

# Consumer Deposit Agreement and Disclosures



MEMBER FDIC

*City Bank*<sup>™</sup>  
NEW MEXICO


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 Equal Housing Lender

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# **Consumer Deposit Account and Services Agreement**

## **Agreement:**

This booklet, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your accounts(s) with us. Please read this carefully. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

## **Terms:**

This agreement establishes the basic terms of the relationship between City Bank and you. You, your and yours mean the Depositor(s). We, our, ours and us mean City Bank. Unless the context clearly requires otherwise, a singular term includes the plural and vice versa, and a word of one gender includes the other. An "item" is any check, draft, or order for the payment of money, oral or written, in electronic or other form. A "business day" is any day we are open for banking business. Every day is a business day except Saturdays, Sundays, and federal holidays. "Such as" means the terms that follow are examples and are not intended to limit the possibilities. "This Agreement" means this document and any subsequent amendments that we give you, including disclosures such as Truth-in-Savings and electronic funds transfer agreements, fee schedules, the signature card and any agreement for banking services connected with this account.

## **Binding Agreement:**

You have read this agreement and understand that it is binding between you and us for a deposit account, hereafter "the account."

## **Multiple Owners:**

If there are multiple account owners, each owner may perform any permitted action with the account, such as endorse items for deposit or collection even if payable to another owner, pledge it as collateral for any obligation, move funds by check or other means, close it, authorize others to conduct transactions on it and give instructions for transfers, stop payments and all other matters relating to it. No owner may cancel a stop payment entered by another owner. Each owner appoints the other owner as attorney-in-fact to endorse and cash items. A notice sent to one owner is effective for all owners. You guarantee the signature of each owner. You will be responsible for any liability, such as an overdraft, fee, or refund to the government of a direct deposit, even though caused by another owner. You will notify us immediately after you learn of the death or declaration of incompetence of any co-owner.

## **Ownership of Account and Beneficiary Designation:**

These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds

(1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

(2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

(3) MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

(4) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties. If two or more parties survive and one is the surviving spouse of the deceased party, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving spouse. If two or more parties survive and none is the spouse of the decedent, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving parties in equal shares, and augments the proportion to which each surviving party, immediately before the deceased party's death, was beneficially entitled under law, and the right of survivorship continues between the surviving parties.

(5) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION. The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

(6) TRUST ACCOUNT. The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

## **UTMA Account:**

If it is noted on the signature card that the account was established under the Uniform Transfers to Minors Act (UTMA), you understand that there can be only one custodian and one minor per account. No other parties are permitted. Your responsibility to us under this agreement will not be limited to the amount in the account.

## **Account Type:**

The account type is noted on the signature card and on the Truth-in-Savings disclosure. If the account is a demand account, it will not earn interest. If the account is a savings or negotiable order of withdrawal (NOW) account, we reserve the right to require seven days' written notice before any withdrawal. If any ineligible entity becomes an owner of a NOW account, we will convert the account into a checking or savings account. We have given you disclosures explaining applicable transaction limits, fees, interest rates, and balance requirements. You agree that our fees and charges need not be based upon the cost of providing the service or administering the event to which the fee or charge is associated, but may be based on other considerations such as the expense of providing account services, similar charges of other financial institutions with which we compete, revenues to the bank, and the deterrence of abuse of an account. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. You agree that we may charge fees for overdrafts and use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees. If we are presented with an item drawn against your account that would be a "substitute check, as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item

## **Severability:**

If the courts determine that any part of this agreement is illegal or unenforceable, you agree that the remainder will be enforced and the offending provision changed to make it enforceable.

## **Law, Jurisdiction and Venue:**

This agreement is subject to applicable federal laws and the laws of the state of New Mexico (except to the extent that this agreement can and does vary such rules or laws). The courts of that state have jurisdiction of any dispute in connection with this agreement. You agree that venue will be proper in the courts in the county and city of our office where you signed or delivered this agreement. The body of state and federal law that governs our relationship with you, however, is too large and complex to reproduce here. The purpose of this document is to:

- Summarize some laws that apply to common transactions;
- Establish rules to cover transactions or events which the law does not regulate;
- Establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- Give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

## **Waiver of Jury Trial:**

You waive your right to a jury trial in any dispute with us. Such disputes may be tried before a judge only.

## **Arbitration:**

You or we may require that any controversy or claim relating to this agreement, or breach of it, be resolved through arbitration administered by the American Arbitration Association under its commercial rules. Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction.

## **Changes:**

We may change any term of this agreement by giving you notice as required by law. If the law does not require a particular type or period of notice, we can post the change in our lobby or other public area for five days before it takes effect. If you use the account after the effective date of a change, that indicates your acceptance of the change.

## **Dormant Account:**

Accounts with no activity for 365 consecutive days will be considered dormant.

## **Account Closing:**

We may close the account at any time without cause. We may close it without notice to you if we reasonably believe it will prevent loss to us or you have violated this agreement. You will pay any fees and costs for closing the account, as well as any outstanding items. Our rights and your obligations survive any closing of the account or cancellation of this agreement. You will not claim we wrongfully dishonored items we return unpaid on or after the day the account was closed. Accounts with a zero balance for 45 consecutive days will be automatically closed.

## **Notices:**

We can send you communication at the last address you gave us in writing or by email if you have signed up for eDocs. You will send us communication at our address on the back cover of this agreement. The postmark or postage meter date, except where this agreement requires that something be “actually received”, determines when communication occurred. You will notify us immediately of any change in your name, address, e-mail address (if applicable) telephone number, or taxpayer identification number.

## **No Assignment:**

You understand that neither the account nor your rights under this agreement can be assigned without our written permission. Your successors and assigns are bound by this agreement. Any actual or purported assignment of this account remains subject to our right of setoff.

## **Expenses:**

You agree to pay any expenses we incur in good faith related to this agreement, such as fees on items sent for collection, foreign exchange charges, and un-reimbursed research and copying fees incurred when a third party requires records about our relationship. You agree to pay any and all attorneys’ fees and court costs we incur in good faith due to concerns about the account, whether or not litigation has begun, through the trial and all appeals. You also agree to pay any expense that we incur, including attorneys’ fees, in response to any subpoena, writ, government agency or judicial order, search warrant, or other order to which we may be required to respond regarding your account or your relationship with us.

## **Indemnification:**

You will indemnify us against and hold us harmless from any and all losses, damages, costs, and attorney fees that we incur because of your failure to abide by any of the terms of this agreement, including but not limited to provisions in “Examination of Items.”

## **No Waiver:**

Failure to insist upon your strict performance of any obligation under this agreement will not create any duty on our part to continue to do so. You will not claim that we waived our right to insist on proper performance.

## **Our Rights:**

You agree that our rights under this agreement are cumulative, not exclusive. We may exercise any of them without giving up the right to exercise others.

## **Recording:**

You give us permission to record your communications with us. If you authorize someone such as an attorney to do business with us on your behalf, you will be responsible for obtaining their permission to allow us to record their communications with us.

## **Setoff:**

You grant us the right to apply the account balance to payment of any debt that any owner of the account owes us without notice including direct obligations, such as promissory notes and agreements (including this one), and indirect obligations, such as guarantees and endorsements. The right of setoff does not apply to this account if it is an IRA or other tax-deferred retirement account. However, this right of setoff does not apply to any home equity loan you may have with us.

