

***BerkOnline*® Banking Term and Conditions**

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY USING *BERKONLINE*®, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO ABIDE BY THESE TERMS AND CONDITIONS, YOU MAY NOT USE *BERKONLINE*®.

Please read this Agreement carefully, as it contains the terms and conditions for *BerkOnline*® that govern your use of our online banking services. You may refer back to it at any time by accessing the "Agreement" tab within *BerkOnline*® or the "Forms" tab on our www.berkbank.com website (our "Website"). We suggest that you read this document carefully and print a copy for your reference. These terms and conditions are subject to change. Any changes will be incorporated into the terms and conditions posted to our Website from time to time. Your use of *BerkOnline*® after the terms and conditions are changed will constitute your agreement to such changes. The Bank and you agree as follows:

Definitions

The "Bank," "us," "we," or "our" means The Berkshire Bank, and "you" or "your" means the person(s), or in the case of a business account, the business entity, registered with *BerkOnline*®.

Our "Business Days" are Monday through Friday, excluding federal holidays and other days that the Bank is closed for business. You may access your accounts through *BerkOnline*® at any time. We may perform regular maintenance on *BerkOnline*®, which may result in errors or interrupted service. We cannot guarantee that we will be able to provide notice of such interruptions, although we will attempt to provide such notice.

"Cutoff Time" means the time by which we must receive Instructions to have them considered entered on that particular Business Day. All transactions after a Cutoff Time or on a Saturday, Sunday, federal holiday, or non-Business Day will be processed on the next Business Day. All Cutoff Times referenced in this Agreement reflect the times displayed on the Bank's internal system clocks and may not necessarily be synchronized with the internal clock displayed on your computer. For this reason, we suggest that you transmit any Instructions to us sufficiently in advance of a Cutoff Time to eliminate the possibility of missing the cutoff.

"Eligible Accounts" means all accounts that you maintain with us that are approved by us for access through *BerkOnline*®, including your "Transfer From Account," which is the account from which a transfer is being requested by you through *BerkOnline*®.

"Instructions" means the information provided by you to us using *BerkOnline*® for the services available through *BerkOnline*®.

Your "User ID" is a unique identification number relating to *BerkOnline*® that we have assigned to you. Your "Password" is a unique identifier that we will initially assign to you for use with *BerkOnline*®, as well as the new, permanent Password that you select when you access *BerkOnline*® for the first time, and any change you make to your Password thereafter. We strongly recommend that you change your Password regularly. We may at our option change the password parameters without prior notice to you, requiring you to change your Password the next time that you use *BerkOnline*®. All transactions initiated using your Password will have the same legal effect as if you had given us a written communication signed by you. You agree that any transaction or Instructions received by us that were made using your User ID and Password shall be deemed authorized by you and binding upon you. You are responsible for all financial transactions performed and Instructions received by us using your Password through *BerkOnline*® to the fullest extent allowed by law. If you give another person the authority to access your accounts for any services available through *BerkOnline*®, that individual may have access to one or more accounts to which that individual would not otherwise have signature access. You assume the entire risk for fraudulent, unauthorized, or otherwise improper use of your Password. We shall be entitled to rely on the genuineness and authority of all Instructions received by us when accompanied by your Password, and to act on such Instructions.

Services

The following services are currently available through *BerkOnline*®:

1. Obtaining account balances and transaction history.
2. Downloading account statements.
3. Transferring funds between Eligible Accounts at the Bank.
4. Placing stop payment orders on checks.
5. Placing new orders or reorders of checks.
6. Contacting us by e-mail.
7. E-mail alerts (requires activation).
8. BerkMobile (requires separate enrollment).
9. Interbank transfers (IBT) (requires separate enrollment).
10. Berk Bill Pay (requires separate enrollment).

We reserve the right to expand or introduce new features, or to terminate, suspend, delete, or otherwise modify any and all features offered through *BerkOnline*®, in our sole discretion. We will notify you of the availability and terms of these new features if we are legally required to do so. By using any new or modified features when they become available, you agree to be bound by the terms and conditions concerning these features.

Internet Service

You may access *BerkOnline*® through an Internet service provider and an encrypted browser of your choice. You are responsible for obtaining, installing, maintaining, and operating all equipment necessary to access *BerkOnline*®. You acknowledge that we are not responsible for notifying you of any upgrades, fixes, or enhancements to, or for providing technical or other support for, any browser or for any compromise of data transmitted across computer networks or telecommunications facilities. You acknowledge that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet and you expressly assume such risks to the full extent that the law allows you to do so. You acknowledge that you have requested *BerkOnline*® access for your convenience, have made your own independent assessment of the adequacy of the Internet as a delivery mechanism for conducting banking transactions, and that you are satisfied with that assessment. The Bank reserves the right to upgrade *BerkOnline*® at any time without prior notice to you. If we upgrade or change *BerkOnline*® or its security features, you may have to modify or change the equipment or software that you use to access *BerkOnline*®.

