



# THE BERKSHIRE BANK

## Interbank Transfer Addendum

This Interbank Transfer Addendum (the "Addendum") sets forth the terms and conditions that govern your use of our interbank transfer services ("IBT Services"), supplements the *BerkOnline*® Online Banking Agreement (the "Agreement") to which you previously agreed and signed, and amends and becomes a part of the Agreement between you and us. The terms and conditions of the Agreement are hereby ratified, affirmed, and incorporated in this Addendum, and shall continue to apply in all respects, as amended by this Addendum. All references hereinafter to the term "Agreement" shall mean the Agreement, as modified by this Addendum. Except as otherwise set forth in this Addendum, all capitalized terms defined in the Agreement and used but not defined in this Addendum shall have the meanings ascribed to them in the Agreement. In the event of any conflict between the terms and conditions applicable to this Addendum and the Agreement, the terms and conditions of this Addendum shall control. We suggest that you read this document carefully and print a copy for your reference. You may refer back to it at any time by accessing the "Forms" tab on our [www.berkbank.com](http://www.berkbank.com) website (our "Website").

By selecting the "I Agree" check box and then clicking "Accept" in the "Interbank Transfers" tab in the *BerkOnline*® section under the "Online Banking" tab on our Website when you initially enroll in our IBT Services, you acknowledge that you have read and agree to be bound by the terms and conditions contained in this Addendum, which govern the provision of our IBT Services. 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 our IBT Services after the terms and conditions are changed will constitute your agreement to such changes.

### **Overview**

Upon being approved by us for our IBT Services, that can only be accessed through *BerkOnline*®, you can link your Transfer Account at the Bank to External Accounts at financial institutions other than us and schedule one-time transfers or arrange Recurring Transfers to and from those accounts. Our approval process may take up to one Business Day after your enrollment. Funds are generally transferred between your Transfer Account at the Bank and your linked External Accounts within 3 Business Days after your Transfer Instructions are processed.

When you use, or allow someone else to use, our IBT Services to send Instructions to us to make Transfers between two linked, eligible accounts, you agree to the terms and conditions set forth in this Addendum.

### **Definitions**

"External Account" means an account maintained by financial institutions other than us in the United States and verified and approved by us for our IBT Services. The accountholder of the External Accounts must be the same individual or business entity as the accountholder of the linked Transfer Account who is authorized to access *BerkOnline*®, bearing the same tax identification number or social security number, and all signatories on the linked External Accounts and your Transfer Account must be identical. You may link 2 External Accounts to your Transfer Account under our IBT Services. To link External Accounts, we require that you provide certain information, including, but not limited to, the name of the accountholder, the account numbers, the type of account (*i.e.*, personal or business), the names of the financial institutions, and the ABA routing numbers of the financial institutions on our *BerkOnline*® IBT Services, to verify your authority and access to your External Accounts.

"Recurring Transfer" means an automatic repeating or scheduled Transfer for the same fixed amount to the same External Account which you authorize for transmission at a regular interval (*i.e.*, weekly, bi-weekly, semi-

monthly, or monthly), that will be transmitted on your requested Send On Date or the next Business Day if the regular date for the Transfer falls on a non-Business Day.

"Send On Date" means the Business Day that we will withdraw funds from your Transfer Account, or the date that we will transmit Instructions to withdraw funds from your External Account, and begin the delivery process.

"Transfer" means Instructions to us to transfer funds to or from your External Account, that include information such as, but not limited to, the name of the financial institution, the account number, the transfer amount, and the Send On Date.

"Transfer Account" means a checking account that you maintain with us that is approved by us for access to our IBT Services and from which a Transfer is being requested by you. Not all accounts are eligible for our IBT Services. We reserve the right to limit eligibility to certain types of accounts and to change eligibility from time to time. Transfer Accounts will not include accounts established under any Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, estate accounts, trust accounts, guardianship or conservatorship accounts, fiduciary accounts, retirement accounts (401k, IRA, *etc.*), custodial accounts, escrow accounts, IOLA accounts, rent security deposit accounts, 1031 savings accounts, basic banking accounts, New Jersey consumer checking accounts, passbook savings accounts, certificates of deposit, any account in the name of a child under 18 years of age, any account that has a power of attorney designated on it, accounts on which the signature of more than one joint owner or signatory is required to process transactions unless all owners or signatories authorize in writing that Transfer Instructions may be submitted to us by only one person 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 to be a Transfer Account.