## **Legal Process:**

If any owner or authorized signer is ever involved in a legal proceeding, such as a divorce, garnishment, levy, or attachment, you will not hold us responsible for any damages you suffer from our actions in good faith reliance on any order or other legal process. Any garnishment, levy, or attachment is subject to our right of setoff. If a bankruptcy or similar proceeding is filed by or against any owner, we can place an administrative hold on part or all of the account balance while we seek to have the automatic stay lifted.

## Authority:

You will not grant anyone authority to conduct business with us on your behalf until we have reviewed the terms of authorization and have given you written acceptance. This includes authority such as power of attorney, bill-paying arrangement, or other method. You will not claim that we wrongfully dishonored items presented to us before we accepted the authorization. If you have not given us the proposed authorization for review, we may, in good faith, honor items and instructions from the person you authorized. You will not hold us responsible if someone you authorized to do business with us misapplies your money. You assume all risk of improper acts by such person. We can consider an authorization valid until we receive written revocation of it and have had reasonable time to review and act upon it. If we accept an authority, we may revoke our acceptance of that authority at any time at our discretion. If you voluntarily disclose information about the account that would permit someone to initiate a debit to the account (such as account number, bank routing number, and next unused check number), then you will be deemed to have authorized us to pay any debit to your account that person initiates.

## Telemarketers:

Telemarketers and others trying to sell you goods or services may ask for information about your account, such as your account number, next unused check number, or our routing number. If you give any of that information to such a person, you agree that we may treat any debit to your account initiated by that person as having been authorized by you.

## Checks:

You will not write a postdated check without giving us written notice, describing the check with reasonable certainty, at least five business days before you write the check. If you do not give us notice, we can pay the check when it reaches us regardless of the date. You will use only approved checks and deposit slips. You will not attempt to create a substitute check for deposit into the account without obtaining our express written consent in advance. You will not write a check using ink of a color or type that is not legible when imaged or copied. You will not deposit any check that was written in such ink or that has any other features that would prevent it from being imaged or copied clearly and completely. You will verify your name, address, telephone number, and the numbers in the magnetic ink character line across the bottom of the face of each document in each order of checks and deposit slips. If there is an error, you will not use the affected documents, and you will notify us and the printer immediately. You will not hold us responsible for any amount beyond the replacement cost of the order, provided the checks were ordered through us. If we keep safe your cancelled checks and other items, we can destroy the originals and keep electronic or other images after a reasonable time has elapsed. We can destroy the images after a further reasonable time. By making your monthly statement with check images available to you, it is as though we have included cancelled checks and other items with your statement.

## Check Processing:

We may process items mechanically by relying on the information encoded along the bottom of the items. This means that we may not individually examine all of your items to determine if the item is properly completed, signed and indorsed. You agree that we have not failed to exercise ordinary care solely because we use an automated system to process items and do not inspect all items processed in such a manner. We reserve the right not to inspect each item because using an automated process helps us keep costs down for you and all account holders. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the times we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

## Order of Payment:

You understand that when two or more checks are presented for payment on the same day, the law allows us to pay them in any order. For now, we have chosen to pay them in descending amount order. This means we will pay the check for the largest amount first, then the check for the second-largest amount, and so on. This method was chosen in an effort to protect our customers by attempting to pay larger items such as mortgage and car payments first. ACH (electronic or paperless) transactions will be processed first followed by paper items. We can, in good faith, choose a different order of payment after giving you any legally required notice.

## Examination of Items:

You do not require us to comply with a restrictive legend on any item, such as "void if not cashed within 90 days", "payment in full", or any other impermissible marking. Permissible markings include the following: drawee bank name and location, payee name, endorser name, drawer signature, and the magnetic ink characters across the bottom front of the item. You will not hold us responsible for any item's late return caused by an endorsement stamp or other marking outside the area allowed for it by law. You will not claim that we failed to exercise ordinary care because our procedures do not require signature examination of each item with an amount below a set figure.

## Temporary Account Agreement:

If this option is selected, this is a temporary account agreement. Each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

## Signatures to Come:

If you have asked us to create the account for multiple owners or authorized signers, we can limit use of the account until all owners have signed.

## Multiple Signatures

A requirement for more than one signature is for the depositor's internal control and audit purpose only. We are not liable for paying a check over one signature. You agree to hold the bank harmless for any payment of an item with fewer than the required signatures.

## Laws, Regulations:

We are subject to federal and state laws and regulations. You will not hold us liable for anything we do or decline to do, based on a good faith belief that it is required by law or regulation. Some laws allow parties to contract out of the law's provisions and establish their own rules. You intend this agreement to do that whenever a term of this agreement conflicts with such a law. You will abide by the rules of any clearinghouse or automated clearinghouse that handles any part of a transaction.

## Liability Limit:

You will not hold us responsible for loss caused by an event beyond our control, such as war, terrorism, riot, labor trouble, natural disaster, and computer problem, loss of electric power, communications, or transport. If we do not process a transaction in accordance with the terms of this agreement, our maximum liability shall be the amount of the transaction. In no circumstances will we be responsible for consequential damages for any action that we take or fail to take in regard to the account.

## Deposited Items:

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including item drawn "on us"). You understand that all deposits are subject to verification and corrections. We can accept an item for deposit or collection only, refuse it, or return it. In receiving items, we are acting only as your agent. We have no responsibility beyond ordinary care. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. Time or savings account deposits will be repaid to depositors under regulations adopted by our board of directors from time to time. These regulations will be available for inspection by you upon your request. You will not hold us responsible for default or negligence of our correspondents or loss of items in transit. Each correspondent we use will be liable only for its own negligence. If we give you credit

for an item, we can revoke it if the item is not paid. Items deposited by mail will not be considered received by us until we actually receive them. You will not hold us responsible for loss of any item until we have received it under this standard. If an item requiring endorsement is deposited without it, you authorize but do not require us to supply it. You will reimburse us for loss or expense we incur because of any missing endorsement, whether yours or another's, on a deposited item. We do not have to notify you of any nonrecurring ACH credits or wire transfers to the account.

## Direct Deposits:

If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

## Foreign Items:

If an item that is payable at a foreign bank or in a foreign currency is deposited, you will be responsible for all collection charges and exchange rate risk on it. You understand that we will not credit that kind of deposit until receiving the proceeds in United States currency.

## Returned Items:

We can charge for the amount of any deposited item that is returned unpaid. We can reprocess the item, but you do not require it. We can process a copy, electronic entry, or other evidence of the returned item. You waive presentment, notice of dishonor, and protest.

## Stale Items:

We can pay an item presented to us more than six months after the date on the item, but you do not require it. If you do not want us to pay such an item, you will place a stop payment on it.

## Stop Payments:

If you want us to stop payment on a check, you will tell us the check number, date, payee name, and exact amount. You understand that if either the check number or the amount is not exact, our check processing equipment may not catch the check in time; you will not hold us responsible. You must make any stop-payment order in the manner required by law and we must receive it in time to give us reasonable opportunity to act on it before our stop-payment cutoff time. Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. A verbal stop payment is valid for a period of fourteen (14) days. You understand that a stop payment must be signed and will expire in six months. You will place a new stop payment if you do not want us to pay the check after the previous one expires.