Security

Access to *BerkOnline*® requires that you enter your User ID and Password each time you log on. You agree that the use of your User ID and Password is a commercially reasonable security procedure for the initiation of transfers and access to confidential customer information, and to verify that all Instructions and *BerkOnline*® transactions have been duly authorized by you. We may rely on the contents of each of your Instructions and we are not responsible for detecting any errors contained in any Instructions sent by you. You authorize us to act upon any Instructions in compliance with this security procedure without further verification or inquiry. You are responsible for maintaining the confidentiality and security of your User ID and Password. Any person, financial institution, or other entity having access to your User ID and Password will be able to access *BerkOnline*® and perform transactions in your Eligible Accounts. If you permit other persons, financial institutions, or entities to use or access *BerkOnline*® or if you disclose your Password to another person, financial institution, or entity, we will consider that third party to be your authorized agent and you will be solely responsible for all transactions and actions of your authorized agent or Instructions that they submit to us, even if those actions go beyond the scope of your agreement with your authorized agent. Providing your User ID and Password to another person effectively constitutes a grant of authority to access your accounts under the Electronic Fund Transfer Act and Federal Reserve Board Regulation E. You have advised us that the only security procedures that you have chosen for your use of *BerkOnline*® are designed solely for the purpose of verifying your User ID and Password to detect unauthorized access to *BerkOnline*® (i.e., that the Instructions were submitted by you or your authorized agent), and not for the detection of errors, and we may rely exclusively upon your User ID and Password. No security procedure for detection of any errors in *BerkOnline*® access or Instructions submitted to us has been established, shall be deemed to exist, or has been

agreed upon between you and us, and we shall have no liability to you as a result of acceptance of any Instructions that we receive from you or your authorized agent. You agree that the security procedures contained in this Agreement are a commercially reasonable method of providing security against unauthorized *BerkOnline*® access. You have been advised that additional security procedures are available only if you transmit or submit your requests directly to any of our branches by telephone, computer, or other electronic means and may require your use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices, and you have refused such security procedures for *BerkOnline*® access. Accordingly, if we receive any Instructions with your User ID and Password, they will be conclusively deemed authentic and authorized by you, we are not obliged to take any further steps to confirm, authenticate, or verify such Instructions, and we will act on them without getting further confirmation, authentication, or verification. You acknowledge and agree that our acceptance of Instructions in compliance and adherence to these security procedures shall constitute the exercise of good faith and ordinary care by us in handling Instructions transmitted to us by you. You further agree to be bound by any such Instructions, whether or not authorized, issued on your behalf and accepted by us in compliance with the security procedures chosen by you, and we are relieved of any and all liability in connection with those Instructions. You assume the entire risk for the fraudulent, unauthorized, or otherwise improper use of your User ID or Password. If you believe that your User ID or Password has been lost, stolen, or compromised or that someone has accessed your accounts or has transferred or may transfer money from your accounts without your permission, please notify us at once, by calling us at (212) 785-8499, or writing to us at The Berkshire Bank, Customer Service, 5 Broadway, New York, New York 10004. In the event of any actual or threatened breach of security, we may, in our sole discretion, issue you a new User ID or Password or establish new security procedures as soon as reasonably practicable, but we shall not be liable to you or any third party for any delay in taking such actions. Without being required or obligated to do so, the Bank, in its sole discretion, may, but is not required to, obtain additional confirmation, authentication, or verification of any Instructions, by contacting you by any means that we deem reasonable in order to obtain reasonable assurance as to the authenticity, authorization, security of, or other correctness of any Instructions. If we are unable to obtain such additional confirmation, authentication, or verification to our satisfaction, we may, in our sole discretion, either honor or dishonor any Instructions.

Except where the Electronic Fund Transfer Act or Federal Reserve Board Regulation E applies to a transaction and imposes other terms that are not permitted to be varied by contract or agreement, you agree to indemnify and hold the Bank harmless from any liability, cost, expense, or damages that the Bank may incur as a result of acting upon Instructions or implementing transactions which bear your User ID and Password. In addition, you agree that the Bank is not liable for any payment, transfer, or transaction from or to any account where the payment, transfer, or transaction bears the appropriate User ID and Password.

Verification

We reserve the right to obtain such additional information as we deem reasonably necessary to insure that you are not using *BerkOnline*® in violation of law, including, but not limited to, laws and regulations designed to prevent money laundering or the transfer of funds to accounts that are blocked under regulations of the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC").

Account Information

You may use *BerkOnline*® to view, download, store, or print information regarding your Eligible Accounts that is usually in your account statement, account balances, amounts and check numbers for checks drawn on the account, and debits and credits made to the account. All account information provided through *BerkOnline*® will be current as of the end of the preceding Business Day, and is subject to further adjustment and correction. Because the information is made available to you as "raw data" and is subject to change, we cannot assure you of the accuracy or completeness of the information and expressly disclaim the same. You will still receive your usual periodic statement of account, and adjustments may have been made to your account in connection with the preparation of your statement.

Account Transfers

You may transfer funds between Eligible Accounts using *BerkOnline*®. You authorize the Bank to debit your designated Transfer From Account for all transfers of funds that you initiate through *BerkOnline*®. We will not be obligated to make any transfer you may request unless there are sufficient immediately available funds or available credit in your Transfer From Account to cover the transfer on the date of the request. If there are insufficient immediately available funds (or available credit in the case of credit transfers) to cover a same day transfer, no automatic representation of the transfer will be attempted by us and the transfer will be immediately rejected. For transfers scheduled for future dates, if there are insufficient immediately available funds or available credit in your Transfer From Account to cover the transfer on the date of the request, we may, in our sole discretion, either: (1) automatically make further attempts to process your transfer request on the same Business Day and on succeeding Business Days; (2) refuse to complete the transaction and reject the transfer; or (3) complete the transaction and overdraw your Transfer Account, and you agree that you will be liable for the overdraft. If you exceed your established credit line for an account or if there is an overdraft to your Transfer Account, we may charge any of your accounts at the Bank for the amount of such excesses or overdraft.

