



## ONLINE BANKING AGREEMENT AND DISCLOSURE

This Online Banking Agreement and Disclosure ("Agreement") describes your rights and obligations as a user of the Online Banking service or the Bill Payment service ("Services"). It also describes the rights and obligations of METROPOLITAN BANK ("Bank"). Please read this Agreement carefully. By requesting and using one of these Services, you agree to comply with the terms and conditions of this Agreement.

### I. Definitions

The following definitions apply in this Agreement:

1. "Authorized Representative" refers to a person with authority (with respect to the account);
2. "Bill Payment" is the online service that enables the scheduling of bill payments using a personal computer;
3. "ISP" refers to your Internet Service Provider;
4. "Online Banking" is the internet-based service providing access to your Bank account(s);
5. "Online Account" means the Bank account from which you will be conducting transactions using a Service;
6. "Password" is the customer-generated code selected by you for use during the initial sign-on, or the codes you select after the initial sign-on, that establishes your connection to the Service;
7. "PC" means your personal computer which enables you, with the Internet browser and ISP, to access your Online Account;
8. "Time of day" references are to Pacific Standard Time;
9. "User ID" is the Bank-generated identification code assigned to you for your connection to the Service;
10. "We", "us", or "Bank" refer to Metropolitan Bank, which offers the Services and which holds the accounts accessed by the Services; and
11. "You" or "your" refers to the owner of the account or the authorized representative.

### II. Access to Services

The Bank will provide instructions on how to use the Online Banking and Bill Payment Services. You will gain access to your Online Accounts through the use of your Internet-enabled device, your ISP, your Password and your User ID. You may access your Online Accounts 24 hours a day, seven (7) days a week. However, availability of the Services may be suspended for brief periods of time for purposes of maintenance, updating and revising the software.

If you request additional Services in the future, they will be governed by this Agreement, unless we advise you otherwise.

For purposes of transactions, the Bank's business days are Monday through Friday, excluding holidays and weekends. All Online Banking transaction requests received after 4:00 p.m. on business days and all

transactions which are requested on Saturdays, Sundays, or holidays on which the Bank chooses to remain closed, will be processed on the Bank's next business day. The Bank's business day begins at 9:00 a.m.

### III. Equipment

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

You agree to comply with the terms of any software license(s) provided to you in connection with the Services. You may not transfer, distribute, copy, reverse compile, modify or alter such software. Unless otherwise agreed by us in writing, the computer programs, Service guides, security procedures, software and systems provided to you in connection with the Services represent our proprietary property and must be returned to us upon request.

### IV. Business Accounts

If you are a business banking customer, your application may list certain Bank accounts that you wish to access with the Services. If it includes the accounts of your parent company, subsidiaries or affiliates, you warrant that they have authorized you to access their accounts through the Services in the same manner as your own accounts. You agree to provide us with their written authorization, in form and substance acceptable to us, evidencing that authority, and to notify us immediately in writing of any change to that authorization.

You may appoint an individual (an "Administrator") with the authority to determine who will be authorized to use the Services on your behalf. Your Administrator can establish separate security codes for you and each user, as well as limits on each user's authority to access information and conduct transactions. You assume sole responsibility for the actions of your Administrator, the authority he or she gives others to act on your behalf, and the actions of the persons designated by the Administrator to use the Services.

You or your Administrator will need to designate which accounts will be utilized for Service payments and transfers. If your Administrator designates an account that requires more than one signature for the withdrawal or transfer of funds, you agree that we may act upon any Service instruction that is accompanied by the security code(s) designated by you or your Administrator for that account and the Service in question. Note: This may mean that we will act upon the instruction of only ONE person even though the signature card for the account in question requires two or more signatures on checks. As long as an instruction is accompanied by the designated security codes, the transaction will be deemed authorized by you.

Any authorized user of your business is authorized on such terms, conditions, and agreements as we may require to:

- enter into this Agreement, as amended from time to time;
- access each account of yours in any manner and for any purpose available through the Service, whether now available or available at some time in the future; and
- use any Online banking service in any manner and for any purpose available through the Service, whether now available or available at some time in the future.

