

## ***BerkOnline*® Banking Terms 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 to it at any time by accessing the "Agreement" tab within *BerkOnline*® or the "Forms" tab on our [www.berkbank.com](http://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.

### **Services**

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

1. Account balances and transaction history

2. Mobile Banking
3. Mobile Deposit
4. Account Transfers (between Eligible Accounts)
5. Zelle®
6. Bill Pay
7. Account Statements (including e-statements)
8. Stop Payments
9. Check Orders
10. Contact us by e-mail
11. E-mail alerts

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*®. 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. There is certain security, corruption, transmission error, and access availability risks associated with using open networks. 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. We may, at our option, change the parameters for your Password without prior notice to you, and if we do so, you will be required to change your password the next time you access *BerkOnline*®. We are strongly committed to protecting the security and confidentiality of your account information. We use multiple authentication methods to help provide an extra layer of security for certain transactions when you use *BerkOnline*®, including two-factor authentication, such as sending you an access code or a one-time PIN to your registered mobile device that you will be prompted to enter as part of the sign on process for our Mobile Banking app to confirm your identity when completing certain transactions, and to help mitigate against the risk of guessed or stolen credentials. 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. You authorize us to act upon any Instructions in compliance with these security procedures without further verification or inquiry. You are responsible for maintaining the confidentiality and security of your User ID,

Password, and one-time PIN. 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, Operations Department, 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 federal Electronic Fund Transfer Act and/or 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, Password, and one-time PIN.

### **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 BusinessDay 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.

### **Mobile Banking**

You can access *BerkOnline*® through our free downloadable Mobile Banking application, which we offer as a convenient and supplemental service to *BerkOnline*®. Mobile Banking 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 Mobile Banking, 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 Mobile Banking services. You will receive an SMS (Short Message Service) text message to your mobile device acknowledging that you have registered for our Mobile Banking services, which will provide you with further instructions on how to access Mobile Banking and download our Mobile Banking 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 Mobile Banking, you will be required to provide your *BerkOnline*® User ID, Password, and one-time PIN.

You agree and understand that Mobile Banking 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 Mobile Banking. 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, transfer funds via *Zelle*® (for consumers only), and view alerts. 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 Mobile Banking, 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 Mobile Banking. The hardware and software that you use in connection with Mobile Banking 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 Mobile Banking 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 Mobile Banking 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" or "spoofing." You acknowledge that, other than at the time you are registering for Mobile Banking or to send you a one-time code as part of our two-factor authentication procedures, 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, one-time PIN, 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 Mobile Banking is accurate, current, and complete, by registering a mobile phone number through the Mobile Banking enrollment process you are certifying that you are the account holder for the mobile phone account or have the account holder's permission to register that number, that you are an authorized user of the mobile device that you will use to access Mobile Banking, 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 Mobile Banking and agree not to leave the mobile device unattended while logged into Mobile Banking and to log off immediately at the completion of each access by you. You agree not to provide your User ID, Password, one-time PIN, 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 Mobile Banking available to anyone using your User ID, Password, and one-time PIN 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 Mobile Banking, 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 Mobile Banking. You further agree that we may send you information concerning Mobile Banking through your communication service provider in order to deliver it 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.

Mobile Banking services are provided for your convenience and do not replace your monthly account statements, which are the official records 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 Mobile Banking. Text messages received through Mobile Banking do not constitute an official record for your accounts. Information available through Mobile Banking, 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

Mobile Banking, 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 Mobile Banking 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 Mobile Banking. The processing of payment and transfer instructions may take longer through Mobile Banking. 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 Mobile Banking. 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 Mobile Banking.

### **Mobile Deposit**

You may access Mobile Deposit through our Mobile Banking Services by selecting the "I Agree" check box and clicking "Accept" on our mobile application ("Mobile Deposit"). Mobile Deposit Service is designed to allow you to make certain single item deposits to an Eligible Account electronically by using the Bank's mobile application ("Mobile Deposit") and a mobile device (which means a smartphone, tablet computer, or other wireless device with a camera) acceptable to us and that is compatible with Mobile Deposit to create electronic images of the front and back of a paper check or other paper source document only payable in U.S. Dollars (each, an "Item") by scanning the Item, and transmit the Item and related data to us or our designated processor for review and processing in accordance with the terms and conditions.