Transfers to, from, or between Eligible Accounts that are made before the Cutoff Time of 4:00 p.m. (Eastern Time) on any Business Day will be effective immediately and the transferred funds will be available the same Business Day to cover all payments. We may, in our option, execute Instructions received after the Cutoff Time on the same day that we receive the Instructions, but we shall have no legal obligation to do so. Transfers to, from, or between Eligible Accounts that are made after that Cutoff Time or on a non-Business Day will be available on the next Business Day to cover all payments. Transfers will be deducted from your Transfer From Account as soon as the transaction is completed.

You agree that we may treat any transfer from an Eligible Account the same as a written withdrawal, transfer, check, or deposit, in accordance with the terms of contained in our Account Agreement and Disclosures. Any transfer made from any of your savings or money market accounts by using *BerkOnline*® is a restricted transfer subject to certain limitations. Please refer to our Account Agreement and Disclosures for full details of the terms and conditions governing your savings or money market accounts. If you open a new Eligible Account after enrolling in *BerkOnline*®, you must request approval from us to link that new account through *BerkOnline*®. We may, from time to time, establish minimum and maximum transactional and daily, weekly, or monthly dollar limits on *BerkOnline*® transactions that may be initiated by your Instructions, which we may impose in our discretion and at our option. We reserve the right to limit transfer eligibility to certain types of accounts and to change such eligibility from time to time. Not all accounts are eligible to be linked for transfer through *BerkOnline*®. Eligible Accounts will not include accounts established under any Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, estate accounts, trust accounts (except for Totten trust accounts), 1031 savings accounts, basic banking accounts, New Jersey consumer checking accounts, passbook savings accounts, accounts on which the signature of more than one joint owner or signatory is required to process transactions unless all owners or signatories authorize access to *BerkOnline*® and agree that revocation of such authorization may only be in writing signed by all joint owners or signatories, accounts in which you do not have an unrestricted right to withdraw funds, or other accounts that we, in our sole discretion, determine are not eligible for *BerkOnline*® access.

BerkMobile

You can access *BerkOnline*® through our free downloadable mobile banking application ("BerkMobile"), which we offer as a convenient and supplemental service to *BerkOnline*®. BerkMobile is not intended to replace access to *BerkOnline*® from your personal computer or other methods that you use for managing your accounts and other services with us. By inputting your mobile phone number and the name of your wireless provider, as well as other information to authenticate your identity when you initially enroll in BerkMobile, and by selecting the "I accept these full terms and conditions" check box in the "Mobile Settings" tab in the *BerkOnline*® section under the "Online Banking" tab on our Website, you acknowledge that you have read and agree to be bound by the terms and conditions of this Agreement, which govern the provision of our BerkMobile services. You will receive an SMS (Short Message Service) text message to your mobile device acknowledging that you have registered for our BerkMobile services, which will provide you with further instructions on how to access BerkMobile and download our BerkMobile application using either the *iTunes*®

app store (for iPhones® or iPads®) or Google Play™ (for Android devices) on your mobile device, as well as how to receive account balance information using SMS texting. You will need to select the "I Agree" check box on your mobile device to complete your enrollment. Each time that you access BerkMobile, you will be required to provide your *BerkOnline*® User ID and Password. For your security and protection and to authenticate your identity, we may occasionally and in our sole discretion, request that you answer multiple sophisticated challenge questions.

You agree and understand that BerkMobile may not be accessible or may have limited utility and functionality over some mobile networks, and that there may be browser or other technical limitations specific to an individual mobile device that will limit or prevent access to BerkMobile. If you have a web-enabled mobile device, whose network allows SSL (Secure Sockets Layer) security protocol and supports WAP (Wireless Application Protocol) browsers, you will be able to access and view account balances and transaction history in your Eligible Accounts, transfer funds internally between Eligible Accounts, view alerts, and transfer funds using our Interbank Transfer ("IBT") Services (if you have enrolled for that service). If you have a text-enabled mobile device, whose network allows SMS texting, you will only be able to access and view account balances and transaction history in your Eligible Accounts and view alerts, and you understand and agree that, by activating or registering your mobile device for BerkMobile, you assume all the risk associated with third party interception, as text messages will be sent to you and received by you concerning your Eligible Accounts without being encrypted, and may include personal or confidential information about you or your accounts, such as your Instructions, account activity, or status.

You acknowledge and agree that there are security risks associated with your use of BerkMobile. The hardware and software that you use in connection with BerkMobile may be subject to unauthorized tracking or other manipulation by spyware or other malicious code. We are not responsible for advising you of the existence or potential effect of such malicious code, and your use of your hardware and software is at your own risk. We will use commercially reasonable efforts to secure BerkMobile to prevent access by unauthorized persons and to prevent the introduction of any malicious code, such as a computer virus. However, no security system is failsafe, and despite our efforts the security of BerkMobile could be compromised or malicious code could be introduced by third parties. We will provide you with notice if your information is the subject of a security breach as required by applicable law. You further acknowledge and agree that it is your responsibility to protect yourself and to be vigilant against e-mail or text messaging fraud and other Internet frauds and schemes, including, without limitation, fraud commonly referred to as "phishing" or "pharming." You acknowledge that, other than at the time you are registering for BerkMobile, the Bank will never contact you by e-mail or text message in order to ask for or to verify your account numbers, User ID, Password, or any sensitive or confidential information, and will never provide links to websites in e-mails or text messages that the Bank transmits to you. In the event you receive an e-mail, text message, or other electronic communication that you believe, or have reason to believe, is fraudulent, you agree that you shall not respond to the communication, provide any information to the sender of the communication, click on any links in the communication, or otherwise comply with any instructions in the communication. To the fullest extent allowed by law, you agree that the Bank is not responsible for any losses, injuries, or harm incurred by you as a result of any electronic, e-mail, text message, or Internet fraud.