## V. Banking Transactions with Online Banking

- A. **Account Access.** You may access up to five (5) Bank personal accounts online. One of these accounts must be a primary checking account. Once you have selected your primary account, you may select up to four (4) additional accounts, including other checking, savings, certificates of deposit or loan accounts.

Since certain information and transactions are not processed by us until after the close of our business day, some transactions may not be reflected in the system until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our information system. If you are unable to access our system for any reason, you can contact your branch of account for loan and deposit information.

- B. **Transfer of Funds.** In addition to viewing account information, you may use Online Banking to conduct the transfer of funds. You may make one-time transfers or schedule future or recurring transfers such as transfers to make loan payments. You may transfer funds among your checking accounts, savings accounts and money market accounts.

NOTE: Because regulations require the Bank to limit preauthorized transfers (including Online Banking transfers), the following limitations apply:

- *Savings and Super Saver's account.* You can make no more than six (6) transfers per month by preauthorized or automatic transfer or by telephone or Online Banking.
  - *Money Market account.* You can make no more than six (6) transfers, including check transactions, per month by preauthorized or automatic transfer or by telephone or Online Banking. *Please note:* If there are not sufficient funds in the account, we cannot complete this transfer. However, future recurring transfers will not be impacted.
- C. **Additional Services.** New services may be introduced for Online Banking from time to time. The Bank will notify you of the existence of these new services. By using these services when they become available, you agree to be bound by the rules that will be made available to you concerning these services.

## VI. Schedule of Fees

The Bank offers the benefits and convenience of the Online Banking Service to you free. The Bill Payment Service is free, which includes ten (10) bill payments. All bill payments over ten (10) are an additional \$0.30 each. The fee will be deducted automatically from your Bill Payment account.

## VII. Statements

You will continue to receive your regular account statement either monthly or quarterly, depending on the type of account. At your request, we can suspend mailing of your account statements.

## VIII. Use of Your Security Password

You are responsible for keeping your password and Online Account information confidential. In order to protect yourself against fraud, you should adhere to the following guidelines:

- Do not give out your account information, Password, or User ID;
- Do not leave your PC unattended while you are in the Bank's Online Banking Site;

- Never leave your account information within range of others; and
- Do not send privileged account information (account number, Password, etc.) in any public or general e-mail system.

If you believe your password has been lost or stolen, or if you suspect any fraudulent activity on your account, call the Bank immediately at 1-800-928-8088 between the hours of 9:00 a.m. to 4:30 p.m. Pacific Time, Monday through Friday. Telephoning the Bank is the best way of minimizing your losses and liability.

If you believe your Password has been lost or stolen, please use the Password change feature within the Online Banking section of the Web site to change your Password.

#### IX. Information Processing and Reporting

We offer a number of Services that require us to receive, process and report information involving your accounts and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you or others provide to us. We will not have a duty to interpret the content of any data transmitted to us, except to the limited extent set forth in this Agreement. Unless otherwise agreed in writing, we will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties.

#### X. Reliance on Third Parties

Our ability to provide certain Services (e.g., in connection with electronic data interchange) is dependent upon our ability to obtain or provide access to third party networks. In the event any third party network is unavailable or we determine, in our discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, we will have no liability for the unavailability of access. We will not be responsible for any services you receive from third party vendors.

#### XI. Electronic Mail (E-mail) / Internet

If you send the Bank an e-mail message, the Bank will be deemed to have received it on the following business day. You should not rely on e-mail if you need to report an unauthorized transaction from one of your accounts or if you need to stop a payment that is scheduled to occur.

- NOTE: E-mail transmissions outside of the Online Banking site are not secure. We advise you not to send us or ask for sensitive information such as account numbers, Password, account information, etc. via any general or public e-mail system. If you wish to contact us electronically, please use the Guest Book provided in our Online Banking site. Use this secure form to e-mail the Bank regarding inquiries about an electronic funds transfer error resolution, reporting unauthorized transactions, or contacting the Bank regarding other concerns of a confidential nature.
- Your use of the Internet will be entirely at your own risk. We make no representation, warranty or endorsement with respect to: (a) information placed on the Internet by third parties; (b) the security or continued availability of the Internet or of any Internet web site, including without limitation our web site; or (c) the services, products or information made available over the Internet by others whose sites may be accessed, directly or indirectly, as a result of our Services. Our service providers and we assume no responsibility for viruses created by third parties, or for any third party's unauthorized access to, or use of, your computer system.
- You agree that: (a) Internet services are provided to you on an "as is" basis, without warranties of any kind; (b) we, our affiliates, Internet service providers, and licensors will not be liable for any errors, defects in, or the untimeliness or lack of authenticity of, any information provided over the Internet; (c) you will comply with all laws applicable to your Internet activities; (d) you will not transmit any

