. These requirements may vary by state. The applicable state law is the state in which you reside or it may be your state of residence as we have it on file (last known address). If funds have been turned over to the state, you may have to file a claim with the state to recover them.

**Account Changes.** Changes can be made to most accounts (e.g. how your account is titled or where we send your statements). We will tell you what is required to make a change. Some changes may require a written request. Changes may not take effect immediately. We will need a reasonable amount of time to act on change requests. We may reject some change requests.

**Transactions After Death or Incompetence.** We may allow your account to remain open after your death or incompetence. We may continue to honor Transactions until we have a reasonable opportunity to act after receiving actual notice of your death or incompetence.

**Claims After Death or Incompetence.** After your death or incompetence, various claims may be made regarding your account. We may require documentation to act on those claims. We may decide what documentation is required. In addition:

- If we pay any claimant, we will be considered released from the claims of all other claimants and your estate.
- Your estate is responsible for any claims made against us concerning your account. For example, the government may require us to reimburse any benefit payments made after your death. Your estate is responsible for that claim. If your account does not have a sufficient balance, we may deduct that claim from any account you have with us.

### **3. Deposits To Your Account.**

**Receipt of Deposits.** We are responsible for a deposit after we have actually received it. Deposits (such as deposits by courier, mail or night depository) are not considered received until actual receipt by our personnel. Deposits received on weekends or federal holidays will be considered received on our next Business Day. Deposits received after our cutoff times will be considered received on our next Business Day. Different cutoff times may apply to different locations and types of deposits. Our counts of money received will be conclusive. We may impose additional requirements for certain deposits (e.g. very large cash deposits).

**Our Processing of Deposits.** Deposits can currently be made via ACH. We may process deposits whether or not they are payable to you. We may refuse to accept any deposit in whole or in part and may return any deposit that has already been made. We may apply deposits to the repayment of existing Overdrafts.

**Incoming Transfers.** We may credit incoming transfers based solely on the account number provided to us. Sometimes this will be inconsistent with other information provided. Incoming transfers will be noted on your statement. We may not notify you separately of their receipt.

**Credit for Deposits.** Any credit we give you for a deposit is provisional. For example, we may reverse a credit:

- Any time before final payment of the Deposited Item.
- If a Deposited Item is returned to us.
- For a transfer into your account if that transfer is returned or reversed. We may place a hold on your account for the amount of any return or reversal as soon as we learn about it.
- If a claim is made against us that relates to the Deposited Item or transfer.

- If we do not receive final payment in a reasonable time.

We may do these things even though another party was late in making its return, reversal, claim or was considered to have finally paid the Item.

Even though we have issued and processed a transaction, we may make reversals, corrections and adjustments if we determine they are appropriate. For example, we may correct errors.

Credits may be reversed even though we permitted you to make withdrawals or transfers of the credited funds. We may credit deposits and incoming transfers based solely on the account number provided to us (even if that number does not match other information we receive). We are not responsible for your errors in identifying the account to credit for a deposit.

**Direct Deposits.** If funds from a Direct Deposit are returned to the originator of that deposit, we may deduct that amount from your account.

**Our Responsibility for the Items You Deposit.** We have limited responsibility for Deposited Items. We act as your agent to collect the Item and must exercise due care. We are not responsible for other banks' actions or for their insolvency. We may select the method of collecting any Deposited Item. We may agree with others to vary the rules and deadlines that would otherwise apply to an Item (including return deadlines).

**Loss or Destruction of Items.** We are not responsible for loss or destruction of Items in transit. If Items are lost or destroyed in transit or in our possession, you agree to cooperate with us. This may include researching and providing information to us about those Items, asking the issuers of those Items to stop payment on them, seeking replacement Items and providing copies of those Items to us.

**Returned Items.** We may deduct the amount of any returned Item from your account or place a hold on your account for the amount of any return as soon as we are made aware a return is being sent. We may accept returns in any form, including copies and electronic forms. We are not responsible for other banks' actions in returning Items. This includes misrouted returns and notices of return. We will not necessarily give you separate notification of a return. You waive notice of dishonor, nonpayment and protest of any Item. We may attempt to re-clear any returned Item and re-present it for payment. We are not, however, responsible for recovering payment for a returned Item. If you do not include your account number in your endorsement, we will be excused from any delayed or inaccurate processing if the Item is returned. We may provide any returned Item to you as a Substitute Check. We may charge any account of yours for any returned Item.

**Foreign Items.** We are not obligated to accept any Item drawn on a foreign bank. We are not obligated to accept Items in foreign currency. If we do, we may convert the amount of the Item to U.S. Dollars using the exchange rate and date we select.

You are responsible for our Fees and any Fees we incur to collect the Item. You accept all risks of currency fluctuation and late return. Funds from foreign deposits may not be available until we actually receive final payment for the Item.