You warrant and represent to us that all information that you provide to us in connection with BerkMobile is accurate, current, and complete, by registering a mobile phone number through the BerkMobile enrollment process you are certifying that you are the accountholder for the mobile phone account or have the accountholder's permission to register that number, that you are an authorized user of the mobile device that you will use to access BerkMobile, and that the mobile device will be password protected (with a different password than you use for *BerkOnline*® access) or have similar security in use. You understand that you have the sole responsibility for maintaining and ensuring the safety, security, and integrity of the mobile device by which you will access BerkMobile, and agree not to leave the mobile device unattended while logged into BerkMobile and to log off immediately at the completion of each access by you. You agree not to provide your User ID, Password, or other access information to any unauthorized person or to store your User ID, Password, or access information on your mobile device. You acknowledge and agree, as set forth in the Security section of this

Agreement, that we are authorized to make BerkMobile available to anyone using your User ID and Password and to act on any and all Instructions received under your User ID and Password, regardless of whether the Instructions are authorized or your authorization is exceeded. You further acknowledge and agree that we are not under any obligation to inquire as to the authority or propriety of any such Instructions. If you permit other persons to use your mobile device, login information, or other means to access BerkMobile, we will consider that party to be your authorized agent, and you are solely responsible for any transactions that they authorize and we will not be liable for any damages resulting to you. You agree not to use any personally identifiable information when creating shortcuts to your account.

You agree to provide a valid mobile phone number, e-mail address, or other delivery location so that we may send you certain information about your applicable account or otherwise related to BerkMobile. You further agree that we may send you information concerning BerkMobile through your communication service provider in order to deliver them to you and that your communication service provider is acting as your agent in this capacity. In addition, you agree to indemnify, defend, and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your provision of a mobile phone number, e-mail address, or other delivery location that is not your own or your violation of applicable federal, state, or local law, regulation or ordinance.

BerkMobile services are provided for your convenience and do not replace your monthly account statements, which are the official record of your accounts. Upon completion of a transaction, a confirmation message will be displayed on your mobile device confirming that the transaction has been completed. No printed receipts are issued through BerkMobile. Text messages received through BerkMobile do not constitute an official record for your accounts. Information available through BerkMobile, including balance, transfer, and payment information, may differ from the information that is available directly through *BerkOnline*® without the use of a mobile device, and information available directly through *BerkOnline*® without the use of a mobile device may be more current than the information available through BerkMobile, including, but not limited to, account balance information. In addition, you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon, and we are not responsible for any damages resulting from your failure to comply with any terms and conditions provided by your communication service provider or any app store.

Delivery and receipt of information, including instructions for payment, transfer and other transactions, through BerkMobile may be delayed or impacted by factors pertaining to your Internet service provider, phone carrier, other parties, or because of other reasons outside of our control. We neither guaranty delivery nor the accuracy of the contents of any messages or Instructions transmitted through BerkMobile. Processing of payment and transfer instructions may take longer through BerkMobile. We will not be liable for losses or damages arising from any disclosure of account information to third parties, non-delivery, delayed delivery, misdirected delivery, or mishandling of, or inaccurate content in, information and Instructions sent through BerkMobile. In addition, not all of the products, features, services, or functionality described on our Website and this Agreement are available when you use a mobile device. Therefore, you may not be eligible to use all the products, features, services, or functionality described when you access or try to access them using a mobile device. We reserve the right to determine your eligibility for any product, feature, service, or functionality. Furthermore, we reserve the right to limit the dollar amount and frequency of the transactions that you can make using BerkMobile.

Statements

We will send you a monthly statement for each monthly cycle in which an electronic funds transfer has occurred and at least a quarterly statement if no electronic funds transfer has occurred for each account using *BerkOnline*® to transfer funds. We may provide you with more frequent statements. It is your responsibility to check the balance in your accounts, using *BerkOnline*® or your periodic account statements, after Instructions are provided to us. You agree to notify us promptly in writing of any discrepancy between your records and the information in the periodic statement within 60 days after we mail or otherwise send you periodic account statements containing such information. You agree that we shall not be liable for any other losses resulting

from your failure to provide us with such notice. If you fail to notify us of such discrepancy within 60 days, the periodic statement will be conclusively presumed to be correct, and you shall be precluded forever from asserting such discrepancy against us and we shall not be liable for any losses or interest resulting from your failure to provide such notice.