If you use Internet Banking to process a stop payment, stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop a bill payment. You may initiate a stop payment request online via Internet Banking only for paper checks you have written on your bank account (not system bill payer). You will incur stop payment charges as disclosed in the current fee schedule for the applicable account.

## Bank Statements:

You will promptly examine and reconcile each statement we send or make available. You will notify us immediately of any problem such as forgery, unauthorized endorsement or debit, or alteration that you find. If you do not notify us within 30 days of the date we sent or made available the first statement that gave an indication of the problem, you will be responsible for any loss that could have been prevented by notifying us, regardless of whether or not we were appropriately careful. In the event that an item was altered or drawn without authorization, if it was done so cleverly that a reasonable person could not detect the fraud and we were not negligent in any way, you will not hold us responsible for the loss. In any event, if you do not notify us of any unauthorized signatures, alteration, forgeries or any other errors in your account within 60 days of when we make your statement available, you cannot assert a claim against us on any items in that statement and the loss will be entirely yours. This 60 day limitation is without regard to whether we exercised ordinary care.

## Telephone Transfers

A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per statement cycle (less the number of "preauthorized transfers" during the cycle). Other account transfer restrictions may be described elsewhere.

## Credit Reports:

You authorize us to obtain reports about you periodically from organizations such as credit reporting agencies, check reporting services, and other consumer reporting entities, and to provide them information.

## Incomplete Items:

If an authorized signer signs a check or authorizes any item that is not completed, you will not hold us responsible for paying it as completed by anyone unless we actually know it was completed in an unauthorized way.

## Disputed Authority:

If anyone claims ownership over funds, and we have a good faith doubt about whether to recognize the claim, we can hold some or all of the account balance until the claim is resolved. We can pay some or all of the account balance into court in an interpleader or other action to determine ownership. You will not claim that we wrongfully dishonored items that were presented to us while such a dispute was pending.

## Other Services:

If you want services from us that are not covered by this agreement, you will sign an agreement with us for those services.

## Wire Transfer:

This agreement is subject to Article 4A of the Uniform Commercial Code – Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named.

## Cashing Your Checks:

Before we allow a person to cash an item, we can require identification, such as a driver's license or passport. We can secure further identification by methods such as photography, fingerprinting, and other biometric or technological means. If the person does not provide or permit such identification, we can decline to cash the item and you will not claim that we wrongfully dishonored it.

## Automated Clearing House (“ACH”) Provisions:

**Notice of Receipt of ACH items:** Under the operating rules of the National Automated Clearing House Association which are applicable to ACH transactions involving this account, we are not required to give next day notice to you of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payment in the periodic statements we provide to you.

**Provisional Payment:** Credit given by us to you with respect to an ACH credit entry is provisional until we receive final settlement. If we do not receive final settlement, you agree that the bank is entitled to a refund of any or all of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not have been deemed to have paid you the amount of such entry.

**Choice of Law for ACH transactions:** 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 Funds Transfer Act. Your rights and obligations with respect to such payments shall be construed in accordance with and governed by the operation rules of the National Automated Clearing House Association.

## Occasional Overdraft Privilege Service<sup>SM</sup>

(Always a Discretionary Service)

It is the policy of City Bank (“the bank, we, us, or our”) to comply with applicable laws and regulations, and to conduct business in accordance with applicable safety and soundness standards.

### A non-sufficient funds (negative) balance may result from:

- The payment of checks, ATM withdrawals, electronic funds transfers, or other withdrawal requests;
- Payments authorized by you;
- The return of unpaid items deposited by you;
- The imposition of bank service charges; or
- The deposit of items, which according to the Bank’s Funds Availability Policy, are treated as not yet “available” or finally paid.

We are not obligated to pay any item presented for payment if your account does not contain sufficient collected funds. Rather than automatically returning, unpaid, any non-sufficient funds items that you may have, if your eligible account has been open for at least thirty (30) days and thereafter you maintain your account in good standing, which includes at least:

- Continuing to make deposits consistent with your past practices,
- You are not in default on any loan obligation to the bank,
- You bring your account to a positive balance (not overdrawn) at least once every thirty (30) days, and
- Your account is not the subject of any legal or administrative order or levy.

We will consider, without obligation on our part, approving your reasonable overdrafts.

This discretionary service will generally be limited to a \$500 overdraft (negative) balance for Free Checking accounts, \$700 overdraft (negative) balance for Free Checking with a recurring direct deposit, \$700 overdraft (negative) balance for other eligible personal checking accounts and \$1,000 overdraft (negative) balance for other eligible personal checking accounts with a recurring direct deposit (some restrictions do apply). Of course, any and all fees and charges, including without limitation our return item fee/overdraft paid fees plus tax (as set forth in our fee schedules) will be included in this limit and will apply to any transaction that overdraws your account including, but not limited to, payments authorized by Checks, ACH/ Electronic Items, City Bank and foreign ATMs/Debit Card/Check Card, Internet Banking/Online Banking and Telephone Banking Transactions.

We may refuse to pay an overdraft for you at any time, even though we may have previously paid overdrafts for you. You will be notified by mail of any non-sufficient funds items paid or returned that you may have; however, we have no obligation to notify you before we pay or return any item. The amount of any overdrafts plus our return item fee(s) and/or overdraft paid fee(s)-OOPS plus tax that you owe us shall be due and payable upon demand. If there is an overdraft paid by us on an account with more than one (1) owner on the signature card, each owner, and agent if applicable, drawing/presenting the item creating the overdraft, shall be jointly and severally liable for such overdrafts plus our return item fee(s) and/or overdraft paid fee(s)-OOPS plus tax.

### Limitations:

Savings Type Accounts, Money Market Accounts, Public Funds/ Charitable Organization Accounts and Student Minor Accounts are not eligible. We may limit the number of accounts eligible for Occasional Overdraft Privilege Service OOPS<sup>SM</sup> to one account per household and one account per tax payer ID.

### Eligible Transaction Types:

Each transaction/item initiated for payment against your checking account(s) may be processed by us using your assigned Occasional Overdraft Privilege Service OOPS<sup>SM</sup> limit, including without limitation: Checks, ACH, ATM, POS, Internet Banking, Bill Payment, and Telephone Banking Bill Payment.

Here's how the Occasional Overdraft Privilege Service OOPS<sup>SM</sup> works if we pay your overdraft item: If you inadvertently write a check, make an ATM withdrawal or other payment or withdrawal request for more than the funds on deposit in your account, we may cover them, and save you time, money and inconvenience. Suppose that your account type permits a \$500 limit. With Occasional Overdraft Privilege Service OOPS<sup>SM</sup>, you may be covered for a check of \$468.05 plus the \$29.50 Overdraft Paid Fee-OOPS plus tax. Alternatively, you may be covered for a \$100 ATM withdrawal, a check of \$338.11 plus the \$59 Overdraft Paid Fee-OOPS plus tax for two items.

### **Optional Overdraft Protection Services:**

City Bank offers optional overdraft protection products/services that you may apply for. These include Overdraft Protection from a Line of Credit and funds transfer from a designated Savings Account Overdraft Protection.

### **Customer Opt-In:**

You may choose at any time to participate in City Bank's Occasional Overdraft Privilege Service OOPS<sup>SM</sup> by notifying any City Bank customer service representative by phone at 1 (575) 258 2265, online at ( [www.citybanknm.com](http://www.citybanknm.com)), or in person, as to ATM and every day debit card transactions. In any event, your checks, ACH transactions and recurring debit card transactions will be subject to OOPS<sup>SM</sup>.