information which is defamatory, abusive, or which may give rise to civil liability; (e) we may monitor your e-mail and Internet communications with our employees; and (f) our Internet Service will be subject to the additional qualifications and operating rules, if any, set forth on our web site.

## XII. Online Bill Payment Services

**Description of Service.** The Bill Payment Service permits you to use your Internet-enabled device to direct payments from your designated online Bill Payment Account to third parties you wish to pay. Your Bill Payment Account must be a primary checking account. Through the Bill Payment Service, you can pay bills from your Bill Payment Account to businesses or individuals.

All payments you make will be deducted from the checking account that you designate as your Bill Payment Account for the Bill Payment Service. Any payments you wish to make through this Service must be payable in U.S. dollars to a payee located in the United States and Territories. We reserve the right to restrict types of payees to whom payments may be made using the Service from time to time. You should not use the Bill Payment Service to make payments to settle securities purchases, payments to interest bearing accounts, tax payments, or court ordered payments. Payments for these payees will be your sole responsibility if delayed or improperly processed or credited.

**Scheduling Payments.** Funds must be available in your Bill Payment Account on the scheduled payment date. If the date you schedule a payment to be initiated falls on a non-business day (Saturday, Sunday, or holiday), funds must be available in your Bill Payment Account the following business day (e.g. Monday). After funds are withdrawn from your Bill Payment Account to make a payment, we may make the payment either by transferring funds electronically to the payee or by mailing the payee a check.

You may choose to schedule payments to recur in the same amount at regular weekly, monthly, or semi-monthly intervals. When you create a new payee in the Bill Payment Service, it takes two (2) business days to set up the payee to receive payments. You should schedule a payment to a new payee at least ten (10) business days before any payment due date, to allow us time to set up the payee and verify information about your account with the payee.

For all subsequent payments, you agree to allow at least four (4) to ten (10) business days between the date you schedule a payment to be initiated and the payment due date (that is, the due date shown on your invoice or provided in your agreement with the payee, not taking into account any applicable grace period). If the payment is an Automatic Clearing House (ACH) electronic payment, it will take up to four (4) business days to reach the payee. However, if the company or person that you are paying cannot accept an electronic payment, the Bill Payment Service will send a check that may take up to ten (10) business days. If you do not follow these time frames, you will be fully responsible for all late fees, finance charges or other actions taken by the payee. If you schedule your payment and follow all instructions provided, but the payment is not received by the payee in a timely manner, the Bank will work with the payee on your behalf to reverse any late fees or charges.

**No Duty to Monitor Payments.** The Bank is only responsible for exercising ordinary care in processing and sending payments upon your authorization in accordance with this Agreement. The Bank will not be liable in any way for damages you incur for any of the following reasons:

- insufficient funds in your Bill Payment Account to make the payment on the processing date;
- delays in mail delivery;

- changes to the payee's address or account number unless we've been advised of the change in advance
- the failure of any payee to correctly account for or credit the payment in a timely manner, or
- any other circumstances beyond the control of the Bank.

If the session during which you schedule a payment or transfer ends by 11:00 a.m. on any business day, the Bank will be considered to have received it on that day. Otherwise, it will be considered received on the following business day. For all entries made using the Services, the time recorded by the Online Banking Service will be considered the official time of the transaction.

If your Bill Payment Account does not have sufficient funds to make a payment as of the date the payment is debited to your account, the Bill Payment Service will automatically block future Bill Payment Service until the account has sufficient funds to make the payment. The Bank will attempt to notify you by e-mail or U.S. Postal Mail, but the Bank shall have no obligation or liability if it does not complete a payment because there are insufficient funds in your account to process a payment. In all cases, you are responsible for either contacting the Service at 1-800-928-8088 to either make alternate arrangements for the payment or reschedule the payment through the Service. In the case of fixed payments, only the payment currently scheduled will be impacted. Fixed payments scheduled for future dates will not be affected.