Stop Payments

You may instruct the Bank through *BerkOnline*® to stop payment on a check that has not been paid. A stop payment order will not be effective unless we have a reasonable opportunity to act on the stop payment order before the check is paid or certified. A stop payment order is effective for 6 months, unless you renew the order in writing or online as a new stop payment order. You cannot use *BerkOnline*® to request a stop payment on a certified check, an unissued, blank check that has been lost, stolen, or destroyed, electronic fund transfers, or Automated Clearing House ("ACH") debits. The Bank shall not be liable for failure to stop payment on a check if: (1) you do not provide the Bank with all the required information and with a reasonable time to implement the stop payment order; (2) the Bank determines, as permitted by law, not to stop payment on a certified item or Bank official check; or (3) the item in question is a postdated item.

E-mail

To ensure the security of your account information, do not send us any confidential information about your accounts by e-mail, or communications which we require to be in writing, or which need our immediate attention; call or write to us instead. Do not use e-mail to place a stop payment on a check, order new checks, or perform transactions on your accounts. Be aware that a "receipt" acknowledgement of an e-mail only means that the message has been routed into the Internet, not that it has been received by the appropriate business unit at the Bank. We will not be obligated to take any action based on any e-mail sent to us through *BerkOnline*® until we receive it and have a reasonable time to act on it.

Charges

We do not charge any fees for using *BerkOnline*®. If we ever change this policy, you will be notified in advance and allowed to cancel your service. Certain fees for services, such as stop payment orders, insufficient funds charges, uncollected fees, ACH returned item fees, and ordering checks, will apply, as disclosed in our Schedule of Fees and Service Charges. You agree to pay, and authorize us to automatically debit any of your accounts at the Bank for all fees and service charges. We reserve the right to add or modify charges, upon notice to you as may be required by law. If we process a transaction in accordance with your Instructions that overdraws your account, we may assess a fee or charge interest for any such overdraft. You are responsible for all fees imposed by your Internet service provider and any associated communications service provider charges in connection with your use of *BerkOnline*®. You are also responsible for any and all charges, including, but not limited to, fees associated with text messaging or data usage imposed by your communications service provider or mobile carrier.

Amendments

The terms and conditions of this Agreement may be amended or changed by us. In such event, we shall either post such changes to our Website, or if we are required to do so by applicable law, notify you by e-mail or regular mail, and subject to the requirements of applicable law, any amendments to this Agreement will become effective at the time stated in such notice. Your use of *BerkOnline*® after we have provided such a notice of change will be considered your agreement to the change. If you do not agree to the amendment or change, you must notify us prior to the effective date of the amendment or change and cancel your access to *BerkOnline*®. We may amend or change the terms and conditions contained in this Agreement without prior notice to you, if the change is made to maintain or restore the security of *BerkOnline*®, is immaterial, or does not result in higher fees, more restrictive service use, or increased liability.

Other Agreements

In addition to this Agreement, you agree to be bound by and comply with such other written requirements that we may provide to you in connection with *BerkOnline*® services, the Bank's Account Agreement and Disclosures and Schedule of Fees and Service Charges, and applicable state and federal laws and regulations.

This Agreement supersedes our Account Agreement and Disclosures and our Schedule of Fees and Service Charges only with respect to subject matters specifically contained in this Agreement which are inconsistent with those documents; all remaining provisions of our Account Agreement and Disclosures and our Schedule of Fees and Service Charges remain in full force and effect.

Disputes

In the event of a dispute regarding *BerkOnline*®, you and the Bank agree to resolve this dispute by looking to this Agreement. If there is a conflict between any advice or information that you receive from anyone, including Bank personnel, and the terms of this Agreement, the terms of this Agreement shall control. Our records, kept in the regular course of business, shall be presumed to accurately reflect the contents of your Instructions to us and the transactions in your accounts and, in the absence of manifest error, will be binding and conclusive.

Assignment

You may not assign all or any part of your rights or obligations under this Agreement without our prior express consent, which may be withheld in our sole discretion. We may assign this Agreement or delegate certain of our rights and responsibilities or the performance of the services under this Agreement to affiliates, subsidiaries, independent contractors, or other third parties without your consent.

Your Liability

The liability of personal accountholders for unauthorized transfers from their accounts is limited by the Electronic Fund Transfer Act and Federal Reserve Board Regulation E, as described below. A personal account is an account established in the name of a natural person primarily for personal, family, or household purposes. Any other account is a non-personal account.

For personal accounts, you are responsible for all transfers that you authorize or initiate through *BerkOnline*®. If you permit other persons to use *BerkOnline*® or your Password, you are responsible for any transactions they authorize from your accounts, whether you specifically authorize the transactions or not, and all transactions that person performs, even those transactions that you did not intend or want performed, or that are initiated with fraudulent intent, are authorized transactions. If you believe that your Password has been compromised, lost, or stolen, or that an unauthorized or that an unauthorized transfer has been made from your account, or that someone may transfer money from your account without your permission, notify us AT ONCE, by calling us at (212) 785-8499, or writing to us at The Berkshire Bank, Operations Department, 5 Broadway, New York, New York 10004. Telephoning us is the best and fastest way of keeping your possible losses to a minimum. If you do not do so, you could lose all the money in each of your accounts, as well as all of the available funds in any overdraft protection account or any other credit line included among your accounts.