## **Security**

Access to *BerkOnline*® and our IBT Services requires that you enter your User ID and Password each time that you log on. You agree that the use of your User ID and Password is a commercially reasonable security procedure to verify that all transactions made through *BerkOnline*® and our IBT Services have been duly authorized by you. You authorize us to act upon any transaction in compliance with this security procedure without further verification or inquiry. You must safeguard your User ID and Password. Any person who obtains your User ID and Password will be able to access *BerkOnline*® and our IBT Services and make Transfers to or from your Transfer Account and External Accounts. You will be responsible for all such transactions.

## **Verification**

After you enroll online in our IBT Services, we may verify your External Accounts that you link to our IBT Services. You authorize us to validate your External Accounts through the use of test transfers, in which two small deposits, each less than \$1, will be deposited by us in your External Account. The two small deposits will have a deposit description that they are web payments from The Berkshire Bank. You may keep the two small deposits. Once the test transfers are complete, which can take up to 3 Business Days, we will ask you to access your External Account to tell us the amounts of the test transfers or any additional information reported by your external financial institution with the test transfers and verify the amounts of the test transfers on our *BerkOnline*® IBT Services. For security purposes, you must complete the verification procedures for our IBT Services within 5 Business Days after receiving the test transfers. We may also verify External Accounts by requiring that you submit proof of ownership of your External Accounts, or requiring that you provide us with an original voided check for your External Accounts.

You understand that in order to complete Transfers, it is necessary for us to access the websites and databases of the financial institutions where you maintain your External Accounts, as designated by you and on your behalf, to retrieve information and effect the Transfers that you request. By using our IBT Services, you represent and The Berkshire Bank – Interbank Transfer Addendum (August 2014) Page 2 of 10

warrant to us that you have the right to authorize and permit us to access your External Accounts to effect such Transfers or for any other purpose authorized by this Addendum, and you assure us that by disclosing and authorizing us to use such information you are not violating any third party rights. You warrant and represent that the information that you are providing us concerning yourself and your External Accounts is true, accurate, current, correct, and complete, and you agree not to misrepresent your identity or your External Account information. You authorize and permit us to use information submitted by you to accomplish these purposes and to configure our IBT Services to be compatible with your External Accounts.

For as long as you are using our IBT Services, you grant to us a limited power of attorney and appoint us as your true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for you and in your name, place, and stead, in any and all capacities, to access your External Accounts, effect Transfers, retrieve information, and use your information, all as described in this Addendum, with the full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such activities, including verifying the content and authenticity of any Transfer Instruction for the purposes of security procedures applicable to your External Accounts, as fully to all intents and purposes as you might or could in person. Once we have actual knowledge that you wish to cease using our IBT Services as provided in this Addendum or as otherwise permitted in this Addendum and have a reasonable opportunity to act on such knowledge, this limited power of attorney is automatically revoked; provided, however, that any act done by us in good faith before we had actual knowledge of termination by you and had a reasonable opportunity to act on such knowledge shall be deemed to be authorized by you. You acknowledge and agree that when we access and retrieve information from your External Accounts, we are acting as your agent. You agree that the financial institutions where you maintain your External Accounts shall be entitled to rely on this authorization, agency, and power of attorney granted by you.

You understand and agree that at all times your relationship with your external financial institutions are independent of us and your use of our IBT Services. We will not be responsible for any acts or omissions by the financial institutions where you maintain your External Accounts, including without limitation any modification, interruption, or discontinuance of your External Accounts by such provider.

You agree that we shall not be liable for any costs, fees, losses, or damages of any kind incurred as a result of our access to your External Accounts, our debit or credit or inability to debit or credit your External Accounts in accordance with your Transfer Instructions, any inaccuracy, incompleteness, or misinformation contained in the information retrieved from your External Accounts, any charges imposed by financial institutions where you maintain your External Accounts, any funds transfer limitations set by the financial institutions where you maintain your External Accounts, and any costs or losses incurred from Transfers that are not permitted under such restrictions by the provider of your External Accounts or those imposed by applicable law.