**Claims that Third Parties Make Against Us.** We have responsibilities to third parties for Items that you deposit to your account. We also have responsibilities to third parties that transfer funds into your account. Those third parties may be able to make claims against us. If a claim is made against us:

- We may place a hold on your account when we learn of a claim.
- We may deduct the amount of the claim from your account. We may also deduct our losses and expenses in handling the claim. We may not give you notice before we do this. We may do this even though it overdraws your account.
- We are not obligated to verify the factual accuracy of claims. We are not obligated to verify that the claim is timely or to assert any defenses to the claim.
- In some situations, you might ask us to dispute a claim. If we do, you agree to be responsible for our losses and expenses.

#### **4. Availability of Deposited Funds.**

Some deposits are not available for immediate withdrawal.

**Funds Availability Policy.** Our current policy is to make funds from your deposits available to you on the first Business Day after the day we receive your deposit.

For determining the availability of your deposit, every day is a Business Day, except Saturdays, Sundays and federal holidays. However, if a deposit is received on a day we are not open, we will consider those next Business Day Transactions.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

#### **5. Transactions on Your Account**

**Electronic Funds Transfers.** You have certain rights regarding electronic transfers from your account. Federal Regulation E issued by the United States Federal Reserve Board of Governors generally governs Electronic Funds Transfers. See our Electronic Funds Transfer Disclosure contained in Section 12 of this Document.

**Other Transactions on Your Account.** We may honor any Transactions that you have directly or indirectly authorized. Other Transactions may take a variety of forms. For example, we may honor:

- Incoming Substitute Checks. We may also honor other images or electronic records that refer to checks you have issued.
- Transactions from merchants and other Payees that are permitted to convert your checks into electronic Transactions.
- Debit and ATM card Transactions that you are responsible for.
- Transfers that you have authorized us or any third party to initiate. This may include transfers initiated over the internet, by telephone or other means.
- Other transfers that third parties are allowed to submit under applicable banking rules. This may include adjustments, corrections, reversals and reclamations of previous Transactions.

**Actions by Members of Your Family.** If a member of your immediate family uses your account or is on your account, we may assume that you authorized that action.

**Holds Based on Authorization.** In some situations, we may authorize Transactions on your account. For example, this may occur when you use a Debit Card. Some merchants request authorizations for more than the amount of the Transaction. We may place a hold on your account for the amount authorized. A hold may continue until the Transaction itself is posted to your account.

**Transfers by Third Parties.** Please exercise caution in giving your account number to a third party. If you do, we may assume that you have authorized that third party to transfer funds to or from your account. We are not required to inquire into the circumstances of those transfers.

**Claims You Have Against Third Parties.** If you have a dispute with a third party, you agree to resolve that dispute without involving us, even if we processed your payment to the third party.

**Pursuing Claims Against Third Parties.** Transactions posted to your account may give rise to claims against a third party. Nothing in these Deposit Terms are intended to preclude you from asserting those claims.

**Transactions from Outside the United States.** We have rights against third parties that transfer or present Items drawn on your account. We also have rights against third parties that initiate transfers from your account. If we honor a Transaction



that has come from outside the United States, we may not have the same rights. You are responsible for any losses we suffer in those circumstances.

**Our Responsibility for Honoring Transactions.** We will exercise ordinary care in paying Transactions. Despite this, we may inadvertently honor an unauthorized Transaction. We will not be liable if we could not reasonably detect that the Transaction was not properly payable. For example, if we could not reasonably detect that an Item was forged or altered, we will not be responsible for paying that Item.

**Our Standard of Care.** We will be considered to have exercised ordinary care if we follow local banking practices. In addition:

- We may rely on automated processing and the information encoded on Items presented on your account.
- We may not review every Transaction posted to your account

**Disputed Transactions.** If you dispute a Transaction posted to your account:

- You must notify us of your dispute as soon as you become aware of it.
- We may ask for information to help us investigate your dispute.

We may withhold the amount of a disputed Transaction from your account until we complete our investigation. We may credit your account before completing our investigation. We may reverse that credit later if we determine the Transaction was properly posted.

## **6. Overdrafts.**

**Your Responsibilities.** You must keep enough money in your account to cover the transfers you authorize.

### **IMPORTANT NOTES**

- It is possible to overdraw your account even if the Available Balance or Pending Items as displayed in your account appears to indicate you have enough money. Those balances may not reflect card transactions or transfers that are authorized to be paid from your account that has not yet been posted by us.
- Do not assume that you will be able to make a covering deposit before a particular card transaction or transfer is posted and is paid from your account. Card transactions and transfers can post, and are paid, very quickly. As a result, attempting to cover those transactions at the last

minute by making a deposit may not work, because the deposited funds may not be available as quickly as you need them to be. Funds subject to a hold are not available to cover transactions. Please carefully review Section 4 of this Document if you have questions about funds subject to a hold.