If you believe your Password has been lost or stolen or that an unauthorized transfer has been made from any of your deposit accounts, and you tell us within 2 Business Days after you discover the loss or theft, you can lose no more than \$50 if someone makes a transfer without your authorization. If you do not tell us within 2 Business Days after you discover the loss or theft of your Password or that an unauthorized *BerkOnline*® transfer has been made from any of your deposit accounts, and we can prove we could have stopped someone from making a transfer without your authorization if you had told us, you could lose as much as \$500. Furthermore, if any deposit account statement shows *BerkOnline*® transfers that you did not make, tell us AT ONCE. If you do not tell us within 60 days after a statement showing such a transfer was transmitted 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 hospital stay, kept you from telling us, we may extend the time periods.

For non-personal accounts, you are responsible for all transfers which are authorized using your Password. If you permit other persons to use *BerkOnline*® or your Password, you are responsible for any transactions they authorize. You assume the entire risk for the fraudulent, unauthorized, or otherwise improper use of your Password. We shall be entitled to rely on the genuineness and authority of all Instructions received by us when accompanied by such Password, and to act on such Instructions. The provisions of the Electronic Fund Transfer

Act, Federal Reserve Board Regulation E, and any other laws or regulations intended for the protection of or governance of transactions involving consumers or consumer accounts do not apply to any transactions involving non-personal accounts.

Our Liability

For personal accounts, 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 actual proven losses or damages as the law imposes in such cases caused by such failure but not for any special, incidental, or consequential damages, court costs, or attorney's fees, unless required by applicable law. However, there are some exceptions. In no event will we will be liable for any indirect, incidental, special, or consequential damages if our failure was not intentional and resulted from a *bona fide* error, notwithstanding our procedures to avoid such error, or was reasonable and appropriate conduct. We will not be liable, for instance: (1) if, through no fault of ours, you do not have enough sufficient immediately available funds in your account to make the transfer; (2) if the transfer would go over the credit limit on your overdraft line on your account; (3) if your operating system, hardware, or software, your external service provider, or any part of *BerkOnline*® was not functioning properly at the time that you attempted to initiate the transfer and it was evident to you at the time that you started the transfer; (4) if your computer malfunctions; (5) if circumstances beyond our control, such as, but not limited to, fire, flood, computer failure, power outages, or interference from an outside force, prevent the transfer from being properly made or completed, despite reasonable precautions that we have taken; (6) if your Password or User ID has been reported lost or stolen or we have reason to believe that the transaction is unauthorized; (7) if we have reasonable cause not to honor for our or your protection; (8) if your *BerkOnline*® access has been suspended; (9) if the transaction would violate any applicable provision of any risk control program or applicable policies, procedures or practices, or government regulations; or (10) if the funds are subject to legal process or other encumbrance restricting the transfer. The list of examples set out in this paragraph is meant to illustrate circumstances under which we would not be liable for failing to make a transfer and is not intended to list all of the circumstances where we would not be liable.

For non-personal accounts, we will not be liable for unauthorized transfers from any of your accounts or any errors or losses you sustain in using *BerkOnline*®, except where we fail to exercise ordinary care in processing any transaction. Our liability in any case shall be limited to the amount of any funds improperly transferred from your account less any amount which, even with the exercise of ordinary care, would have been lost, and our obligation to correct any errors or omissions will be limited to retransmitting any transfer request to or from your Transfer From Account. We will not be liable for transactions initiated by someone using your Password, unless you prove that your Password was wrongfully used by one of our employees or by a person who obtains access to our records and wrongfully obtains your Password from us. We will not be liable if you or any person you give your Password to, or who obtains your Password from or through you, directly or indirectly, contributes to the event which causes the loss. You must notify us of any error, omission, or interruption in, or delay or unavailability of any of our *BerkOnline*® services as promptly as possible, and in any event within 1 Business Day after the discovery thereof, and in the case of any error within 10 Business Days of the earliest notice to you, including through e-mail, or availability on our *BerkOnline*® online banking services, which reflects the error. Without regard to care or lack of care of either you or us, a failure to report to us any unauthorized transaction, error, or other discrepancy within a 10 Business Day period after the occurrence of an event shall relieve us of any liability for any such unauthorized transaction, error, or discrepancy sustained after the expiration of such 10 Business Day period and you shall thereafter be precluded from asserting any such claim.

Disclaimer of Liability

Except as specifically provided in this Agreement or where the law requires a different standard, we are not responsible for any direct, indirect, special, incidental, consequential, punitive, or exemplary damages, lost profits, lost opportunity, losses, expenses, or injury arising in any way out of or in connection with the use of or inability to use *BerkOnline*®, regardless of whether the Bank has been apprised of the likelihood of such damages occurring, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, bugs, computer viruses, malicious code or other defect in our Website, errors,

configuration problems or incompatibility of computer hardware or software, failure or unavailability of Internet access, problems with Internet service providers, problems or delays with intermediate computer or communications networks or facilities, problems with data transmission facilities, your telephone service, or any other problems that you experience due to causes beyond our control. We are 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 Internet browser or software. We are not responsible if you give incorrect Instructions or if you do not give your Instructions sufficiently in advance to allow us to timely execute them. If any law limits this exclusion from liability, our liability will be limited to the fullest extent permitted by law. We believe that the information you can get by using *BerkOnline*® is reliable. Except as otherwise expressly provided in any applicable agreement, you understand and agree that your use of *BerkOnline*® is at your sole risk, and that *BerkOnline*® and all information, software, products, contents, features, and services (including third party services) is at your sole risk. *BerkOnline*® is provided to you on an "as is" and "where available" basis. You acknowledge that we make no warranty that *BerkOnline*® will be uninterrupted, timely, secure, or error-free, unless otherwise stated on our Website or in any applicable agreement. To the fullest extent permitted by law, we disclaim all representations, warranties, and conditions of any kind (express, implied, statutory, or otherwise, including, but not limited to, the warranties of merchantability and fitness for a particular purpose, title, and non-infringement of proprietary rights) as to our *BerkOnline*® services, and all information, products, and other content (including third party information, products, and content) included or accessible from our Website. We are not responsible for any deficiencies in the accuracy, completeness, availability, or timeliness of such information or for any investment or other decision you may make using this information. We are not responsible for any damage to your computer, software, modem, telephone, or other property resulting from your use of *BerkOnline*®. No license to you is implied in these disclaimers.