**Cancel or Change Payment Instructions.** Payments must be changed or canceled using the Service prior to 11:00 a.m. on the business day the transaction is scheduled to be initiated. If you ask us to cancel a payment after it is issued and we agree to do so, we may charge you a stop payment fee. Stop payment orders whether oral, written, or electronic, will be in effect for a period of six (6) months. If requested by the Bank, you will confirm any stop payment order in writing. After six (6) months, any stop payment will terminate and must be renewed in order to continue in effect. The Bank may pay any item that is presented following the lapse of any stop payment order.

**No Signature Required.** When any payment or other online Service generates items to be charged to your account, you agree that we may debit your Bill Payment account without requiring your signature on the item and without prior notice to you.

**Multiple Person Bill Payment Accounts.** If more than one person has access to a Bill Payment account, each person may individually enroll in the Bill Pay service. Each enrolled person needs a unique password but may choose to use the same payee list. Each individual may terminate her/his enrollment in the Bill Payment service without affecting the Service for any other person enrolled in that Bill Payment account. However, any enrolled person may terminate the Bill Payment service that will terminate the service for all enrolled persons on that Bill Payment account.

### XIII. Stop Payment Service

You may stop payment on a check by providing us with timely, complete and accurate information on: the number of the account in question; the date of the item; the item number; the payee information; and the EXACT amount of the item (dollars and cents). If any information is incomplete or incorrect, we will not be responsible for failing to stop payment on the item. Requests become effective when we confirm their receipt and have verified that the item has not been paid. From time-to-time, the on-line system may be inoperable. If that occurs, your request can be communicated to us by telephone or in writing.

#### XIV. Amending/Canceling a Transaction.

Unless this Agreement or your User Guide provides otherwise, you do not have a right to cancel or amend a payment or transfer instruction once we have received it. If we attempt to reverse a transaction at your request, we assume no liability for any interest or losses that result if the reversal is not effected. Requests to cancel a transaction must state the exact amount (dollars and cents) of the transaction you wish to stop. You agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any reversal. You are solely responsible for providing notice to the receiver/beneficiary that a reversal is being transmitted and the reason for the reversal no later than the settlement date of the reversing entry.

#### XV. Our Rejection of Transactions

We may refuse any transfer or payment instruction without cause or prior notice.

#### XVI. Notice of Returned Payments or Transfers

We may notify you electronically, in writing, by telephone, or otherwise if any funds transfer is rejected or returned for any reason. We will not be obligated to credit your account with any interest, unless the return is caused by our failure to properly execute your instruction.

#### XVII. Unauthorized Transactions

We may process any payment or transfer instruction (including an amendment or cancellation instruction) that we believe is transmitted or authorized by you if we act in compliance with the security procedures (e.g., we obtain the Security Code) you and we have agreed upon for the Service. The instructions will be deemed effective as if made by you, and you will be obligated to pay us in the amount of such transactions, even though they are not transmitted or authorized by you.

We may elect to verify the authenticity or content of any instruction, as an alternative security procedure, by placing a call to any authorized signer on your account or any other person designated by you for that purpose. If we are unable to verify an instruction to our satisfaction, we may reject the instruction.

#### XVIII. Transaction Limits and Safeguards.

You agree not to exceed the Service transaction limits we establish from time to time for your account. You agree that you will not allow anyone to initiate transfer or payment instructions on your behalf without proper supervision and adequate safeguards, and that you will review pending payment and transfer instructions prior to their submission to us to ensure that they are complete, accurate and properly authorized.

#### XIX. Linked Accounts

All accounts with the Bank that you enroll in a service will be linked by the tax identification numbers of the persons authorized to access the account. The linked accounts will appear together without regard to the ownership of the accounts. For example, if an authorized user of a linked account accesses the Service, that authorized user will be able to view and access at a single time the following accounts:

- the accounts of the business for which that person is an authorized user;
- the accounts of any other business for which that person is an authorized user; and
- any consumer accounts for which the person is a co-owner or authorized signer.