**Our Options.** If a transfer is received by us and you do not have funds to cover the Item, we may refuse to pay the transfer and then return it. We may also choose to pay the transfer, which will create an Overdraft. Even if we have a history of paying Overdrafts for you, we may stop doing so at any time.

**Overdraft Timing.** We are not obligated to evaluate the availability of funds in your account at any particular time or more than once before making a decision. As a result, an Overdraft decision might be made before you make a deposit later in the day.

**Credits and Debits.** Deposits are additions to your account and are referred to as "credits" or "Money in". Deductions or subtractions from your account are referred to as "debits" or "Money out". Credits and debits can take many forms.

Credits and debits individually or together may be referred to as "Transactions." We use both automated and manual systems to process and post Transactions to your account. We also may refuse to accept a Transaction as prescribed by our procedures and regulatory requirements.

If you have more than one Transaction on the same day (and do not have sufficient funds in your account), the order we use to post those Transactions may affect the number and extent of Overdrafts you have that day.

**We Choose the Order of Posting.** We generally choose the order in which Transactions are posted to your account by category and within each category (see below for more details). You agree that we may decide how our system will process and post the order of your Transactions and understand that such order may change from time to time based on regulatory requirements, technology and industry standards. This includes the order in which we decide to authorize, accept, decline, pay or return credits, debits and holds on your account. This may include different timing for categories of Transactions based on how the Transaction is presented and administered by us.

The posting order of Transactions to your account may vary based on the types of Transactions presented, their source and the respective cutoff times applicable for the systems utilized. As a result, the posting order to your account may be different from the order in which your Transactions actually occur. All of this will affect when Overdrafts occur and which of your Transactions we pay or return.

**Explaining the Posting Order of Transactions on Your Account.** Generally, we post transactions in the order we receive them.

Deposits or credits are Transactions that increase the balance in your account. Withdrawals or debits are Transactions that reduce the balance in your account.

Transactions received after our Business Day cutoff times will be processed on the next Business Day.

**We generally process withdrawals in the following categories as follows:**

- ACH transactions that are originated from your Milli account are generally posted in real-time.
- ACH transactions that are originated at another financial institution will post when it is settled.
  - The transactions will be settled when they appear on your account.
  - Things to consider when you are relying on the timing of these transactions
    - The time of day you initiate this transaction (be aware of any cut off times of the financial institutions in which you are initiating the transaction and the cutoff times of Milli);
    - Keep in mind transfers between financial institutions aren't processed on weekends and federal holidays, so transfers take longer at those times.
- Internal Milli account transfers are generally posted real-time.
- Debit Card Transactions (non-ATM Transactions) are generally posted in real-time

The posting order of deposits and withdrawals may change from time to time based upon regulatory requirements, technology or industry standards.

We recommend that at all times you maintain an accurate record of balances and Transactions that you authorize for deposit or withdrawal from your account, so sufficient funds are always available.

## **7. Statements and Other Communications and Notices.**

**Statements and Communications.** Statements and other information about your account will be available through the Milli App. We may also send you statements, notices that your statement is available and other communications

(we will refer to all of these things as “statements”). Anything we send you may be addressed to the single contact address contained in our records. If there is more than one of you, you should make arrangements among yourselves to share what we send. Your statement cycle may vary depending on the product(s) that are associated with your account. You should not communicate sensitive information to us via unencrypted email.

**Reviewing Statements and Communications.** You should promptly review the statements and other information we make available to you. Please review carefully and make sure:

- There are no mistakes.
- That we recorded each of your deposits.
- That each Transaction posted to your account was properly authorized. If you need a copy of an Item, let us know right away.

Notify us immediately of any problems you discover.

**Deadlines for Notifying Us of Problems.** If you do not promptly notify us of a problem that is evident on a statement, you may not be able to hold us responsible for it.

You are in the best position to discover and report any unauthorized charge to your account. If you do not notify us of a problem on a statement within thirty (30) days of the date of the statement, you may not be allowed to assert a claim about subsequent problems created by the same wrongdoer.

If you do not notify us of a problem on a statement within sixty (60) days of the date of the statement, the statement will be considered entirely correct. We will not be responsible for any error or Transaction shown on such a statement.

**Communications with You.** We may contact you to service your account and for collection and other purposes. We may contact you, including by phone call, text or email using live operators, automated systems, automatic dialing devices and recorded messages. Some of these contacts may result in charges to you. We may contact you at home or work. Our contacts will not be considered unsolicited. If you provide a cell phone number to us or place a cell phone call to us, you agree that we may contact you at that cell phone number. If you provide us with an email address or if you send us an email, you agree that we may contact you at that email address.