Errors and Questions

In case of errors or questions about your electronic transfers from your deposit accounts, call us at (212) 785-8499, or write to us at The Berkshire Bank, *BerkOnline* Customer Service, 5 Broadway, New York, New York 10004, as soon as you can, if you think that your statement is wrong or you need more information about a transfer listed on the statement. When you call or write: (1) tell us your name and your account number; (2) describe the error or the transfer you are uncertain about, and explain as clearly as you can why you believe it is an error or why you need more information; and (3) tell us the dollar amount of the suspected error.

For personal accounts, we must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared, but it is important that we hear from you at the earliest possible time. If you tell us in person or by telephone, 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 after we hear from you and, if we determine that an error has occurred, we will correct it promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will provisionally credit the account in question within 10 Business Days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive the writing within 10 Business Days, we may not provisionally credit your account. For errors involving new accounts, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to provisionally credit your account for the amount you think is in error. We will tell you the results within 3 Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we relied on to reach our conclusion. Please note that if we credit your account with an amount in dispute before we complete our investigation, the credit is provisional. This means that if our investigation reveals that an error did not occur or that your dispute is invalid, then we can withdraw the amount that we provisionally credited to your account. If your claim is partially valid, then we can withdraw any amount in excess of the amount of the valid claim.

For non-personal accounts, you acknowledge that the error resolution and liability provisions applicable to consumers and consumer accounts contained in our Account Agreement and Disclosures and on the back of periodic statements or other documents that you may receive from us do not apply to non-consumer accounts

(i.e., business or non-personal accounts). You agree to examine and reconcile your online banking or periodic statements that will record transactions made using *BerkOnline*® in a timely manner. The owners of non-consumer accounts must notify us immediately if they discover any unauthorized transactions or errors, at the address and telephone number listed above, as soon as you can, if you think that your statement is wrong or you need more information about any transaction. We will not be liable for any errors or losses you sustain by any transactions made using *BerkOnline*®, except where we fail to exercise ordinary care in processing any transaction. Our liability in any case shall be reduced by any amount which, even with the exercise of ordinary care, would have been lost, and our obligation to correct any errors or omissions will be limited to using commercially reasonable efforts to correct the transaction. You acknowledge that since your account is a non-consumer account, you are required to notify us within 24 hours of any unauthorized transaction in your account, and acknowledge that any transactions in your account are presumed to be authorized by you. Failure to notify us within such a time period will forever preclude you from asserting against us that a *BerkOnline*® transaction in your account was unauthorized.

Information Disclosure and Privacy

You authorize us to disclose information to third parties about you or your accounts or the transactions that you make where: (1) it is necessary, in our judgment, for completing transactions; (2) as necessary in connection with offering any *BerkOnline*® services; (3) in connection with the investigation of any claim related to your accounts or any transactions in your accounts that you initiate; (4) in order to verify the existence and condition of your accounts for a third party such as a credit bureau, merchant, or another financial institution; (5) in order to comply with government agency or court orders; (6) if you give us your written permission; or (7) as otherwise permitted by the terms of our Privacy Policy, which can be viewed by clicking on the "Privacy Policy" tab on our Website. You are strictly responsible to establish and maintain procedures to safeguard unauthorized Instructions and to maintain the confidentiality of your nonpublic personal and financial information, security procedures, User ID, and Password. If you believe or suspect that any unauthorized person has accessed any such information or Instructions, you agree to notify us immediately, followed by written confirmation.

Trademark Notice

BerkOnline® is a registered trademark of The Berkshire Bank. The works of authorship contained on our Website, including, but not limited to, all design, text, and images are owned, except as expressly stated otherwise, by the Bank. Except as otherwise provided in this Agreement, they may not be copied, transmitted, displayed, distributed (for compensation or otherwise), licensed, altered, framed, stored for subsequent use, or otherwise used in whole or in part in any manner without our prior written consent, except to the extent permitted by the Copyright Act of 1976, and then only with notice of our proprietary rights, provided that you may download information and print out hard copies for your personal use, so long as you do not remove any copyright or other notice as may be contained in the information, as downloaded.

Indemnity

You acknowledge and agree that you are personally responsible for your conduct while using *BerkOnline*® and agree to indemnify and hold us and our officers, directors, employees, affiliates, and agents harmless from and against any loss, damage, liability, cost, or expense of any expense (including, but not limited to, reasonable attorneys' fees) that we may incur in connection with a third party claim or otherwise, in connection with your use of *BerkOnline*® or the use of *BerkOnline*® by anyone using your User ID and Password or your violation of any provision of this Agreement or the rights of a third party (including, but not limited to, privacy rights).