### **Mobile Deposit - Service Requirements and Obligations**

In order to enroll in the Mobile Deposit Service, you must be designated as an authorized signer or owner of a checking or savings account with the Bank, as we may determine in our sole discretion from time to time to be eligible for the Mobile Deposit Service (each, an "Eligible Account"), and be approved by us. The Mobile Deposit Service is designed to allow you to make certain single item deposits to an Eligible Account electronically by using the Bank's mobile application and a mobile device (which means a smartphone, tablet computer, or other wireless device with a camera) acceptable to us and that is compatible with the Bank's mobile application to: (a) create electronic images of the front and back of a paper check or other paper source document only payable in U.S. Dollars (each, an "Item") by scanning the Item, and (b) transmit the Item and related data to us or our designated processor for review and processing in accordance with the terms and conditions of this Agreement. As part of the Mobile Deposit Service, you must use software and hardware provided by or acceptable to us. You are solely responsible for information or data that is transmitted, supplied, or key-entered by you, your employees, or agents,

and for maintaining confidentiality, security, and prevention of unauthorized access to your mobile device.

Before you scan any Item, you are required to properly endorse all Items with both your signature and the restrictive endorsement that states "For Mobile Deposit to The Berkshire Bank Only," or as otherwise instructed by us. For Items made payable to a wrong name, misspelled name, incorrect name, assumed name, or a name other than your own legal name, you are required to sign and endorse the Item in both your own legal name and the wrong, misspelled, incorrect, or assumed name, in addition to the restrictive endorsement that states "For Mobile Deposit to The Berkshire Bank Only." Only Items that are made payable to, and properly restrictively endorsed by you, may be transmitted through the Mobile Deposit Service. You agree that if we accept an Item that does not bear an appropriate restrictive endorsement which would prohibit further transfer of the Item, you will nonetheless be solely liable in the event that the Item is presented for payment more than once. You further agree to follow any and all other procedures and instructions for use of the Mobile Deposit Service as we may establish from time to time.

As conditions to the Bank's provision of the Mobile Deposit Service, you shall: (a) maintain the Eligible Account(s) in good standing for more than 30 days with collected balances of more than \$1,000, (b) subscribe to BerkOnline®, (c) enroll in Mobile Banking, and (d) comply with such restrictions on the Mobile Deposit Service as we may communicate to you from time to time.

You agree that after an Item has been scanned and submitted for deposit, you shall not otherwise transfer or negotiate the Item, substitute check, or any other image of the Item.

You agree that you shall be solely responsible for the Item, including storage, retrieval, and destruction, and if an Item is misused in any way by anyone following submission through the Mobile Deposit Service and before its full destruction.

You agree that after an Item has been credited to the Eligible Account, you are required to mark the Item by writing "mobile check deposit" on the front of the Item with the date deposited and retain the Item for 7 business days. During this 7 business day period (or until you destroy the Item and related information or documents), you will maintain control over and be responsible for secure retention, storage, and destruction (immediately after this 7 business day period) of the Item, and you must make the Item (or related information or documents) available to us for review at any time and at your expense, as may be reasonably requested by us to facilitate the clearing and collection process, to resolve third party claims, or for audit purposes to verify your compliance with the terms and conditions of this Agreement.

You agree that the electronic image of the Item or any substitute check, as defined by federal law, will become the legal representation of the Item for all purposes, including return items processing. Items submitted using the Mobile Deposit Service shall be processed in accordance with funds availability requirements of Federal Reserve Board Regulation CC, as set forth in our Account Agreement and Disclosures.