### **If You Need Help:**

Of course, overdrafts should never be used to finance ordinary or routine expenses – and you should never rely on overdrafts to cover these expenses. If at any time you feel you need help with your financial obligations please contact customer service at 1-575-258-2265

### **Always a Discretionary Service:**

City Bank's OCCASIONAL OVERDRAFT PRIVILEGE SERVICE (OOPS)<sup>\*</sup> does not constitute an actual or implied agreement between you and City Bank. Nor does it constitute an actual or implied obligation of or by City Bank. This service represents a purely discretionary courtesy or privilege that City Bank may provide to you from time to time and which may be withdrawn or withheld by City Bank at any time without prior notice or reason or cause.

<sup>\*</sup>Occasional Overdraft Privilege OOPS<sup>SM</sup> is subject to approval. Some restrictions do apply.

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## **Regulation D Limits**

### **Limitations on Transfers from Your Money Market or Savings Account:**

Preauthorized transfers, automatic transfers, online transfers, point-of-sale ("POS") purchases, payments to other persons, and transfers by telephone from your Money Market or Savings Account are limited to six per statement cycle. Preauthorized transfers include automatic bill payments, transfers to your other accounts with the Bank, or automatic transfers to other persons that you have authorized the Bank to make. The Bank permits transfers from your Money Market or Savings Account by check, draft, check card or any similar order for withdrawal. Six transfers may be made by check or debit card to third parties in a statement cycle (Money Market Account – monthly, Savings Account – quarterly). The Bank may impose an excess activity fee for exceeding these limitations. Please note this does not authorize you to exceed the federal statutory limits of six per statement cycle. If the Bank determines that you are exceeding the limits described above on more than an occasional basis, the Bank will, at its option, either close the account, or change the type of account to a transactional account without limitations that you are eligible to maintain, or terminate your right to make transfers against the account.

## **Funds Availability Disclosures**

### **Your Ability to Withdraw Funds:**

This policy statement applies to "transaction" accounts. Transaction accounts, in general, are accounts which permit an unlimited number of payments to third persons and an unlimited number of telephone and preauthorized transfers to other accounts of yours with us. Checking accounts are the most common transaction accounts. Feel free to ask us whether any of your other accounts might also be under this policy.

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use the funds to pay checks that you have written.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

For determining the availability of your deposits, everyday is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 4:00 p.m. on a business day, we consider that day to be the day of your deposit. If you make a deposit at our Carrizozo branch before 2:00 p.m. on a business day, we will consider that day to be the

day of your deposit. However, if you make a deposit after these cut off times or on a day we are not open, or on a Saturday or Sunday we will consider that the deposit was made on the next business day we are open.

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately, but delay your availability to withdraw funds until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

## Longer Delays May Apply:

**CASE-BY-CASE DELAYS:** In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

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

**SAFEGUARD EXCEPTIONS:** In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit may not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

## Special Rules for New Accounts:

If you are a new customer, the following special rules may apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of the day's total deposits of cashier's, certified, teller's, traveler's and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the check must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available no later than the ninth business day after the day of your deposit.

## International ACH Transactions (IAT)

An International ACH Transaction is an Automatic Clearing House (ACH) entry that is part of a payment or deposit transaction involving a bank that is not located in the territorial jurisdiction of the United States.

All banks that receive ACH transactions are required to meet Office of Foreign Assets Control (OFAC) compliance obligations when handling IAT transactions.

Due to the requirements of OFAC, from time to time it maybe necessary to temporarily stop the processing of a credit or debit transaction. Greater scrutiny or verification against the Specially Designated Nationals (SDN) list may affect settlement and/or availability.

# **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 the 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 electronic debits to your account. However, you have rights under other laws with respect to those transactions

## **For Consumer Account Holders: 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 (for example, if you think 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 as a result of the withdrawal (i.e. NSF/OD 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 laws.

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 you have suffered a loss relating to a substitute check that you have received and that was posted to your account, please contact us in writing at the address on the back of this disclosure. 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 the following:

- 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 checks: identifying information (i.e. the check number), the name of the person to whom you wrote the check, and/or the amount of the check.

## **City Bank Electronic Statement(s)/ Notice(s) Delivery**

### **Terms and Conditions**

This agreement is made between you and City Bank and provides your request and consent to receive statements and notices for your account(s) by electronic delivery. You affirmatively consent and agree to permit the Bank to make disclosures and provide notices to you in the electronic form, in lieu of providing such notices and disclosures in written form. Your consent and agreement shall relate to all forms of disclosures and notices required under applicable law as a result of the various agreements between you and the Bank and shall remain valid until such time as you exercise your right to revoke this consent. You elect and authorize us, at our discretion, to electronically deliver your account statement(s) and notices that we are required to provide to you under applicable Federal and State statutes and their implementing regulations, as amended from time to time, including: Truth in Savings Act, Fair Credit Reporting Act, Electronic Funds Transfer Act, Equal Credit Opportunity Act, New Mexico Banking Code, Privacy of Financial Information. If there is more than one Depositor that is a party to the account, notice to any one Depositor will be effective for all. These electronic statements and notices are called “eDocs”.

By enrolling for eDocs, you are electing to receive your statement by e-mail. Once enrolled, you will only receive your statement(s) by

e-mail. Although you are opting out from receiving your statement(s)/notice(s) by U.S. mail, you have the option to receive a paper statement, at any time, by request. To revoke this consent or to request a paper copy of any electronic disclosure or notice provided pursuant to this consent, mail or fax your request to the address or fax number on the back of this disclosure. You may also visit any of our branch locations and speak with one of our Customer Service Representatives for assistance.

There are currently no service charge fees for the use of eDocs. However, you agree that City Bank has the right to institute or change the fees for eDocs upon ten days prior written notice to you. In addition, City Bank has the right to amend these terms and conditions from time to time providing you with written notice of the amended terms and conditions.

You agree to waive and release any claims against City Bank arising out of or that may in any way be related to the use of eDocs, except for those claims resulting solely from the negligent acts or omissions of the Bank. You agree that you are solely responsible for any loss due to use of eDocs by you, any authorized user, or any unauthorized user or recipient who gains access to eDocs through your computer or information obtained directly or indirectly from you.

We will use commercially sound measures consistent with industry standards, to maintain a reasonable level of security over the information contained in electronically delivered account statements and notices. You must be a City Bank Online customer to enroll for eDocs and have at least one City Bank demand deposit account. Adobe Acrobat Reader® version 6.0 or higher is required to open and view your statement(s)/notice(s)\*. To download the latest version of Adobe Acrobat Reader®, visit <http://www.adobe.com/products/acrobat/readstep2.html>. We also recommend that you use the latest browser version available that supports 128 bit SSL Encryption.

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You understand that these industry standards are dynamic and constantly developing. By consenting to the enrollment process for eDocs service you acknowledge and understand that there are risks to electronic delivery of account statements and notices, including but not limited to delay or failure of delivery due to technical difficulties, weather conditions, and matter beyond our reasonable control. You have considered the historical and potential future content of your account statement(s), the risk associated with electronic delivery of account statements and our security procedures, and you find that our security measures are reasonable. If in the future you conclude that our security procedures cease to be reasonable, you must terminate this agreement immediately.