## XX. Electronic Statement (eStatement) / Notification

### Online Statement Delivery

By accepting this Agreement, you consent and agree that we may provide certain disclosures and notices to you in electronic form, in lieu of paper form, including electronic delivery of statements (Online eStatements) for your account(s).

### E-mail Reminders

Your consent to receive electronic notices covers any notice or other type of communication provided to you pursuant to the terms of this agreement. Delivery of some disclosures in electronic form does not require the Bank to deliver all disclosures or all disclosures of a particular type electronically, including, but not limited to, Privacy Notice or Error Resolution Disclosure required under the Electronic Funds Transfer Act.

### E-mail Address Changes

You agree to notify us immediately of any change in your mailing address, e-mail address or other information relevant to this agreement. To notify us of your e-mail address change, contact us by phone or by mail. It is your responsibility to notify the Bank in writing of changes to your mailing address for US Mail delivery of other account documentation, including, but not limited to, all year-end tax reporting documents.

### Enrolling for Online eStatements

You may enroll for Online eStatements at any time by accessing Online eStatements within the Online Banking System. Agreeing to the disclosure enrolls all accounts listed in your online banking.

### Statement Availability

We will automatically turn off paper statements for your account(s) once you have enrolled for Online eStatements. You will need to access all future statements for the account(s) through the Bank's Online Banking System. You will be able to download, review and/or print your periodic account statements. Both Online eStatements and check images may be downloaded and saved or printed for permanent retention.

You can save copies of your statements to your hard drive or other media for viewing and printing at a later time by using the SAVE and PRINT buttons within Adobe Acrobat, not the browser buttons. If you need help printing or if you need a paper copy, please contact the Bank at the address or phone number provided below.

### Review of Online eStatements

Your receipt of Online eStatements does not in any way alter your obligation to promptly review your Online eStatements. You must promptly access/review your Online eStatements and any accompanying items and notify us in writing immediately of any error, unauthorized transaction or other irregularity. If you allow someone else to access your statement, you are still fully responsible to review the statement for any errors, unauthorized transactions, or other irregularities. All provisions as set forth in the applicable deposit account disclosure agreement(s), terms and conditions, and loan agreements shall continue to apply.



## Requesting a Paper Copy of your Account Statement

At any time, you may request a paper copy of any periodic statement or disclosure which has been delivered electronically. Paper copies may be acquired by contacting your local branch. We will provide the statement to you via US Mail. You might be charged the standard research fees for production of a paper copy of your periodic statement.

## Joint Accounts

If your account is owned jointly with another person, either one of you may consent to receive or cancel Online eStatements and electronic notices/disclosures. Such consent to access Online eStatements shall apply to all owners. A notification e-mail to one owner of a joint account is considered notice to all owners.

## Security

Your Access ID and Password are used to access online banking services and should be kept confidential. We strongly recommend that you change your password regularly. You are responsible for keeping your password, account numbers, and other account data confidential. You further understand and agree to notify the Bank immediately if your password should become compromised or known to individuals who are not authorized by you.

## System Requirements

In order for you to access and retain your online statement records, your personal computer must meet the following requirements.

- Internet and e-mail access
- A certified/supported browser that supports 128-bit encryption
- Adobe Acrobat Reader 7.0 or higher

We may revise hardware and software requirements, and if there is a material chance that the changes may impact your ability to access Online eStatements, we will notify you of these changes in advance and provide you an opportunity to change your method of receiving disclosures (e.g. change to paper format vs. electronic format) without the imposition of any fees.

## Change in Terms

The Bank reserves the right to change the terms and conditions of this agreement (including fee schedule) at any time, including the addition and deletion of Online eStatements services. We will update this agreement on our website and may notify you of such changes by mail or electronic message to your most recent addresses listed on our records. The notice will be posted or sent at least thirty (30) days in advance of the effective date of any additional fees, any stricter limits on the type, amount or frequency of transactions or any increase in your responsibility for unauthorized transactions, unless an immediate change is necessary to maintain the security of the system. If such a change is made and it can be disclosed without jeopardizing the security of the system, we will provide you with electronic or written notice within thirty (30) days after the change. By using the online statement service when such changes become effective, you agree to be bound by the revised terms and conditions contained in this agreement or you can decline the changes by discontinuing the use of the online statement service and notifying us of your election by US Mail. The Bank reserves its right to terminate this Electronic Statement Disclosure Agreement and your access to the online statement service, in whole or in part, at any time, including, but not limited to, when you have not logged on to use the Online Banking Services for over 90 days.