Generally, if we receive a scanned Item at or before 4:00 p.m. Eastern Time on a business day that we are open, we will consider that day to be the day of deposit. If we receive a scanned Item after 4:00 p.m. Eastern Time or on a weekend, a state or federal holiday when we are closed for business, or other non-business day we will consider that the deposit was made on the next business day.

The maximum amount that you may deposit through the Mobile Deposit Service is \$500 per individual Item, \$1,500 per calendar month, and 5 Items per calendar month. However, in our sole

discretion, we may allow transactions that exceed these limits. We may temporarily reduce your limits below these disclosed limits without notice for security reasons. We reserve the right to modify these limits or impose limits on the number of deposits or aggregate deposit amounts that you may transmit using the Mobile Deposit Service from time to time and will notify you to the extent required by law.

We may, at our discretion, return or refuse to accept all or any part of a deposit to your Eligible Account using the Mobile Deposit Service, or suspend or terminate your use of the Mobile Deposit Service, at any time and without prior notice to you, and will not be liable for doing so even if such action causes outstanding checks, items, or other debits to your Eligible Account to be dishonored and returned.

You agree that all notices that we may be required to provide you with concerning the Mobile Deposit Service may be delivered to you by electronic mail to the last e-mail address that we have for you in our records. All of your deposits using the Mobile Deposit Service will be reflected on your account statements and in your online account activity. After your deposit has been submitted through the Mobile Deposit Service, you will receive a notice by electronic mail advising you about the status of your deposit, including whether your deposit has been approved for processing, requires further review, has been modified, or has been declined.

You agree that if you receive notice of any claim regarding the Mobile Deposit Service or any suspected errors regarding Items deposited through the Mobile Deposit Service, you shall promptly provide us with a written notice of it.

### **Mobile Deposit - Item Quality and Processing**

The image of an Item transmitted to us using the Mobile Deposit Service must be legible and must include the following information clearly readable within the image: (a) dollar amount, both numeric and written, (b) payee name, (c) drawer signature, (d) date, (e) check number, (f) account number, (g) routing and transit number, (h) magnetic ink character recognition ("MICR") line, and (i) endorsement. If the electronic files or images transmitted to us with respect to any Item do not comply with our or our processor's requirements for content or format, we may, in our sole discretion transmit the Item and data in the form received from you or return the Item and the data to you unprocessed and charge back your Eligible Account. For each Item that we determine is eligible for processing, we will create a substitute check that we will present, directly or indirectly, to the paying bank on which the original paper check was drawn, or at or through which the paper check is payable, and include the Item in an electronic file for presentment, directly or indirectly, to the paying bank on which the original paper check was drawn.

### **Mobile Deposit - Warranties**

You represent and warrant to us that:

- Before you scan any Item, you shall properly endorse all Items with both your signature and the restrictive endorsement that states "For Mobile Deposit to The Berkshire Bank Only," or as otherwise instructed by us.
- Any image that we receive from you accurately and legibly represents all of the information on the front and back of the Item as originally drawn.
- The information that you transmit to us corresponding to an Item contains a record of all applicable MICR-line information required for a substitute check and the accurate amount of the Item.