You will need e-mail access with at least 1MB of free space to receive your statement(s)/notice(s). Your statement(s)/notice(s) will be sent to the e-mail address that's on file with City Bank Online. It is your responsibility to keep your e-mail address updated on City Bank Online. You have the option to have your statement(s)/notice(s)

e-mailed to three additional recipients. It is your responsibility to maintain the ID, Password, and e-mail addresses for these additional recipients.

With eDocs, you receive next day delivery of your statement(s)/notice(s). The delivery method used is a 'Push' method meaning your statement(s)/notice(s) are e-mailed to you as a secure .pdf (Portable Document Format) attachment.

Statement(s)/notice(s) are sent as a "shell" .pdf without customer data. Once the user logs into eDocs, the ID and Password are authenticated and the data fills the PDF document. The data included in the statement(s)/notice(s) is streamed via a secure 128-bit SSL encryption.

Statement(s)/Notice(s) can be printed or saved to a file on your computer for easy storage. The past two months' statement(s)/notice(s) will be available on City Bank Online for your convenience. By consenting to electronic delivery of statements and disclosures, you represent that you have the ability to either print or store these items.

Your City Bank Online ID and Password are your keys to eDocs. It takes both identification keys to gain access. No one representing City Bank will ask for your Password. You should never give your Password to anyone who asks for it in an e-mail or by phone or anyone else who you do not want to have access to your account. You agree that the Bank has no control over the persons who have access to your personal computer and your password once it is in your possession. The Bank will not be liable for any authorized access to your personal computer using your password.

We make no warranties of any kind with respect to the software program used to access eDocs. We do not warrant that the software program or that eDocs services will meet your specific requirements. We make no warranties of any kind, whether express or implied, with respect to the use and adequacy of the software program or the eDocs services we provide under this agreement. If you believe your eDocs statement is lost or that someone has obtained access to your eDocs statement without your permission, contact any Customer Service Representative. Notwithstanding any provisions to the contrary contained in this agreement, we shall be responsible only for performing the eDocs services as expressly provided for in this agreement.

We shall be liable only for material losses which are the direct result of our own negligence or intentional misconduct in performing these services. We shall have no liability for failure to perform any eDocs services or for any disruption or delay in performing said services in the event such failure, disruption or delay is due to circumstances beyond our reasonable control (including, but not limited to, failure or disruption of electronic power, computer equipment, telecommunications systems, your internet service provider, or weather conditions). We shall have no liability for any consequential, special, punitive damages or indirect loss under any circumstances, except to the extent that we are liable under this agreement. You agree to indemnify and hold us and our directors, officers, employees, and agents harmless for all claims, demands, judgments, and expenses

(including reasonable attorneys fees) arising out of or in any way connected with the performance of the eDocs services. You agree that this indemnification shall survive the termination of this agreement.

This Agreement shall remain in full force and effect until it is terminated by either party upon (30) days' prior written notice to the other party. Please mail or fax requests to the address of fax number enclosed in this disclosure. You may also visit any of our branch locations and speak to one of our Customer Service Representatives for assistance. We also have the right to terminate the Agreement immediately, with or without cause, or if you fail to comply with the terms of the Agreement or any other agreement which you may have with us or any applicable rule or regulation which may govern your account(s), including the deposit agreement.

## **Internet Banking and Bill Payment Services**

BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT THE TERMS AND CONDITIONS OUTLINED IN THIS AGREEMENT WILL APPLY TO AND GOVERN YOUR USE OF THE INTERNET BANKING AND BILL PAYMENT SERVICES OFFERED BY CITY BANK, ("CITY BANK"), AND THAT YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AND THIS WILL CREATE A VALID AND BINDING LEGAL CONTRACT BETWEEN YOU AND CITY BANK.

### **What This Agreement Covers:**

This Agreement covers your use of City Bank's Internet Banking and Bill Payment Services. City Bank's Internet Banking and Bill Payment Services are defined as any electronic service provided by City Bank that permits you to transfer funds to or from your City Bank accounts, obtain account information and/or statement updates on your deposit accounts, and receive and send electronic messages to City Bank, and direct City Bank to make payments from your City Bank checking accounts to third parties, and all through the use of a personal computer. Access for Internet Banking and Bill Payment Services will be provided through the Worldwide Web of the Internet. You are responsible for providing your own access to the Internet through the Internet Service Provider of your choice (the "Service").

### **Bank Documents:**

The terms and conditions of this Agreement are in addition to, and shall supplement the terms, conditions, rules, and regulations that apply to any of your existing City Bank accounts or services of City Bank which you currently use.

### **Access:**

To use the Service, you must have at least one account at the Bank and access to Internet service. Once we have received an acknowledgement for the Online Banking Service and verified your account information, we will provide you with your assigned ID and Password. The Service can be used to access only the accounts which you have designated for Online Banking. You can add or delete any of your accounts by contacting the Bank. Access to accounts through the Service will be based upon the identification of users and authority levels specified by you. We undertake no obligation to monitor transactions through the Service to determine that they are made on behalf of the account holder. You can use the Service to check the balance of your accounts, view account histories, transfer funds between your accounts, and perform other services as provided. Balance and activity information are available in "real time" throughout the day. You may also pay bills from your accounts if you have requested this service.

### **Hours of Access:**

You can use the Service seven days a week, twenty-four hours a day, although some or all services may not be available occasionally due to emergency or scheduled Service maintenance.

### **Your Password:**

Your ID is a 12 digit computer generated number. Your ID may be changed once you are logged into your online banking session. The password defaults to the primary's last four digits of their social security number. That password will be used the first time you log into the Service. For security purposes, you are required to change your password upon your initial login to the Service. You determine what password you will use. You agree that we are authorized to act on instructions received under your password. You accept responsibility for the confidentiality and security of your password and agree to change your password periodically. After three unsuccessful attempts to use your password, your access to the Service will be locked. To re-establish your authorization to use the Service, you must contact us to have your password reset. We recommend that you create a password that utilizes alpha and numeric characters for purposes of security. Your password should not be associated with any commonly known personal identification, such as social security number, address, date of birth, or names of children. Your password should be memorized rather than written down.

## **Internet Banking Services, Transfers and Payments:**

Transfers completed through the Service before 6:00 p.m. Mountain Standard Time on a business day are posted to your account the same day. Transfers completed after 6:00 p.m. Mountain Standard Time on a business day or on a Saturday, Sunday, or banking holiday will be posted on the next business day. When you instruct City Bank to transfer funds to or from your City Bank accounts through the Internet Banking Services, you authorize City Bank to withdraw the necessary funds from the City Bank account you designate. As with any funds transfer request, whether or not utilizing Internet Banking Services, you agree that you will instruct City Bank to make a withdrawal only when a sufficient balance is or will be available in your designated City Bank account at the time of withdrawal. City Bank will not be obligated to act on any withdrawal instruction from you if sufficient funds, including overdraft lines of credit are not available in the account you designate.

## **Cost of the Internet Banking Services:**

There are currently no monthly service charges or transaction fees for City Bank's Internet Banking and Bill Payment Services. You are responsible for paying any fees associated with City Bank's Internet Banking and Bill Payment Services as outlined in this Internet Banking and Bill Payment Agreement and Fee Schedule provided to you, which may be modified from time to time by City Bank. You are also responsible for all telephone charges you incur in connecting to the Internet Banking and Bill Payment Services as well as all charges assessed by any Internet Service Provider you use.