Termination

The Bank reserves the right to terminate, suspend, or limit your access privileges to *BerkOnline*® and the services covered by this Agreement, in whole or part, at any time for any reason or for no reason, without prior notice to you, including, but not limited to, your failure to access *BerkOnline*® for an extended period of time. For security purposes, if you do not log on to *BerkOnline*® at least once within the first 30 days after receiving your User ID and Password, your right to access *BerkOnline*® will be terminated. You may terminate your right to use *BerkOnline*® at any time by notifying us in writing. If you terminate your right to use

BerkOnline®, you authorize us to continue to process orders previously authorized by you until we receive your termination notice and have a reasonable time to act on it. Such notice will serve to cancel your *BerkOnline*® services only, not your account relationships with the Bank. The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this Agreement for all purposes.

Notices

You agree that by using *BerkOnline*®, we may provide legally required notifications or other notices to you for your accounts by e-mailing them to you to an e-mail address that you have provided to us, transmitting them to you as text messages, posting them to our Website, or by other electronic means, and that all notices sent by any of these methods of electronic communication shall be deemed received by you no later than 24 hours after they are sent or posted by us. These notice may include, but are not limited to, records or confirmations of transactions through any of our *BerkOnline*® services constituting deposit account statements for your accounts, customer service communications, including communications with respect to claims of errors or unauthorized use of any of our *BerkOnline*® services, and all legal and regulatory communications associated with your accounts, such as notifications of changes to the terms and conditions concerning your accounts or *BerkOnline*® and privacy policies and notices. If your mailing address or e-mail address changes, you must promptly notify us in writing of the new address. Any notice that you give us under this Agreement must be given in writing, unless applicable law provides that it can be given in any other way.

Approvals

Any individual signing this Agreement warrants that all approvals necessary for the execution of this Agreement have been obtained and shall furnish us with copies of such authorizations if requested by us, including, but not limited to, a certificate by your secretary or other authorized official; that the individual signing on behalf of you has full authority to do so; that no law or statute applicable to, or your organization or formation documents restrict the authority of the individual signing this Agreement to act on your behalf; that no amendment to any organization or formation documents shall be binding upon us unless and until we receive prior written notice of such restrictions and have a commercially reasonable opportunity to act on them; and that upon execution, this Agreement shall constitute your binding, legal obligation. You will notify us in writing of changes in the names of the persons authorized to act on your behalf, including, but not limited to, the individuals authorized to provide Instructions to us pursuant to this Agreement, and we may rely on this Agreement or our account documentation until we receive notice, in a writing authenticated to our satisfaction, of any change or rescission of the powers or authority of any officer, member, or signatory on your accounts, and have reasonable time to act on it. You agree not to change business account documentation, to change names, or to allow additional signers on your accounts until you have first notified us in writing. You further agree not to request or advise us that your accounts requires multiple signers to transact on your accounts. You further agree that you shall certify to us promptly, when and as made, any changes in the officers or signatories on your account and we may rely on this Agreement until we receive notice, in a writing authenticated to our satisfaction, of any change or rescission of the powers or authority of any member, officer, or signatory on your accounts granted under this Agreement, and have a commercially reasonable time to act upon it. Any User ID or Password we provide to you is provided to you in your capacity as a representative of business entity that owns the accounts and may not be retained by you after any termination of your relationship with such business entity. You agree to inform us immediately if a person with access to a User ID or Password leaves your business entity. If your account is a joint account, each owner of the account is jointly and individually responsible for all transactions that affect that account. By using any of *BerkOnline*® services, you confirm that, if your account is a joint account, your joint accountholder has consented for you to use your account for *BerkOnline*®. We will terminate your use of *BerkOnline*® if any joint accountholder notifies us that they never consented to your use of *BerkOnline*®, the joint account can no longer be operated on your Instructions alone, or if any joint accountholder notifies us that they are withdrawing consent for you to operate the joint account. We shall have no liability for losses caused by your failure to provide such notification. We will be fully protected in relying on your notices.

Waiver

No failure of the Bank to enforce any right or remedy shall act as a waiver of such rights. No waiver shall be valid unless it is in writing and signed by us. We may waive any term or provision of this Agreement at any time or from time to time, but a waiver in any one situation will not be deemed a waiver of the term or provision in the future.

Severability

If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such provision shall be replaced by a legal and enforceable provision that comes as close as possible to carrying out the intent of the original provisions, and the remaining provisions of this Agreement shall remain valid and enforceable.

Governing Law

This Agreement is governed by and interpreted in accordance with the laws of the State of New York, without regard to the conflict of law provisions of New York law. Both parties to this Agreement consent to the jurisdiction and venue of the state and federal courts located in the State of New York, County of New York, for any action concerning this Agreement.

Complete Agreement

You understand and agree that prior to submitting Instructions to us, you will complete and execute this Agreement in its entirety, without alteration or addition. You further understand and agree that this Agreement is not valid until it is accepted and approved by us. You have made your own independent assessment as to the suitability and appropriateness of submitting Instructions using *BerkOnline*® to us for your needs and requirements of your personal use or your business.

Customer Service

For any questions regarding *BerkOnline*®:

Write to us at: The Berkshire Bank
 BerkOnline Customer Service
 5 Broadway
 New York, New York 10004

Call us at: (212) 785-8499

E-mail us at: berkonline@berkbank.com

BY SIGNING YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Accountholder Signature

Date

Accountholder Signature

Date