- No person will receive a transfer, presentment, or return of, or otherwise be charged for, the Item (either the original Item, or a paper or electronic representation of the Item) such that the person will be asked to make payment based on an Item that has already been paid.
- You will not redeposit through this Mobile Deposit Service or at the Bank any Item previously deposited and returned to you unless we advise you otherwise.
- You will not present the original Item, or any image or substitute check created from the Item for payment at any other financial institution.
- You will employ commercially reasonable security measures and firewalls sufficient to protect transmissions and storage to ensure no unauthorized access or duplicate presentment.
- You will use the Mobile Deposit Service only to transmit Items that originated as paper Items.
- You will not use the Mobile Deposit Service to scan and deposit Items payable to any person or entity other than you, or for double endorsed checks.
- You will not use the Mobile Deposit Service to scan and deposit Items containing obvious alteration to any of the fields on the front of the Item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the Item is drawn.
- You will not use the Mobile Deposit Service to scan and deposit Items previously converted to a substitute check.
- You will not use the Mobile Deposit Service to scan and deposit Items that are remotely created checks, electronically created items, or unsigned checks.
- You will not use the Mobile Deposit Service to scan and deposit Items not payable in United States currency or international checks.
- You will not use the Mobile Deposit Service to scan and deposit traveler's checks, U.S. savings bonds, U.S. postal money orders, MoneyGram checks, or cash.
- You will not use the Mobile Deposit Service to scan and deposit Items dated more than 6 months prior to the date of deposit or post-dated checks.
- You shall use the Mobile Deposit Service for your personal or internal business purposes and will comply with this Agreement and all laws, rules, and regulations applicable to you in your use of the Mobile Deposit Service.
- You will only transmit Item(s) that are drawn on or payable at or through banks located within the United States, with a valid ABA routing number on the MICR line of the Item.
- If you are scanning Items from a location outside of the United States, such authorization covers the cross-border transmittal of the Item.
- You agree that if you violate any of the terms and conditions contained in this Agreement, we may use such actions as a basis to disable your access to or terminate your use of the Mobile Deposit Service or to terminate your account relationship with us.
- Your warranties under this section shall survive termination of this Agreement.

### **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 available funds or available credit in your Transfer from Account to cover the transfer on the date of the request. If there are insufficient 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 rejected.

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 contained in our Account Agreement and Disclosures. If you open a new Eligible Account after enrolling in *BerkOnline*®, you must request, in writing, 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), basic banking 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.

## **Zelle Network® Standard Terms**

### **1. Description of Services**

(a) The Zelle Network® (“Zelle”) is a convenient way to send and receive money with others you trust. Zelle enables you to send and receive money with customers who are enrolled with us or with another financial institution that partners with Zelle (each, a “User”) using aliases, such as e-mail addresses, mobile phone numbers, or other unique identifiers (the “Service”). We will refer to financial institutions that have partnered with Zelle as “Network Financial Institutions.”

(b) Zelle provides no deposit account or other financial services. Zelle neither transfers nor moves money. You may not establish a financial account with Zelle of any kind. All money will be transferred by a Network Financial Institution.

(c) THE SERVICE IS INTENDED TO SEND MONEY TO FRIENDS, FAMILY, AND OTHERS YOU TRUST. YOU SHOULD NOT USE THE SERVICE TO SEND MONEY TO RECIPIENTS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST.

### **2. Eligibility and User Profile**

When you enroll to use the Service you agree to the terms and conditions of this Agreement. You represent that you have the authority to authorize debits and credits to the enrolled bank account.

You agree that you will not use the Service to send money to anyone to whom you are obligated for tax payments, payments made pursuant to court orders (including court-ordered amounts for alimony or child support), fines, payments to loan sharks, gambling debts, or payments otherwise prohibited by law, and you agree that you will not use the Service to request money from anyone for any such payments. You agree that you will not authorize a third party to use the Service or share your credentials with a third party to use the Service on your behalf except in legally authorized situations such as legal guardianship or pursuant to a power of attorney. Zelle and we reserve the right to terminate, suspend, or limit your access to or use of the Service at any time and without prior notice, including for reasons involving your use of the Service at any Network Financial Institution which may be deemed to be illegal, improper, brand damaging, or potentially exposing us, Zelle, or the financial system to risk.

The Service is intended for personal, not business or commercial use. You agree that you will not use the Service to send or receive payments in connection with your business or commercial enterprise. We reserve the right to decline your enrollment if we believe that you are enrolling to use the Service with your business account or to receive business or commercial payments. We further reserve the right to suspend or terminate your use of the Service if we believe that you are using the Service for business or commercial purposes, or for any unlawful purpose.