**When Notices are Effective.** Our notices to you are effective when we include the notice on or with your monthly statement. If we send the notice separately, it will be effective when we put it in the U.S. mail or send it to you.

**Recording.** We may monitor and record all communications with you in accordance with applicable law.

**Phone Number and Address Changes.** You must promptly notify us of changes in your phone number or address. We may change your address if we receive a change notice from the U.S. Postal Service. We may also rely on other services that update contact information. We may apply address changes to all of your accounts with us. We may rely completely on our account records to determine the ownership of your account.

**Communications with Others.** We may report information about your obligations to us to credit bureaus and similar organizations. We may obtain credit reports and make inquiries of others in connection with maintaining your account and collecting from you. You authorize any third party to release information about you to us.

**Notices to Us.** You may notify us by calling or writing us at the appropriate contact information listed in Section 14 of this Document. Any notification by phone should be confirmed in writing as soon as possible. Notices to us are not effective until they are actually received in writing by an employee that has authority to act on the notice. You agree that we will have a reasonable opportunity to act on each notice we receive. We may disregard communications we consider unreliable (e.g., communications via fax, unsecured email and voicemail).

## **8. Our Obligations and Liability.**

**Legal Obligations.** We have obligations to you under applicable law. You agree that we have no liability to you other than liability imposed by statute that cannot be waived or if agreed to in these Deposit Terms.

**Our Standard of Care.** We are obligated to exercise ordinary care as specified by applicable law. This means our standard of care should not vary unreasonably from general banking practices for similarly situated banks in our local area. Clerical errors, inadvertence, oversights and honest mistakes of judgment will not count as failures to exercise ordinary care. Our policies and procedures are for our own internal purposes only. They may not be taken into account for purposes of evaluating whether we have exercised ordinary care.

**Warranty Disclaimer.** OUR BANKING SERVICES ARE PROVIDED "AS IS." WE DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**Limitation of Liability.** We are not liable for defaults or delays that arise out of communication failures, computer or equipment failures, emergency conditions or

any other circumstances beyond our control. WE WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THEY ARE FORESEEABLE. These limitations apply to all claims, whether based on breach of contract or any other legal theory.

**Refusal to Take Action.** Except as otherwise required by law, we may refuse to take any action for any reason. This includes the right to refuse to violate applicable laws.

**Third Party Claims and Disputes Among Owners and Others.** Generally, we may refuse to respond to any inquiry, request or claim from any party other than an owner. We are not responsible for resolving or taking action over owner disputes. We may choose what to do if there is any claim or dispute on your account. For example, we may:

- Continue to honor Transactions as permitted by these Deposit Terms or we may close your account.
- Place a hold on your account until any claim or dispute is resolved to our satisfaction.
- Comply with any legal process we receive regarding any one of your accounts. This includes garnishments, levies, attachments, forfeitures, seizures, subpoenas, tax levies and withholding orders, search warrants and other requests for information, and any other type of judicial, administrative or legal process or order. We may honor legal process regardless of where or how we receive it and regardless of which branch your account is associated with. We may apply a separate cutoff time to legal process. Our security interest and Setoff rights will take precedence over any legal process.
- Honor any claim that we determine to be justified. We may do this even if it results in an Overdraft on your account.
- Impose a charge for any third party claim or dispute among owners that we receive.
- Pay any claimed or disputed funds into court and ask the court to decide who is entitled to them.

We are not required to decide the merits of any third party claim or owner dispute.

We may not give you advance notice of these actions. You are responsible for our costs and expenses in any of these circumstances.

## 9. Your General Obligations.

**Review Statements and Communications.** You agree to promptly review the statements and other information we make available to you. Please monitor your transactions within the app to keep track of current activity in your account.

**Reasonable Care.** You agree to use reasonable care in using and handling your account.

**Safeguarding Your Account.** You agree to safeguard your debit card and user ID and passwords. You also agree to protect the computers and mobile devices used to access your account. You agree to notify us immediately if any of your user IDs, passwords, computers or mobile devices are lost, stolen or accessed by unauthorized persons.

**User IDs and Passwords.** You agree to keep your user IDs and passwords protected. You should change your password frequently and choose strong passwords (our system may provide some guidance on this topic). We may follow any instructions we receive from any person using your user ID and password. If a person uses your user ID or password, we may assume that you authorized that person to do so. If that is not the case, we may assume you failed to properly safeguard your account.

**Digital Communication.** It is very important for you to take care to protect your account. You should not communicate sensitive information to us via unencrypted email, including your account number.

**Compliance with Law and Rules.** You agree not to use your account for any illegal purpose. You agree to comply with all applicable laws.