### **Availability**

To use our IBT Services, you must be a *BerkOnline*® customer and maintain an account with us and an External Account at a financial institution other than us, between which you may transfer funds. You may make up to 3 outgoing Transfers from your Transfer Account on any Business Day and 3 incoming Transfers to your Transfer Account on any Business Day. Transfers to or from your Transfer Account may be made in any amount up to \$5,000 per transaction, with a maximum daily limit of \$5,000 in the aggregate for all Transfers on any Business Day. Your daily transfer limit is the total amount of Transfers that are processed on any Business Day and may include Transfers that were scheduled and have not yet been completed. We may, in our sole discretion, refuse to process any transaction that exceeds these limits. We reserve the right to change from time to time the dollar amounts and aggregate daily transfer limits or to establish weekly or monthly transfer limits that you are permitted to make using our IBT Services.

We reserve the right to decline to effect any Transfer, to submit Transfer Instructions or orders to external financial institutions, or to carry out change or cancellation requests in cases such as, but not limited to the following: (1) the withdrawal would consist of funds deposited in the form of a check or other instrument and

is not yet available for withdrawal in accordance with our funds availability policy contained in our Account Agreement and Disclosures; (2) there is a dispute about your Transfer Account, unless a court has ordered us to permit the withdrawal; (3) a court orders us not to permit the withdrawal; (4) the withdrawal would consist of funds that we have transferred out of your Transfer Account to pay an overdue debt to us or to set off any liability or obligation to us; (5) the withdrawal would consist of funds that we have been ordered to pay or hold for a creditor other than us; (6) someone in whose name the Transfer Account is opened requests that we not permit the withdrawal; (7) we believe that the Transfer may violate applicable law or be in violation of OFAC regulations; (8) any of your accounts at the Bank are not current or are not in good standing; (9) you have had an overdraft, an over-limit item, or an item returned for insufficient funds with respect to any of your accounts at the Bank during the current or 3 prior calendar months; or (10) you have had any prior Transfer cancelled, revoked, or uncompleted due to insufficient funds, revoked authorization, stopped payments, frozen accounts, or any similar reasons. All Transfers are subject to our internal review based on your External Accounts, the amount of the transaction, your relationship with us, a successful fraud screening and such other factors that we may determine to apply from time to time. In the event that we determine that there are risks associated with a Transfer or other reasons, including those described above, not to process a Transfer, we may delay or cancel the Transfer and notify you, or direct you to contact us to provide additional details concerning the Transfer before it is initiated or funds are released.

### **Account Transfers**

You may schedule one-time Transfers or arrange Recurring Transfers using *BerkOnline*®. You authorize us to debit your Transfer Account for all Transfers that you initiate through *BerkOnline*® in order to complete your designated Transfer, you agree that you will instruct us to make a Transfer only when there is a sufficient balance of immediately available funds as defined in our Account Agreement and Disclosures, in your Transfer Account on the Send On Date to cover each such Transfer that you schedule and any fees that might be associated with such Transfer.

If there are not sufficient immediately available funds or available credit in your Transfer Account to cover the Transfer on the Send On Date, you agree that we are not obligated to make the Transfer and 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. You agree that we may, at our option, make Transfers that you request, even though a debit to your Transfer Account may bring about or increase an overdraft, 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.

The Cutoff Time for Transfer Instructions is 4:00 p.m. Eastern Time on any Business Day and is the time by which we must receive Transfer Instructions to have them considered entered on that particular Business Day. Transfer Instructions that we receive after our Cutoff Time or on a Saturday, Sunday, federal holiday, or other non-Business Day, will be processed on the next Business Day. Transfer Instructions that we receive before the Cutoff Time on any Business Day will begin processing on the same day. Transfer Instructions entered after our Cutoff Time with a Send On Date that is the next Business Day, may in our option, start to process immediately and on the same Business Day, which is prior to your requested Send On Date. Transfer Instructions that are initiated on any non-Business Day or after the Cutoff Time on any Business Day, will reflect a Send On Date of the next Business Day. Transfer Instructions scheduled in advance will be made on the Send On Date, provided that it is a Business Day, otherwise, they will be made on the next Business Day. Transfer Instructions will be deducted from your Transfer Account as soon as the transaction is completed. Transfers from your External Accounts are subject to the processing times of the financial institutions where you maintain your External Accounts.