## **Changes in Terms:**

City Bank may change the Internet Banking and Bill Payment Services terms, including fees, set forth in this Agreement or in City Bank's Internet Banking and Bill Payment Agreement and Fee Schedule at any time. You will be notified of any such change as required by applicable law, either by mail or by an electronic message. You understand that, by using the Internet Banking and Bill Payment Services after a change becomes effective and after you are notified of the change, you are agreeing to the change.

## **Cancelling the Service:**

This Agreement will remain in effect until it is terminated by you or City Bank. You may cancel this Agreement at any time by notifying City Bank by mail to 1096 Mechem Drive, Suite 103, Ruidoso, NM 88345, Attention Online Banking. City Bank may cancel this Agreement and terminate your use of the Internet Banking and Bill Payment Services for any reason, at any time. City Bank will use commercially reasonable measures to notify you in advance of any such termination, but City Bank is not obligated to do so.

## **Security:**

In order to maintain secure communications and reduce fraud, you agree to protect the security of your numbers, codes, marks, signs, public keys or other means of identification. City Bank reserves the right to block access to the Internet Banking and Bill Payment Services to maintain or restore security to City Bank systems if City Bank reasonably believes your access codes have been or may be obtained or are being used or may be used by an unauthorized person(s). You are liable and responsible for all Internet Banking and Bill Payment Services transactions made using your means of identification, whether those transactions are made by you or any person you authorize, permit or enable to have your means of identification (even if the person exceeds your authority) or by any person who obtains through you, by whatever means, your means of identification. If you have given someone your means of identification and wish to terminate their authority, or if you know or believe that your means of identification otherwise is compromised, you must notify City Bank so that City Bank can take the necessary steps to change the means of identification. You agree to defend, hold harmless and indemnify City Bank from and against any and all claims of any nature arising out of any such access by a person you have authorized, permitted or enabled to have access to your City Bank accounts via the Internet Banking and Bill Payment Services.

## **Limit of City Bank and Other Providers' Responsibility:**

City Bank agrees to make reasonable efforts to ensure full performance of the Internet Banking and Bill Payment Services. City Bank will be responsible for acting only on those instructions sent through the Internet Banking and Bill Payment Services which are actually received and cannot assume responsibility for malfunctions in communications facilities not under its control that may affect the accuracy or timeliness of messages you send. City Bank is not responsible for any losses or delays in transmission of instructions arising out of the use of any Internet Service Provider or caused by any browser software. Any information you receive from City Bank can only be provided on a best-efforts basis for your convenience and is not guaranteed. City Bank is not liable for any deficiencies in the accuracy, completeness, availability or timeliness of such information or for any investment or other decision made using this information. City Bank is not responsible for any computer virus or related problems which may be attributable to the Internet Banking Services or to any services provided by any Internet Services Provider. In the absence of negligence on the part of City Bank, none of City Bank, any of its affiliates or any of their respective officers, directors, employees or agents, is responsible for any direct, indirect, special, incidental or consequential damages arising in any way out of the use of the Internet Banking Services. Because some states do not allow the exclusion of limitation of liability for consequential or incidental damages, in such states the liability of the foregoing entities and individuals is limited to the extent permitted by law.

## No Other Use:

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

## Authorization and Agreement:

Upon application approval, the requested eligible accounts you hold with City Bank will be included in your City Bank Online services. You hereby authorize City Bank to establish an Online Banking account to enable you to perform transactions. You authorize us to process transactions for you as requested from time to time, and authorize us to post them to your accounts. You agree that your first use of City Bank Online Banking will signify your acceptance of the other terms of this agreement. Instructions for using these services are available on City Bank's web site.

## City Bank Online Bill Payment Service:

You may direct City Bank to make payments from your City Bank checking accounts to third parties ("payees") whom you have selected to receive payment. You may make payments through the Service to any business, merchant, or professional that generates a bill or invoice for products or services provided to you on your behalf ("Business Payee") or to any individuals, family, or friends for non-business purposes ("Individual Payees"). Payments may be made only to payees with a U.S. payment address.

## Delivery of Your Payments:

You may schedule payments to be initiated on the day that you enter the payment information, on a future date, or on the same date each month, subject to the restrictions in this Agreement. Although you can enter payment information through the Service 24 hours a day, 7 days a week, payments can be "initiated" only on business days. Bills cannot be initiated on holidays or weekends. If a scheduled bill payment falls on a holiday or weekend it will be paid on the Friday before the weekend, or the last working day before the holiday. The date on which a payment is "initiated" is the date on which we act on your payment instructions.

As you are initiating your payment, you will be asked whether you want your payment to be sent by electronic transmission or by check. In order to send a payment by electronic transmission, your designated payee must be on our list of businesses that are set up to accept electronic transfers. To determine whether your payee is on the list simply type in the payee name and search. All payments not made by electronic transmission are made with a check to your designated payee.

Payments are "processed" two times each business day: at 2:00 a.m. MST and at 12:00 noon MST.

You have the right to stop or change any scheduled bill payment(s) until the time it is processed. The following scenarios illustrate City Bank's bill pay schedule:

Scenario One: Any payments entered between 2:01 a.m. MST and 12:00 noon MST on any business day can be modified or deleted anytime prior to 12:00 noon MST.

Scenario Two: Any payments entered between 12:01 p.m. MST and 1:59 a.m. MST on any business day can be modified or deleted anytime prior to 2:00 a.m. MST.

## Stop Payments Are Not Guaranteed:

Stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop a bill payment. You may initiate a stop payment request online via the Service ONLY for the payment type of a check not electronic. Stop Payments are not guaranteed. Payees may present payments to their bank before the stop payment has been properly processed. Payments that are in process cannot be cancelled or stopped. If City Bank is successful in processing a stop payment request, please allow up to seven business days for the funds to be credited to your account.

## Scheduling Payments:

There will be a delay between the time when you initiate a payment and when the payee receives that payment. Any payments made using the Service require sufficient time for your payee to receive your payment and credit your account properly. Therefore, you should initiate the payment sufficiently in advance of the due date of your payment. We recommend that you initiate payments at least 7 full business days prior to the due date for payments by check and at least 4 full business days for electronic payments. We will not be responsible for any fees, expenses, late charges or losses you may incur as a consequence of late payment if you fail to properly initiate the payment sufficiently in advance of the due date of your payment.

## Payment Guarantee:

If City Bank does not properly complete a bill payment on time or in the correct amount, we will reimburse you for any late fees or penalties you are charged up to a maximum of \$25.00 per scheduled payment to a Business Payee that is not received by the scheduled payment date as a result of the failure of a Business Payee to receive a payment made through the Service. In order to be eligible for such reimbursement, you must meet the following conditions:

- (a) You must have properly scheduled the payment to be initiated on a date at least 7 business days prior to the bill's actual due date if payment is being made by check and at least 4 business days if by electronic payment
- (b) You must provide us with the correct Payee name, address, and account information, and with the correct payment amount

(c) Your checking account must contain sufficient funds to complete the payment

(d) The late payment fee or penalty, or the method of its calculation, must be published by the payee prior to the bill's actual due date.

(e) You are an individual using Bill Pay for personal, family, or household purposes.

(f) The Payee must be a Business Payee.

The Bank has the right to refuse any transaction if the Bank reasonably believes such refusal is necessary for security reasons.