Applicable laws include those enforced by the Office of Foreign Assets Control. Among other things, those laws prohibit payments to certain foreign countries and to certain listed persons and organizations (e.g., terrorists and drug traffickers). You can obtain additional information at [800-540-OFAC](tel:800540OFAC) (6322).

You agree not to use your account for unlawful internet gambling. We may block any Transaction that we identify as a restricted Transaction under the Unlawful Internet Gambling Enforcement Act of 2006 or other applicable law.

**Other Rules.** We may send or receive Items for you through the ACH and other associations or clearinghouses. You agree to be bound by the rules of those associations and clearinghouses. Please see Disclosures for the Notice with Respect to ACH Credit Transactions and UCC Article 4A contained in Section 12 of this Document.

**Your Responsibility for Our Losses.** In some situations, a third party may make a claim against us. You agree to be responsible for the losses, costs and expenses we suffer because of third party claims. Examples of third party claims include the following:

- If the claim involves a Transaction on your account. This could include a transfer or a withdrawal. This includes claims related to the role we play as your bank in those Transactions.
- If the claim is based in whole or in part upon the fact that we are your bank. This includes claims made against us to recover money from your account or information about your account.
- If the claim relates to something we did or did not do at your request.
- If the claim involves something you did or did not do. This includes not complying with your obligations in these Deposit Terms or any other contract.

You will continue to have these responsibilities after your account is closed. We may deduct our losses, costs and expenses for these matters from your account. You are not responsible to the extent a third party is entitled to recover from us for our own gross negligence or willful misconduct.

**Errors.** You agree to notify us immediately if we credit your account in error or if you receive funds from us in error. You have no rights in those funds and you agree to return them to us promptly.

## **10. Dispute Resolution; Arbitration.**

***Please read this carefully. It includes a class action waiver and an enforceable arbitration provision.***

**Definitions.** In this part of the Deposit Terms:

A "Claim" means any issue or dispute involving these Deposit Terms or any prior deposit agreement for your account. A Claim may involve your account application or activity in your account. A Claim also may involve advertising, benefits or products related to your account. A Claim may involve action or inaction. Claims may exist now or arise in the future and may be for money damages, penalties or for injunctive, declaratory or equitable relief.

An "Ordinary Claim" is a Claim seeking money damages for less than \$25,000, not counting interest and costs. A Claim is not an Ordinary Claim if anyone is a party to it other than you, us and/or Our Related Parties.



“You” means you and anyone associated with you. This could include a joint account holder, a beneficiary of your account or a legal heir or a trustee acting on behalf of your estate.

“Our Related Parties” are parties related to us such as our parent, subsidiaries and affiliates. This also includes corporate officers, directors, employees, representatives, successors and assigns. The term also includes others who provide products or services to you or to us for your account.

“Class Proceedings” are proceedings brought by or on behalf of a class. These include proceedings brought in a representative capacity or in a private attorney general action. The term applies to proceedings whether filed in court or in arbitration.

**Notice and Timing of Legal Actions.** Before we bring a Claim against you, we must tell you about our Claim in writing. The writing must identify the amount we claim. Before you bring a Claim against us, you must do the same. If we claim you owe us money, our written notice may be a statement we send you. You may take thirty (30) days to pay us or such longer time as allowed by these Deposit Terms or applicable law. If you do not pay us on time, we may begin a court or arbitration proceeding.

If you have a Claim against us, you must tell us within ninety (90) days of when you learned (or should have learned) of the facts on which your Claim is based. We will have a reasonable period of time (not less than 30 days) to correct the situation. If we do not correct the situation in this time, you may begin a court or arbitration proceeding. You must commence that proceeding within one year of the date of the first statement that referenced the subject of your Claim.

#### **Class Action Waiver.**

**NEITHER YOU NOR WE MAY INITIATE OR PARTICIPATE IN ANY CLASS PROCEEDING IN COURT OR IN ARBITRATION.** You and we waive the right to bring Class Proceedings against each other. We may not participate in a Class Proceeding brought against you. You may not participate in a Class Proceeding brought against us.

#### **Binding Arbitration.**

**THIS PROVISION SAYS YOU OR WE MAY REQUIRE ANY CLAIM OTHER THAN AN ORDINARY CLAIM TO BE RESOLVED BY BINDING ARBITRATION.**

**IN ARBITRATION, YOU AND WE GIVE UP THE RIGHT TO HAVE THE MATTER HEARD IN COURT AND BEFORE A JURY. IN ADDITION, OTHER RIGHTS YOU AND WE HAVE IN COURT, LIKE THE RIGHT TO CONDUCT DISCOVERY OR TO APPEAL, MAY NOT BE AVAILABLE OR MAY BE MORE LIMITED. EXCEPT AS PROVIDED BELOW, YOU AND WE WAIVE THESE RIGHTS.**

“Ordinary Claims” are not subject to this arbitration provision and may be resolved in an appropriate court. Except for Ordinary Claims:

- You may require any Claim we assert against you to be resolved through binding arbitration.
- We may require any Claim you assert against us and/or any of Our Related Parties to be resolved through binding arbitration.
- If you assert a Claim against one of Our Related Parties and not us, the Related Party may require that Claim to be resolved through binding arbitration.