## Disclaimer of Warranty and Limitation of Liability

You agree that the Bank shall not be held liable if you are unable to gain access to the website or the Bank's Online Banking Service from time to time. You understand that some or all of the Online eStatements Services and/or other system services may not be available at certain times due to maintenance and/or computer, communication, electrical or network failure or any other causes beyond the Bank's control.

We make no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with Online eStatements provided to you under the Agreement. We do not and cannot warrant that the Online eStatement Service will operate without error, or that the Online eStatement Service will be available at all times. Except as specifically provided in this Agreement or otherwise required by law, you agree that our officers, directors, employees, agents or contractors are not liable for any indirect, incidental, special or consequential damages under or by reason of any services or products provided under the Agreement or by reason of your use of the Online eStatement Service, including loss of profits, revenue, data or use by you or any third party, whether in an action in contract or tort or based on a warranty or any other legal theory.

## Proceed with Acceptance of Online Disclosures

With your acceptance of these disclosures, you agree to accept periodic deposit account statements, including important notifications that may appear on your statements, in an electronic format instead of our mailing you a monthly paper statement. You also agree that you have the necessary equipment for accessing and viewing Online eStatements and you agree to notify us if you change your e-mail address or if you no longer want to receive statements electronically. You can still enroll at a later time within the Online Banking Service.

If you have inquiries regarding your account, please contact us at:

Metropolitan Bank  
800-928-8088  
250 East 18<sup>th</sup> Street  
Oakland, CA 94606  
ibsupport@met.bank

## XXI. Term and Termination

- A. Term. This Agreement will become effective on the Effective Date and shall remain in full force and effect until termination in accordance with the following provisions.
- B. Termination for Cause. We may immediately terminate your electronic banking privileges (including the Bill Payment Service) without notice to you under the following circumstances:
  - 1. you do not pay any fee required by this Agreement when due or
  - 2. you do not comply with the agreement governing your deposit or loan accounts, or your accounts are not maintained in good standing.

We will promptly notify you if we terminate this Agreement or your use of the Services for any other reason.

- C. Termination for Convenience. To terminate this Agreement, you must notify the Bank and provide your name, address, the Service(s) you are discontinuing, and the termination date of the Service(s). When Bill Payment is terminated, any prescheduled bill payments made through Online Banking will also be terminated. Your final charge for the Bill Payment service will be assessed at the end of your statement cycle. You may notify the Bank by one of the following methods:

- By sending an e-mail to [ibsupport@met.bank](mailto:ibsupport@met.bank).
- By calling 800-928-8088.
- By writing a letter and either sending it to the following address: Metropolitan Bank, 250 East 18<sup>th</sup> Street, Oakland, CA 94606 or giving it to a Customer Service Representative at any of the Bank's locations.

If you are not paying a monthly service charge for the Service, we may convert your account to inactive status if you do not sign on to the Service or have any transaction scheduled through the Service during any consecutive 90-day period. If your account is considered inactive, you must contact us to have the Service activated before you will be able to schedule any transaction through the Service.

## XXII. Electronic Fund Transfer Act Provisions For Consumers

- i. **Applicability.** These provisions are only applicable to online electronic fund transfers that credit or debit a consumer's checking, savings or other asset account and are subject to the Federal Reserve Board's Regulation E (an "EFT"). When applicable, the Bank may rely on any exceptions to these provisions that are contained in Regulation E. All terms that are not defined in this Agreement but which are defined in Regulation E shall have the same meaning when used in this section.