## **Bank Documents:**

The terms and conditions of this Agreement are in addition to, and shall supplement the terms, conditions, rules, and regulations that apply to any of your existing City Bank accounts or services which you currently use.

## **Business Days/Hours of Operation:**

The Bank's business days are Monday through Friday, except holidays on which the Bank is closed. City Bank's Bill Payment services are available 24 hours a day, 7 days a week except during maintenance period.

## **Limitation of Liability:**

Except as otherwise provided in this Agreement, the Bank is not responsible for any loss, injury or damages, whether direct, indirect, special or consequential, caused by the Service or the use thereof or arising in any way out of the installation, use or maintenance of your personal computer hardware or software. City Bank has no duty to monitor the payments that are made through the Service. If you are a business and an authorized representative of yours, uses your Bill Pay Account to pay bills, which are not your bills, you assume the entire risk of loss and indemnify and hold us, our directors, officers, employees and agents harmless from all loss, liability, claims, demands, judgments and expenses arising out of or in any way connected with such use.

## **Warranties Disclaimer:**

CITY BANK MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE INTERNET BANKING AND BILL PAYMENT SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS UNLESS, AND THEN ONLY TO THE EXTENT, DISCLAIMING SUCH WARRANTIES IS PROHIBITED BY LAW.

## **Severability:**

In the event any one or more of the provisions of this Agreement for any reason be determined to be invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable.

## **Governing Law:**

The terms and conditions of this Agreement, and any issue relating to an account or service with City Bank which you access through the Internet Banking Services, shall be governed by and construed in accordance with the laws of the State of New Mexico.

## **Assignment:**

City Bank may assign its rights and delegate its duties under this Agreement to a company affiliated with City Bank or to any other party. You may not assign any of your rights or duties under this Agreement at any time.

## **Interruptions in Services:**

City Bank may on a regular basis perform maintenance on City Bank equipment or Services which may result in interruption of the Internet Banking Services. City Bank will not incur any liability to you as a result of any such interruptions.

## **Entire Agreement:**

This Agreement is the entire agreement between you and City Bank regarding your use of the Internet Banking and Bill Payment Services, and it supersedes any prior discussions and agreements between you and City Bank regarding the Internet Banking and Bill Payment Services, and supersedes any marketing or other similar material pertaining to the Internet Banking Services delivered to you in writing, verbally or obtained at any City Bank site or the site of any Internet service provider.

# **Electronic Funds Transfer Disclosures**

## **Types of Transfers, Frequency and Dollar Limitations:**

The Electronic Fund Transfers we are capable of handling for consumers are indicated below. Some of these may not be available at all terminals.

**Prearranged Transfers.** You may make arrangements for certain direct deposits to be accepted into your checking and/or savings account(s). You may make arrangements to pay certain recurring bills from your checking account(s).

**Telephone Banking.** You may access your account(s) by telephone at 1-575-258-2432 using a touch tone phone, your account number and password to get checking and/or savings account information.

**ATM Transfers.** You may access your account(s) by ATM using your card and personal identification number to get cash withdrawals from checking and/or savings accounts. You may withdraw no more than \$380 per day. You may also transfer funds from savings to checking or visa versa. You may get checking and/or saving account information.

**Point-Of-Sale Transactions.** Using your card: You may access your checking account to purchase goods (in person, by phone, by computer) pay for services (in person, by phone, by computer), get cash from a merchant, if the merchant permits, or from a participating financial institution, and do anything that a participating merchant will accept. You may not exceed more than \$500 in transactions per day. You may not exceed more than 15 transactions per day.

**Computer Transfers.** You may access your account by computer at citybanknm.com using your online ID and password. You may transfer funds from checking to savings and visa versa. You may make payments from checking to loan accounts with us. You may get information about your checking and/or savings.

**Electronic Fund Transfers Initiated by Third Parties.** You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to electronically pay a returned check charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your account number

and financial institution information. This information can be found on your check as well as on a deposit or withdrawal slip. Thus, you should only provide your financial institution and account information (whether over the telephone, the internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

## **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 pay for purchases or pay bills. You may make payments by electronic check from your checking account.

## **Electronic Returned Check Charge:**

You may authorize a merchant or other payee to initiate an electronic fund transfer to collect a charge in the event a check is returned for insufficient funds. You may make electronic payment of charges for checks returned for insufficient funds from your checking account.

## **General Limitations:**

In addition to those limitations on transfers elsewhere described, if any, the following limitations apply:

Transfers from a Money Market or Savings account to another account or to third parties by preauthorized, automatic, or telephone transfer are limited to six with no more than three transfers by check, debit card or similar order to third parties.

## **Fees:**

We charge \$1.00 plus tax per transaction for ATM's we do not own or operate. We do not charge for Electronic Fund Transfers.

## **ATM Operator/Network Fees:**

When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer.

## **Terminal Transfers:**

You can get a receipt at the time you make any transfer to or from your account using one of our automated teller machines.

## Preauthorized Credits:

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 call us at 1-575-258-2265.

You will get a monthly account statement from us, unless there are no transfers in a particular month. In any case you will get a statement at least quarterly.

You will get a quarterly statement from us on your savings account if the only possible electronic transfer to or from the account is a preauthorized credit.

## Right to Stop Payment of a Preauthorized Transfer:

If you have told us in advance to make regular payments out of your account, you can stop any of these payments.

Call or write us at the telephone number or address listed on the back of this brochure, 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 will also require you to put your request in writing and get it to us within 14 days after you call.

We charge \$27.00 plus tax for each stop payment.

## Notice of Varying Amounts of Preauthorized Payment:

These regular payments may vary in amount. The person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

## Bank's Liability for Failure to Stop Payment of Preauthorized Transfer:

If you order us to stop one of these payments 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 provided you have given us the exact amount.

## Bank's Liability for Failure to Complete a Transfer:

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.

- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the terminal or system was not working properly and you know about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

There may be other exceptions stated in this agreement.

## Confidentiality:

We will disclose information to third parties about your account or the transfer you make as explained in the separate Privacy Disclosure.

## Consumer Liability:

Tell us at once if you believe your card and/or code 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 one of the best ways of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission. Also, if you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code 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 money you lost after the 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 a hospital stay) kept you from telling us, we may extend the time period.

## MasterMoney® Debit Card:

We may obtain further information from a consumer credit report to assist in the review process and issuance of a debit card. When you or someone you authorize uses the card, you agree to the terms and conditions of the agreement that governs the use of the MasterMoney® debit card. You understand that the bank may assess service charges for the privilege of having a MasterMoney® debit card. You understand if your checking account becomes overdrawn due to a MasterMoney® debit card transaction, an overdraft fee plus tax may be charged.

## **Additional Limits On Liability For Debit Card:**

You will not be liable for any unauthorized transactions using your MasterCard® debit card, when used for point-of-sale transactions, if:

- You can demonstrate that you have exercised reasonable care in safeguarding your card from the risk of loss or theft,
- You have not reported to us two or more incidents of unauthorized use within the prior twelve-month period, and
- Your account is in good standing.

If any of these conditions are not met, your liability is the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to us. "Unauthorized use" means the use of your debit card by a person, other than you, who does not have actual, implied, or apparent authority for such use, and from which you receive no benefit. This additional limit on liability does not apply to ATM transactions or to transactions using your Personal Identification Number which are not processed by MasterCard®. MasterCard® is a registered trademark of MasterCard® International Incorporated.