No arbitration will be consolidated with any other arbitration without the consent of all parties. The right to require a Claim to be resolved through binding arbitration includes Claims asserted as counterclaims, cross-claims or third party claims.

This arbitration provision will apply even after your account is closed or transferred. This provision will apply even if these Deposit Terms change or you file bankruptcy.

This arbitration provision is made in a transaction involving interstate commerce. It will be governed by and enforceable under the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16, as amended.

If any part of this arbitration provision is unenforceable, that part will be severed. The rest of this arbitration provision will remain in effect. If the Class Action Waiver is held to be invalid, the entire arbitration provision will be null and void.

**Any party choosing to have a Claim resolved by arbitration waives the right to assert that Claim in court, to have a jury determine that Claim, and to engage in discovery, except as the applicable Arbitration Rules may provide.**

**Arbitration Procedures.** An arbitration proceeding will be brought before a third party called an “Administrator.” The Administrator will be the American Arbitration Association (“AAA”) or the National Arbitration Forum (“NAF”). If neither is available, you and we will agree to a comparable organization. No other organization may be used.

An arbitration will be subject to the rules and procedures of the Administrator (the “Arbitration Rules”). If the Arbitration Rules conflict with this arbitration provision, this provision will prevail.

You may obtain AAA forms and rules by contacting the AAA. You can write the AAA at 1633 Broadway, 10th Floor, New York, NY 10019. You can call the AAA at [800-778-7879](tel:800-778-7879). You can visit the AAA at [www.adr.org](http://www.adr.org).

You may obtain NAF forms and rules by contacting the NAF. You can write the NAF at P.O. Box 50191, Minneapolis, MN 55405. You can call the NAF at [800-474-2371](tel:800-474-2371). You can visit the NAF at [www.arb-forum.com](http://www.arb-forum.com).

The arbitration will be decided by one or more impartial Arbitrators selected under the applicable Arbitration Rules. Arbitrators must be lawyers with at least ten years experience or former judges. The decision of the Arbitrators will be final and binding. The decision will be subject to judicial review, but only as set forth in the Federal Arbitration Act. A court having jurisdiction may enter judgment based on the Arbitrators' decision.

Only the Arbitrators may decide if a claim, dispute or controversy is a Claim subject to this provision. A court may decide whether a Claim is an Ordinary Claim. The Arbitrators may not entertain Class Proceedings. If the Arbitrators do so anyway, you or we may appeal to a court that has jurisdiction. Any Class Proceeding allowed despite these terms will be conducted only in a court having jurisdiction. The Arbitrators will apply law consistent with the Federal Arbitration Act, and other applicable federal laws and regulations. The Arbitrators will honor statutes of limitations and appropriate claims of privilege. The Arbitrators may not award punitive damages.

If there is an arbitration hearing, it will take place in the federal court district where you live when the arbitration is started.

Counsel in any arbitration may represent you and us. Each party will bear their own fees and expenses, regardless of who prevails.

We will reimburse the fee you pay an Administrator to initiate an arbitration proceeding consistent with these terms, up to \$350. You must prove you paid the fee. Reimbursement applies only if you initiate an individual proceeding in good faith. We will pay other fees if the Administrator or Arbitrators tells us we must. Other fees may be assessed to you or to us as the Arbitration Rules and applicable law provide.

## **11. Miscellaneous.**

**Additional Legal Rules.** These Deposit Terms are designed to be simple and straightforward. Applicable law gives both you and us additional rights and responsibilities. These Deposit Terms do not describe all the applicable laws that might possibly apply.

**Modification of Legal Rules.** These Deposit Terms should be considered to modify applicable law to the extent permitted. Many laws cannot be modified by agreement.

**Invalidity.** Any unenforceable provision of these Deposit Terms should be considered enforceable to the maximum extent permitted by law. Invalidity or enforceability of one provision should not affect any other provision.

**Entire Document.** This Document supersedes any prior communications or agreements between you and us as to the topics addressed in this Document. This Document remains in effect even if we enter into a subsequent agreement with you that applies to another product or service.

**Governing Law.** These Deposit Terms and your account are governed by federal law. To the extent that state law applies, Nebraska law will govern (excluding conflict of law rules).

**Waivers by Us.** We may waive any part of these Deposit Terms. Waivers are effective only once as to a specific Transaction. Waivers do not apply on an ongoing basis or to future Transactions.

**Course of Dealing.** Our course of dealing with you will not add to our legal obligations to you. We may discontinue any such course of dealing at any time without notice.