**Content Standards:** You agree that you will not use the Service in any way, or upload or provide content or otherwise post, transmit, distribute, or disseminate through the Service any material, that: (a) is false, misleading, unlawful, obscene, indecent, lewd, pornographic, defamatory, libelous, threatening, harassing, hateful, abusive, or inflammatory; (b) encourages conduct that would be considered a criminal offense or gives rise to civil liability; (c) breaches or infringes any duty toward or rights of any person or entity, including rights of publicity, privacy, or intellectual property; (d) contains corrupted data or any other harmful, disruptive, or destructive files; (e) advertises products or services competitive with Zelle, as determined by Zelle in its sole discretion; or (f) in Zelle or our sole judgment, is objectionable, restricts or inhibits any person or entity from using or enjoying any portion of the Service, or which may expose us, Zelle, or our respective affiliates or customers to harm or liability of any nature.

Although neither we nor Zelle have any obligation to monitor any content, both we and Zelle have absolute discretion to remove content at any time and for any reason without notice. We and Zelle may also monitor such content to detect and prevent fraudulent activity or violations of the terms and conditions. You understand that by using the Service, you may be exposed to content that is offensive, indecent, or objectionable. We and Zelle are not responsible for, and assume no liability, for any content, including any loss or damage to any of your content. We and Zelle make no representation or warranty that content uploaded to a User profile accurately identifies a particular User of the Service.

The Service may include functionality for you to use a unique alpha-numeric identifier to your registered User profile to be used in lieu of your mobile phone number or e-mail address when sending, receiving, or requesting money, which will be your Zelle tag. Each Zelle tag must have an eligible U.S. mobile phone number associated with it and there will be a limit on the number of Zelle tags you may use. Your Zelle tag must meet the Content Standards. You may not select a Zelle tag that misleads or deceives other Users of the Service as to your identity, or otherwise. Although neither we nor Zelle have any obligation to monitor User Zelle tags, both we and Zelle have absolute discretion to remove a User Zelle tag at any time and for any reason without notice. We and Zelle may require you to change your Zelle tag in our sole discretion, and we may elect

to make a Zelle tag unavailable to you, without any liability to you. We and Zelle may also monitor User Zelle tags to detect and prevent fraudulent activity or violations of the terms and conditions. You understand that by using the Service, you may be exposed to a Zelle tag that is offensive, indecent, or objectionable. We and Zelle are not responsible for, and assume no liability, for any User Zelle tags, including any loss or damage caused thereby. We and Zelle make no representation or warranty that a User Zelle tag accurately identifies a particular User of the Service. We respect the intellectual property of others and require that users of the Service comply with relevant intellectual property laws, including copyright and trademark laws. We may, in appropriate circumstances and at our discretion, limit or terminate the use of our products or services for users who use or publish content on the Service that is subject to intellectual property rights claims. We reserve the right to limit your Zelle use to an e-mail address or mobile phone number that you provided to us.

### **3. Consent to Use and Disclose Personal Information (Including Account Information)**

We may disclose information to third parties about your account or the funds you send or receive:

- (a) As necessary to initiate or complete transfer transactions, to process transfer transactions, or to verify the existence and condition of your account.
- (b) As necessary in connection with offering the Service.
- (c) In connection with the investigation of any claim related to your account or the funds you send or receive.
- (d) To comply with government agency or court orders.
- (e) In accordance with your written permission.
- (f) As otherwise permitted by the terms of our Privacy Policy.

### **4. Privacy and Information Security**

We make security and the protection of your information a top priority. You can access our Privacy Policy at [www.berkbank.com/privacy.php](http://www.berkbank.com/privacy.php) which is incorporated into and made a part of this Agreement by this reference.

### **5. Wireless Operator Data**

We or Zelle® may use information on file with your wireless operator to further verify your identity and to protect against or prevent actual or potential fraud or unauthorized use of the Service. By using the Service, you authorize your wireless carrier to use or disclose information about your account and your wireless device, if available, to Zelle or its service provider for the duration of your business relationship, solely to help them identify you or your wireless device and to prevent fraud.