You agree that we may treat Transfer Instructions from your Transfer Account the same as a written withdrawal, in accordance with the terms and conditions contained in our Account Agreement and Disclosures. The Berkshire Bank – Interbank Transfer Addendum (August 2014) Page 4 of 10

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 account.

Transfer Instructions relating to your External Accounts and the transmission and issuance of data related to such Instructions shall be received pursuant to the terms and conditions of this Addendum and the Agreement and the rules of the National Automated Clearing House Association and any applicable rules of any regional automated clearing house (collectively, the "ACH Rules") and you and we agree to be bound by the ACH Rules as in effect from time to time. In accordance with the ACH Rules, any credit to your Transfer Account or your External Accounts shall be provisional until such credit has been finally settled by us, the financial institutions where you maintain your External Accounts, and any service provider and clearing bank, as the case may be. You acknowledge that you have received notice of this requirement and of the fact that if we do not receive final settlement for a Transfer, or any portion of a Transfer, for any reason, you authorize us to charge back the amount of such Transfer against your Transfer Account, any of your other accounts at the Bank, your External Accounts, or claim a refund from you to the extent necessary to offset any resulting deficiency and collect the amount that is due to us. There may be a fee associated with such collection imposed by the financial institutions where you maintain your External Accounts. We do not undertake to notify you in such event, other than by posting any such Transfers to the applicable account in accordance with this Agreement. You agree that we are not responsible for any direct, indirect, special, incidental, or consequential damages arising in any way as a result of such action by us.

### **Cancellation of a Transfer**

One-time Transfers that are requested to begin processing on the same or next available Business Day may or may not be cancelled, depending upon when the Transfer is requested and whether our service provider has begun processing the Transfer. Generally, Transfer Instructions are processed every half hour on the half hour. If a "Delete" link is displayed on the "Pending Transfers" tab within the "Interbank Transfers" tab of *BerkOnline*® next to the requested Transfer, then that particular Transfer may be cancelled. Otherwise, one-time Transfer Instructions may not be cancelled.

You may cancel any Recurring Transfer, if the cancellation request is processed before our Cutoff Time on the Business Day before the Send On Date of the Transfer. If a "Delete" link is displayed on the "Pending Transfers" tab within the "Interbank Transfers" tab of *BerkOnline*® next to the requested Recurring Transfer, then that particular Transfer may be cancelled. If a Recurring Transfer is cancelled, all future Recurring Transfers for the same fixed amount and to the same External Account that were scheduled to be sent at the same regular interval (*i.e.*, weekly, bi-weekly, semi-monthly, or monthly) will be cancelled and you must submit new Transfer Instructions to us if you want that Recurring Transfer to be made in the future.

### **Account Activity**

You will be able to review the activity and transfer history in your Transfer Account through our *BerkOnline*® online banking services, and you agree that by accepting and agreeing to the terms and conditions of this Addendum or using our IBT Services, we may send you deposit account statements, post your transfer activity or history, or provide legally required notifications or other notices to you for your Transfer Account 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. Although we may decide to provide you with a monthly statement for each monthly cycle in which a Transfer has occurred or a quarterly statement if no Transfers have occurred in your Transfer Account, you agree that we are under no obligation to do so.

### **License**

The Bank grants you a non-transferable and non-exclusive license to use our IBT Services online website solely for your own business dealings with the Bank and for no other purpose. You acknowledge and agree that our IBT Services online website is valuable, confidential, and proprietary property of the Bank and agree not to transfer, distribute, reverse engineer, reverse compile, disassemble, decompile, modify, or alter any of the service technology associated with our IBT Services online website. You agree to treat all intellectual property, software, and documentation provided to you pursuant to our IBT Services with absolute confidentiality. Any violation by you of the "License" section of this Addendum may cause irreparable injury to us, and you agree that we shall be entitled to seek, without limitations, temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation.