**Service Providers.** We may use third parties to provide services as we see fit.

**Pledges and Security Interests.** You may not pledge or grant a security interest in your account to anyone without our written consent. If we give our consent, our Setoff rights and security interest rights will remain in effect and take priority over the third party.

**Copies.** We may retain a copy of this Document and any other documents related to your account in electronic form. We may destroy all originals. Any copy we produce from an electronic form will be as effective as the original.

**Third Parties.** These Deposit Terms are only for your benefit and our benefit. There are no third party beneficiaries.

**Sub-accounts.** Checking accounts may consist of sub-accounts. We may post Transactions to these sub-accounts and transfer funds between these sub-accounts as allowed by law. We maintain these sub-accounts for regulatory accounting purposes. The existence of these sub-accounts should not affect you. They will be treated as a single account for anything that affects you. This includes statements and other information we provide to you.

**Special Types of Account Ownership.** Certain accounts are subject to specific laws. We may take any action permitted by those laws. You are responsible for understanding and following those laws when relevant. Some examples of special types of accounts are listed below.

**POD and Similar Beneficiary Accounts.** "POD" means payable on death. Funds in this account belong to the owners while they are alive. When the last owner dies, funds are payable to the named beneficiaries. Beneficiaries will be paid in equal shares unless our records say otherwise.

## **12. Disclosures.**

### **Important Information About Substitute Checks and Your Rights.**

#### **What is a Substitute Check?**

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

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other laws with respect to those transactions.

#### **What are my rights regarding substitute checks?**

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (e.g., if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged because of the withdrawal (e.g. bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### **How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please refer to the appropriate contact information listed in Section 14 of this Document for the correct mailing address. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

### **Your claim must include:**

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect).
- An estimate of the amount of your loss.
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and a copy of the substitute check and/or the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check and the amount of the check.

**Electronic Funds Transfer Disclosure.** The following disclosures apply to electronic transfers to and from your deposit account with us:

#### **1. Use of Your Card.**

You may use your card to:

- Withdraw cash from the account(s) you have selected.
- Transfer funds between the accounts you have selected.
- Pay for purchases from merchants that have agreed to accept the card at the point of sale.
- Pay bills directly from the account(s) you have selected in the amounts and on the days you request.
- Inquire for balances of the account(s) you have selected.

Some of these services may not be available at all ATMs or points of sale.

You agree to observe these limitations on the frequency of transfers:

- You may make an unlimited number of cash withdrawals from our ATMs each day.
- You can use your card for an unlimited number of purchase transactions each day

For security reasons, there are other limits on the number of purchases and withdrawal transactions you can make.

You agree to observe these limitations on the dollar amount of transfers:

- You may withdraw up to \$1,000 each day with your Visa Debit Card. Amounts authorized will not, however, exceed your Available balance.
- You may buy goods and services up to \$3,000 each day with your Visa Debit Card. Amounts authorized will not, however, exceed your Available balance.
- You agree not to use your card to engage in illegal activity or online gambling.
- If you use an ATM that is not operated by us, you may be charged a fee by the operator of the machine and/or by any network used (and you may be charged a fee for a balance inquiry even if you do not complete a transaction).
- Please note that if we authorize a withdrawal or transfer from your account, we may debit or place a hold on your account for the amount authorized. We may do this at the time of the authorization or later. You agree not to request transfers or withdrawals with your card if there are not sufficient funds available in your relevant account. If we nonetheless authorize such a transfer or withdrawal, you agree to immediately reimburse us.

## **2. Preauthorized Transfers.**

If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Please refer to the appropriate contact information listed in Section 14 of this Document to contact us in time for us to receive your request three (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 fourteen (14) days after you call. If you order us to

stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages. If these regular payments may vary in amount, the person you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be.

### **3. Documentation of Transfers.**

You will get a monthly account statement unless there are no transfers in a particular month. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can telephone us to find out whether or not the deposit has been made. Please refer to the appropriate contact information listed in Section 14 of this Document.

### **4. Liability for Failure to Make Transfers.**

If we do not complete a transfer to or from your account on time or in the correct amount according to these Deposit Terms, we will be liable for your losses or damages. However, there are some exceptions. For instance, we are not liable: (1) if, through no fault of ours, you do not have sufficient funds in your account to make the transfer; (2) (3) the funds are subject to legal process or other encumbrance restricting a transfer; (4) if there is a technical malfunction which is known to you at the time you attempt to initiate the transfer or, in the case of a recurring transfer, at the time the transfer should have occurred; or (5) if circumstances beyond our control (such as a fire, flood, power outage or communications or computer system failure) prevent the transfer, despite reasonable precautions that we take. In no event are we liable for more than actual damages proved if any failure of ours was unintentional, and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid such an error. This does not mean that we accept liability for other circumstances resulting in transfers not being made or completed on time. For example, we are not responsible for delayed or failed transfers if: (1) you exceed applicable restrictions on the number, amount or frequency of transfers; (2) transaction information is lost or delayed in transmission; (3) a bona fide security consideration causes us not to make the transfer, we have reason to believe a transfer is unauthorized, or the transfer would violate other security restrictions in our system; or (4) your deposit account is closed.