**Your Liability.** The following determines your liability for any unauthorized EFT or any series of related unauthorized EFTs:

1. If you notify the Bank within two (2) business days after your password was lost or stolen, your liability will not exceed \$50.00 or the amount of the unauthorized EFTs that occur before notification, whichever is less;
2. If you fail to notify the Bank within two (2) business days after your password was lost or stolen, your liability will not exceed the lesser of \$500.00 or the total of:
  - \$50.00 or the amount of unauthorized EFTs that occur within the two (2) business days; and
  - the total of authorized EFTs which occur during the two (2) days before notification to the Bank, provided the Bank establishes that these EFTs would not have occurred had the Bank been notified within that two-day period.
3. You must report an unauthorized EFT that appears on your periodic statement no later than 60 days of transmittal of the statement to avoid liability for subsequent transfers. Your liability will not exceed the amount of the unauthorized EFTs that occurred within the 60-day period. You may also be liable for the amounts as described in sections 1 and 2 above.
4. If the report is made orally, we will require that you send the complaint or question in writing within 10 business days. We will notify you with the results of the investigation within 10 business days and will correct any error promptly. If more time is needed, however, we may take up to 45 days to investigate a complaint or question. If this occurs, we will credit your account within 10 business days for the amount you think is in error. This will allow you to use the money during the time it takes us to complete our investigation. If your complaint or question is not received in writing within 10 business days, we may not credit your account until the investigation is completed. If an alleged error involves an electronic fund transfer outside a state or territory or possession of the United States, the applicable time periods for action by us are 20 business days (instead of 10) and 90 calendar days (instead of 45). If we determine that no error occurred, we will send you a written explanation within three business days after the investigation is complete. You may request copies of the documents that were used in the investigation.

5. You may notify the Bank by telephone, writing, or by email using the Guest Book provided in our Online Banking site. Notification by general e-mail to report an unauthorized transaction is not secure and therefore not advised.

Telephone Numbers and Addresses. In case of errors or questions regarding an Online Banking or Bill Payment transaction, call (800) 928-8088 or write us at: Attn: Electronic Banking Services Department, Metropolitan Bank, 250 East 18<sup>th</sup> Street, Oakland, CA 94606.

We must hear from you at the telephone number or address, listed above, no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. We will need:

1. Your name and account number
2. A description of the error or the transfer in question and an explanation concerning why you believe it is an error or need more information
3. The dollar amount of the suspected error and date on which it occurred.

### XXIII. Liability

- i. Our Liability. This section explains our liability to you only to the extent that any other agreements, notices or disclosures have not separately disclosed our liability. In no event shall we be liable to you for failure to provide access to your Online Banking or Bill Payment services accounts. Unless otherwise required by applicable law, we are only responsible for performing the Online Banking and Bill Payment services as delineated in this Agreement. We will be liable for the amount of any material losses or damages incurred by you and resulting directly from our gross negligence.

We will not be liable to you in the following instances:

1. If through no fault of the Bank, you do not have enough money in your account to make the transfer.
2. If circumstances beyond our control (such as fire, flood, power outage, equipment or technical failure or breakdown) prevent the transfer despite reasonable precautions that we have taken.
3. If there is a hold on your account, or if access to your account is blocked, in accordance with banking policy.
4. If your funds are subject to a legal proceeding or other encumbrance restricting the transfer.
5. If your transfer authorization terminates by operation of law.
6. If you believe someone has accessed your accounts without your permission and you fail to notify the Bank immediately.
7. If you have not properly followed the instructions on how to make a transfer included in this Agreement.
8. If we have received incomplete or inaccurate information from you or a third party involving the account or transfer.
9. If we have a reasonable basis for believing that unauthorized use of your Password or account has occurred or may be occurring or if you default under this Agreement, the deposit account agreement, a credit agreement or any other agreement with us, or if we or you terminate this Agreement.

IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT.

**Indemnification.** You agree to indemnify, defend and hold us, our affiliate companies, directors, officers, employees and agents harmless against any third party claim, demand, suit, action or other proceeding and any expenses related to an Online Banking or Bill Payment account.

**Third Parties.** We are not liable for any loss or liability resulting from any failure of your equipment or software, or that of an internet browser provider such as Netscape (Netscape Navigator browser) or Microsoft (Microsoft Explorer browser), by an internet access provider, or by an online service provider, nor will we be liable for any direct, indirect, special or consequential damages resulting from your access to or failure to access an Online Banking or Bill Payment account.

**Virus Protection.** The Bank is not responsible for any electronic virus or viruses that you may encounter. We suggest that you routinely scan your PC using a virus protection product. An undetected virus may corrupt and destroy your programs, files, and your hardware.

### XXIII. Privacy Statement and Policy

The Bank recognizes that you expect a high level of privacy and confidentiality when it comes to your financial affairs and your personal information. We are committed to providing the highest level possible.