## **Your Obligations**

You warrant and represent to us with respect to each Transfer through our IBT Services that: (1) all transactions will be subject to the terms and conditions contained in our Account Agreement and Disclosures and in compliance with all procedures and operating guidelines established by us contained in this Addendum and the Agreement or subsequently created; (2) you have obtained any necessary authorization from the any external financial institution to deposit or withdraw funds from your External Account; (3) you will only make Transfers to offices or branches located in the United States of a federal or state chartered or licensed financial institutions having an ABA routing number; and (4) you agree that you will not use our IBT Services for international automated clearing house ("ACH") transactions, which are prohibited under this Addendum. If you fail to comply with any of these obligations, you agree that we are not obligated to make such a Transfer.

You understand that we must rely on the information provided by you and you authorize us to act on any Instruction which has been or reasonably appears to have been sent by you or on your behalf. You understand that financial institutions receiving Transfer Instructions may rely on such information. We are not obliged to take any further steps to confirm or authenticate such Instructions and will act on them without getting further confirmation. You understand that if you provide us with incorrect information or if there is any error in your Instructions, we will make all reasonable efforts to reverse or delete such Instructions, but you accept full responsibility for losses resulting from any of your errors, duplication, ambiguities, or fraud in the information that you provide. You understand that financial institutions receiving Transfer Instructions may execute those Instructions by reference to the account number only, even if the account number does not correspond to the accountholder name on the Instructions, and may not investigate discrepancies between accountholder names and account numbers. We are not responsible for Transfers made to unintended accounts or for the failure of a Transfer, due to the input of incorrect information by you, and you agree that we have no responsibility to investigate discrepancies between accountholder names and account numbers. You agree not to impersonate any person or use a name that you are not authorized to use. If any information you provide is untrue, inaccurate, not current, or incomplete, without limiting other remedies, we reserve the right to recover from you any costs or losses incurred as a direct or indirect result of the inaccurate or incomplete information. It is your responsibility to check the balance in your External Accounts after a Transfer has been made to confirm that such Transfer occurred.

## **Your Liability**

The liability of personal accountholders for unauthorized Transfers from their accounts is limited by the Electronic Fund Transfer Act, 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 our IBT Services. If you permit other persons to use your Password, you are authorizing that person to use our IBT Services, and you are responsible for any transactions that they authorize from your Transfer Account, 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 Transfer has been made from your Transfer Account, or that someone may transfer money from your Transfer 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 your Transfer Account, 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 that your Password has been lost or stolen or that an unauthorized Transfer has been made from your Transfer Account, 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 Transfer has been made from your Transfer Account, 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 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 a hospital stay, keeps 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 our IBT Services or your Password, you are responsible for any transactions that 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 Transfer Instructions received by us when accompanied by such Password, and to act on such Transfer Instructions. The provisions of the Electronic Funds Transfer Act, Federal Reserve Act 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**

We are not responsible for errors, delays, and other problems caused by or resulting from the action or inaction of financial institutions where you maintain your External Accounts. Although we will try to assist you in resolving any such problems, you understand that any such errors, delays, or other problems are the responsibility of the relevant financial institution. Any rights you may have against a financial institution for such errors, delays, or other problems are subject to the terms of the agreements you have with such financial institution, including any time limits during which complaints must be made.

You agree that your Transfer Instructions constitute authorization for us to complete the Transfer. You represent and warrant to us that you have enough money in the applicable account to make any Transfer that you request that we make on your behalf through our IBT Services. You understand and agree that we are not liable under any circumstances for any losses or damages if, through no fault of ours, you do not have enough money to make the Transfer, or the financial institutions where you maintain your External Accounts do not permit the Transfer.

If we do not make a Transfer on time, cause an incorrect amount to be removed from an account, or cause funds from an account to be transferred to any account other than the account specified in the applicable Transfer Instruction, we shall be responsible to process the Transfer correctly by the next Business Day, return any improperly transferred funds, or direct any misdirected funds to the proper account, as appropriate.