### **5. Account Information Disclosure.**

We will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers; or
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or



- In order to comply with government agency or court orders; or
- If you give us your written permission.

Please reference our Privacy Policy for more information on this topic.

## **6. Liability for Unauthorized Use.**

- Tell us AT ONCE if you believe your card has been lost or stolen or if you believe that an electronic funds transfer has been made without your permission using information from your Item. 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 sixty (60) days after the statement was mailed to you, you may not get back any money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods.
- For purposes of these disclosures, our business days include every day other than a Saturday, Sunday or federal holidays.

## **7. Charges.**

Please reference the Fee Disclosure.

## **8. Error Resolution Notice**

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS PLEASE REFER TO THE APPROPRIATE CONTACT INFORMATION LISTED IN SECTION 14 OF THIS DOCUMENT.

Contact us if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than sixty (60) days after we sent the FIRST statement on which the problem or error appeared.

- Tell us your name and account number.
- 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.
- Tell us the dollar amount of the suspected error.

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

We will determine whether an error occurred within ten (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 forty-five (45) days to investigate your dispute or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If we ask you to put your dispute or question in writing and we do not receive it within ten (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 ninety (90) days to investigate your dispute or question. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

#### **Notice with Respect to ACH Credit Transactions and UCC Article 4A**

- (1) Credit given by us with respect to an Automated Clearing House (ACH) credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment via such entry (i.e. the originator of the entry) shall not be deemed to have paid the amount of such entry.
- (2) Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice of receipt of an ACH item and we will not do so. However, we will notify you of the receipt of payments in the periodic statements we provide to you.
- (3) We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the State of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and us, Nebraska law shall govern.

**13. Glossary.** Capitalized words contained in this Document are defined here.

**Automated Clearing House (ACH).** The ACH is a nationwide electronic fund transfer system that permits participating depository financial institutions to credit or debit payments electronically. ACH Transactions are governed by clearinghouse operating rules and consumers are protected under Federal Regulation E. We may send or receive Transactions for you through ACH and other associations or clearinghouses. You agree to be bound by the rules of those associations and clearinghouses.

**Available Balance.** The Available Balance in your account references the current funds you have available for withdrawal. This amount reflects Items that have already credited or debited to your account. The Available Balance also includes any Overdraft protection you may have on your account. The Available Balance *does not include* any funds that are being held for outstanding Items that have not yet posted to your account.

**Direct Deposit.** A Direct Deposit is an electronic deposit made to your account from a certain payor. These are periodic payments that could include your paycheck or other state or federal payments.

**Dormant Account(s).** Your account may be considered dormant by us if there has been no account activity for an extended period of time or the statements we send you are repeatedly returned.

**Electronic Funds Transfer.** These services offer alternative methods to make transfers to and from your account using your Debit Card, ATM, mobile and telephone banking or by using our online banking services.

**Fee(s).** A Fee is a charge that may apply to your account for various account features including services, maintenance and Transactions. This may result in an Overdraft to your account. We may impose a Fee if your account has a balance of zero.

**Item(s).** An Item may be any form of paper or electronic instructions. Examples of an Item may include electronic Transactions, remotely created checks or account deposits.

**Deposited Item.** This Item may be accepted in a variety of formats. You authorize us to cash, deposit or collect a Deposited Item on your account.

**Overdraft(s).** An Overdraft is any Transaction that causes your account to have a negative balance.

**Payee.** A Payee is a person that receives a stated amount of money, especially in the form of making a check payable to a Payee.

**Setoff.** If you owe money to us, we have a right to take over the funds in your account to cover your obligations, without prior notice to you.

Substitute Check(s). A Substitute Check is a special paper copy of the front and back of an original check. Check 21 (federal law) allows financial institutions to replace original checks with Substitute Checks to make check processing faster. The Substitute Check may be slightly larger than the original check. Substitute Checks are specially formatted so they can be processed as if they were original checks. The front of a Substitute Check should state: *"This is a legal copy of your check. You can use it the same way you would use the original check."*

**Transaction(s).** A Transaction is the movement of funds into or out of your account when an Item or demand draft is presented for credit or debit.

**14. Customer Service Information.** Please contact us at [1-800-733-4015](tel:1-800-733-4015) or email us at [support@milli-bank.com](mailto:support@milli-bank.com), or chat with us within the app.