In the normal course of business we gather nonpublic personal information about our customers and those who transact business with us. We will safeguard and protect this information at all times. In the event you close your account(s) or become an inactive customer, we will follow the privacy policies and practices as described in this notice. This Statement is provided for the purpose of informing you of how we gather and protect your information.

#### Collection of Customer Information

We obtain nonpublic personal information about our customers when you conduct a transaction with us, such as opening an account or applying for a loan or credit card. Information may be obtained directly from customers, from credit bureau agencies and from other credit references you may supply us.

We may collect the following kinds of information about you:

- Information we receive from you on applications or other forms such as your name, address, Social Security number, assets and income
- Information about your transactions with us, such as your account balance, payment history, parties to transactions and credit card usage: and
- Information we receive from consumer-reporting agency, such as information relating to your creditworthiness and credit history.

We collect information about you only when we reasonably believe it will help provide products, services and other opportunities to you. We obtain information that is necessary to administer our business and is allowed by law.

#### Use of Customer Information

Personal and financial information about customers is used only for very specific purposes:

- To identify persons involved in transactions and to guard against unauthorized access to funds or information, and to protect customer's accounts;
- To identify additional products or services that may be of value to our customers; and
- To help us identify and avoid potential risks or losses to the Bank.

#### Maintaining Information

We have established procedures and controls to ensure that information used is accurate, current and complete in accordance with commercial standards. Our procedures are designed to correct inaccurate information in a timely manner whenever it is discovered. We request that you notify us in writing of any changes in your personal information (i.e. address, phone, etc.)

#### Employee Access to Information

Access to your personal information is only available to those employees with legitimate need to know. Employees are trained to handle all information in a confidential manner. All employees must adhere to our Code of Ethics as a requirement for continued employment.

#### Protection of Information by Established Security Procedure

The Bank will make every reasonable effort to maintain the highest level of security against any unauthorized access to your financial information. In this regard we will use robust security procedures, employee training and technology.

#### XXIV. Arbitration

At your or our request, any claim or controversy that arises out of or relates to this Agreement or the Services will be submitted to arbitration in accordance with the terms of your deposit agreement with us.

#### XXV. General Terms and Conditions

- A. **Bank Agreements.** In addition to this Agreement, you and the Bank agree to be bound by and comply with the requirements of the agreements applicable to each of your Online Accounts. Your use of the Online Banking Service or the Bill Payment Service is your acknowledgment that you have received these agreements and intend to be bound by them. You should review other disclosures including the charges that may be imposed for electronic funds transfers or the right to make transfers listed in the fee schedules accompanying those disclosures and the fee schedule contained in this Agreement. We will automatically deduct the fees related to this Service from your Bill Payment Account each month.
- B. **Changes and Modifications.** The Bank may modify the terms and conditions applicable to the Services from time to time. We may send any notice to you via e-mail and you will be deemed to have received it three days after it is sent. The revised terms and conditions shall be effective at the earliest date allowed by applicable law. We reserve the right to terminate this Agreement and your use of the Services in whole or in part at any time without prior notice.
- C. **Assignment.** We may assign this Agreement to an affiliate of the Bank or any successor in interest in the event of a merger, reorganization, change of control, acquisition or sale of all or substantially all assets of the business to which this Agreement is related without the other party's prior written consent.

- D. Notices. Unless otherwise required by applicable law, any notice or written communication given pursuant to this Agreement may be sent to you electronically.
- E. Disclosure of Information. We will only disclose information to third parties about your account or transfers you make under the following circumstances:
- where it is necessary for the provision of Online Banking and for completing transfers;
  - in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant;
  - in order to comply with government or court orders, or other reporting requirements;
  - if you give us your permission;
  - to the Bank affiliated companies.
- F. Governing Law. This Agreement is governed by the laws of the State of California and applicable federal law.
- G. Waivers and Severability. We may delay exercising our rights without losing them. Any waiver or partial exercise of one right is not a waiver of other rights or the same right at another time. If any provision of this Agreement, or its application to any person or set of circumstances is held invalid or unenforceable to any extent, the remainder of this Agreement, and the application to any other persons or set of circumstances is not impaired or otherwise affected.