**For personal accounts**, if we do not complete a Transfer by your requested Send On Date or in the correct amount, 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 Transfer Account to make the Transfer; (2) if the Transfer would go over the credit limit on your overdraft line on the Transfer 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; (10) if the funds are subject to legal process or other encumbrance restricting the Transfer; (11) if the financial institutions where you maintain your External Accounts mishandle or delay processing or posting Transfer Instructions sent through our IBT Services; (12) if you did not provide us with the complete and correct Transfer information, including, without limitation, the name, account number, and transfer amount for a Transfer; or (13) if any of the accounts involved in the Transfer are no longer linked for our IBT Services. 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 your Transfer Account or any errors or losses you sustain in using our IBT Services, 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 Transfer 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 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 our IBT 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 IBT Services online website or 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.

## **Errors and Questions**

In case of errors or questions concerning electronic transfers to or from your Transfer Account, call us at (212) 785-8499, or write to us at The Berkshire Bank, Operations Department, 5 Broadway, New York, New York 10004, as soon as you can, if you think your statement is wrong or if you need more information about any Transfer. When you call or write: (1) tell us your name and the account number of your Transfer Account; (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.

In case of errors or questions about your electronic transfers that appear on any of your External Account statements, please contact the financial institutions that provided such statements to you in accordance with the terms and conditions of your External Account.

**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 Transfers 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 Transfer, 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 Transfer Account is a non-consumer account, you are required to notify us within 24 hours of any unauthorized Transfers from your Transfer Account, and acknowledge that any Transfers to or from your Transfer 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 Transfer from your Transfer Account was unauthorized.

### **Disclaimer of Liability**

You, unconditionally and irrevocably and irrespective of any future events, release and forever discharge, indemnify, and hold harmless the Bank and its past, present, and future officers, directors, shareholders, employees, agents, representatives, attorneys, affiliates, related entities, successors, and assigns, from and against any and all direct, indirect, special, incidental, consequential, punitive, or exemplary damages, lost profits, lost opportunity, losses, actions, causes of action, suits, debts, dues, sums of money, accounts, bills, contracts, controversies, agreements, promises, judgments, executions, claims, demands, obligations, liabilities, costs, and expenses, of any nature whatsoever, in law or equity (including attorney's fees and costs), which against the Bank, you or any third party ever had, now has, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, which may arise, directly or indirectly, as a result of the Bank's transferring funds to or from your Transfer Account or External Accounts or in connection with your use of or inability to use our IBT Services, regardless of whether the Bank has been apprised of the likelihood of

such damages occurring, failure, defects, or malfunctions of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, bugs, computer viruses, malicious code or other website defect, 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, telephone service, delays by a third party processing center, failure of any third party to provide the Bank with the data necessary for complete and proper transmission of a transaction, or any other problems experienced due to causes beyond our control. We are not responsible for any losses, lost files and transmissions, or Transfer Instructions transmitted by you that we do not receive, arising out of the use of any Internet service provider, caused by any Internet browser or software, or otherwise. We are not responsible if you give incorrect Instructions or if you miss a Cutoff Time. If any law limits this exclusion from liability, our liability will be limited to the maximum extent permitted by law. We do not warrant that operation of any software will be error-free or uninterrupted. Our IBT Services are provided to you on an "as is" and "as available" basis. 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 our IBT Services. You expressly agree that your use of our IBT Services is at your sole risk. No license to you is implied in these disclaimers. You acknowledge that the limitations of liability in this Agreement are a bargained for allocation of risk and liability and agree to respect such allocation of risk and liability.

### **Information Disclosure**

You understand that financial institutions where you maintain your External Accounts may contact us to verify the content and authority of Transfer Instructions and any changes to those Instructions. You understand that, as your agent, we may provide to such financial institution such information as may be required to verify the Instructions and may constitute a valid security procedure under the rules governing such accounts.

### **Approvals**

You understand and agree that, if your Transfer Account is a joint account, each owner of the Transfer Account is jointly and individually responsible for all Transfers that affect that account. By using our IBT Services, you confirm that, if your account is a joint account, your joint account holder has consented for you to use your account for our IBT Services. We will terminate your use of our IBT Services if any joint account holder notifies us that they never consented to your use of our IBT Services, 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.