## **PINless MasterCard® Debit Transactions**

City Bank MasterCard® Debit Card allows you to conduct transactions on the Pulse and Cirrus debit networks, which will generally require you to enter your Personal Identification Number (PIN). Various merchants are authorized to accept debit card payments without requiring entry of your PIN; these transactions are called "PINless debit transactions". PINless debit transactions are not considered Mastercard® transactions and are not covered by Mastercard's® Zero Liability Policy.

## **Disputed Transactions:**

City Bank is not responsible for the delivery, quality, safety, legality or any other aspects of goods and services purchased by you from merchants with your MasterMoney® debit card.

## **Debit Holds by Merchants:**

When you use your card to rent a vehicle or hotel room or to make certain other purchases, the vehicle rental company, hotel, or other merchant (collectively the "merchant") might initiate a debit hold on your account at that time. Merchants may initiate debit holds for many reasons, including (without limit) to satisfy any "secured deposit" requirement agreed to by you with the merchant or to ensure that you have available funds in your account when you complete your transaction. Funds in your account that are subject to a debit hold will not be available to pay for other purchases or ATM withdrawals. Please note that we have no control over when a merchant "releases" any debit hold that you previously authorized. You acknowledge and agree that when a merchant does send us a request to release a debit hold; the released funds will not be available to you for withdrawal until we have had a reasonable opportunity to process the refund.

## **Contact in Event of Unauthorized Transfers:**

If you believe your card and/or code has been lost or stolen, call or write at the telephone number or address listed on the back of this brochure. You should also call the number or write to the address on the back of this brochure if you believe a transfer has been made using the information from your check without your permission.

## **In Case of Errors or Questions about Your Electronic Transfers:**

In case of errors or questions about your electronic transfers call or write us at the telephone number or address listed on the back of this brochure, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 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 complaint or question in writing within 10 business days.

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

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

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

# **ATM/Debit Card Safety Tips**

Customers should always use good judgment and be conscious of their surroundings when using an ATM. These tips are helpful suggestions, but the best advice is simply not to use an ATM if you feel uncomfortable in doing so. ATMs provide convenience, but they haven't replaced the bank teller. If you prefer, conduct your business in the bank lobby.

## **Protecting Your ATM And Debit Card:**

- Always protect your ATM or Debit Card and keep it in a safe place, just like you would cash, credit cards, or checks.
- Do not leave your ATM or Debit Card lying around the house or on your desk at work. No one should have access to the card but you. Notify your bank immediately if it is lost or stolen.
- Keep your Personal Identification Number (PIN) a secret. Never write it down anywhere, especially on your ATM or Debit Card.
- Never give any information about your ATM card, Debit Card, or PIN over the telephone. If you receive a call (supposedly from your bank or the police) wanting to verify your PIN, do not give that information. Notify the police immediately.
- Do not expose your card's magnetic stripe to magnetic objects.
- Report a lost or stolen card immediately to your bank. This will reduce the chance that it will be used for the wrong reasons. Prompt notice to the bank will limit your liability for unauthorized transactions.
- Contact the bank if you notice any suspicious or unauthorized ATM or Debit Card transactions on your monthly statement.

## **Using an ATM:**

Be aware of your surroundings, particularly at night. If you observe or sense suspicious persons or circumstances, do not use the machine and leave the area at once.

- Have your ATM or Debit Card ready and in your hand as you approach the ATM to reduce the time spent at the ATM. Don't wait to get to the ATM and then take your card out of your wallet or purse.
- Make sure that no one can see you enter your PIN number. Use your body to "shield" the ATM keyboard as you enter your PIN into the ATM.
- To keep your account information confidential, always take your receipts or transaction records with you.
- Do not count or visually display any money you received from the ATM. Immediately put your money into your pocket or purse and count it later.

## **Special Precautions for Using an ATM at Night:**

- Park close to the ATM in a well-lit area. If the lights at the ATM are not working, do not use it. If shrubbery is overgrown or a tree blocks the view, select another ATM and notify the bank.
- Take another person with you if possible.

## **Drive-up ATM Security:**

- If you are using a drive-up ATM, be sure passenger windows are rolled up and all doors are locked. If you leave your car and walk to the ATM, lock your car.
- If there is a line at the ATM, always leave enough room between vehicles to allow for a quick exit should it become necessary.
- Before rolling down the window to use an ATM, observe the entire area.
- Minimize the time spent at the ATM.
- Cancel your transaction and drive away immediately if anyone or anything looks suspicious.
- If anyone appears to follow you after making an ATM transaction, drive immediately to a well lit, crowded area and call the police.

## **Point-of-Sale (POS) Security:**

- Never allow a cashier or any other person to enter your PIN for you, even if they are helping you with the transaction.
- When using a POS terminal, block the view of others when using your PIN.
- Make sure the transaction is complete and look at your receipt before leaving.
- If you receive cash back from a transaction, always secure it before leaving the area.

# Schedule of Fees:†

The following fees may be assessed against your account and the following transaction limitations, if any, apply to your account.

Balance Inquiry by telephone	\$1.00
Telephone transfer from one account to another	\$1.00
Account activity printout	\$2.00
Requests for additional statements per cycle	\$5.00/statement
Automatic transfer	\$1.00
New account closed within 90 days of opening**	\$10.00
Chargebacks (Deposited items returned unpaid)	\$5.00
Nonsufficient items (NSF) paid or returned	
Overdraft Paid Fee - OOPS	\$29.50
Overdraft Paid Fee - NSF	\$29.50
Return Item Fee	\$29.50
Account research ((\$20.00 minimum, plus copying fee of \$1.50 per page)	\$20.00/hour
Account balancing assistance (\$20.00 minimum)	\$20.00/hour
Stop payments (all items)	\$27.00
Stop payment for cashiers check	\$50.00
Debit card / ATM withdrawal daily limit	\$380.00
Point-of-sale daily limit	\$500.00
Debit card daily limit total	\$880.00
Cash withdrawal from ATMs we do not operate*	\$1.00
Transfer funds at ATMs we do not operate*	\$1.00
ATM card (Replacement)	\$3.00
Debit card (Replacement)	\$3.00
Outgoing domestic wire transfers	
Customer	\$15.00
Non-Customer	\$20.00
Incoming domestic wire transfers	
Customer	\$10.00
Non-Customer	\$15.00
Outgoing foreign wire transfers	\$45.00
Check Printing (fee depends on style of check) 3 personal style checks available at no charge	
Cashier's checks	
Customer	\$3.00
Non-Customer	\$5.00
Traveler's checks	1% of amount purchased
Collections	\$15.00
Non-Customer check cashing	\$5.00 or 1% of total whichever is greater
Non-Customer using our ATMs	\$2.50
Photocopies	\$.10 per page
Loose Coins	\$5.00 or 1% of total whichever is greater
Safe deposit boxes available upon request*** Key deposit	\$10.00
Freezes/Garnishments/Levies	\$50.00/each occurrence/ each account plus any reason- able legal fees
Gift card fee-	\$2.00

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\*Not responsible for ATM terminal owner imposed fees. \*\*Not applicable to free checking account. \*\*\*Not FDIC Insured. Price based upon size and availability. -Additional fees may be assessed if card is not used. † All fees subject to sales tax.

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