### **6. Enrolling for the Service**

- (a) You must provide us with an e-mail address that you regularly use and intend to use regularly (*i.e.*, no disposable e-mail addresses) and/or a permanent U.S. mobile phone number that you intend to use for an extended period of time (*i.e.*, no “burner” numbers). You may not enroll in the Service with a landline phone number, toll-free number, Google Voice number, or Voice over Internet Protocol.
- (b) Once enrolled, you may: (i) authorize a debit of your account to send money to another User either at your initiation or at the request of that User; and (ii) receive money from another User

either at that User's initiation or at your request, subject to the conditions of the Section below titled "Requesting Money."

(c) If at any time while you are enrolled, you do not send or receive money using the Service for a period of 18 consecutive months, we may contact you and/or take other steps to confirm that the U.S. mobile phone number or e-mail address that you enrolled still belongs to you. If we are unable to confirm that you are the owner of the mobile phone number or e-mail address, or we receive information that you are not the owner of the mobile number or e-mail address, then you understand that we may cancel your enrollment and you will not be able to send or receive money with the Service until you enroll again.

(d) Once enrolled, a Z logo will appear on your profile for each U.S. mobile number and/or e-mail address that you have enrolled with Zelle. The Z logo will be displayed to other Users to aid them in determining which of your U.S. mobile numbers or e-mail addresses should be used to send money with Zelle. If a User sends you money using a different U.S. mobile number or e-mail address that they may have for you (one that is not already enrolled), you will receive a message with instructions on how to enroll it with Zelle.

(e) If you enroll for the Service and select to use a Zelle tag, the mobile phone number associated with your User profile will be used as the contact method for communication related to the Service and must meet the requirements described herein.

## **7. Consent to E-mails and Automated Text Messages**

By participating as a User, you represent that you are the owner of the e-mail address, U.S. mobile phone number, Zelle tag, and/or other alias you enrolled, or that you have the delegated legal authority to act on behalf of the owner of such e-mail address, U.S. mobile phone number, Zelle tag and/or other alias to send or receive money as described in this Agreement. You consent to the receipt of e-mails or text messages from us, from Zelle, from other Users that are sending you money or requesting money from you, and from other Network Financial Institutions or their agents regarding the Services or related transfers between Network Financial Institutions and you. You agree that we may, Zelle may or either of our agents may use automatic telephone dialing systems in connection with text messages sent to any mobile phone number you enroll. You further acknowledge and agree:

(a) You are responsible for any fees or other charges that your wireless carrier may charge for any related data, text or other message services, including without limitation for short message service. Please check your mobile service agreement for details or applicable fees.

(b) You will immediately notify us if any e-mail address or mobile phone number you have enrolled or is used as a Contact Method for a Zelle tag is (i) surrendered by you, or (ii) changed by you.

(c) In the case of any messages that you may send through either us or Zelle or that we may send or Zelle may send on your behalf to an e-mail address or mobile phone number, you represent that you have obtained the consent of the recipient of such e-mails or automated text messages to send such e-mails or text messages to the recipient. You understand and agree that any e-mails or text messages that we send or that Zelle sends on your behalf may include your name.

(d) Your wireless carrier is not liable for any delay or failure to deliver any message sent to

or from us or Zelle, including messages that you may send through us or through Zelle or that we may send or Zelle may send on your behalf.

(e) To cancel text messaging from us, send STOP to 53608. For help or information regarding text messaging, send HELP to 53608 or contact our operations department at (212) 785-8499 or BerkOnline@berkbank.com. You expressly consent to receipt of a text message to confirm your "STOP" request.

(f) Supported Carriers: All mobile carriers.

## **8. Receiving Money; Money Transfers by Network Financial Institutions**

Once a User initiates a transfer of money to your e-mail address or mobile phone number enrolled with the Service, you have no ability to stop the transfer. By using the Service, you agree and authorize us to initiate credit entries to the bank account you have enrolled.

Most transfers of money to you from other Users will occur within minutes. There may be other circumstances when the payment may take longer. For example, in order to protect you, us, Zelle, and the other Network Banks, we may need or Zelle may need additional time to verify your identity or the identity of the person sending the money. We may also delay or block the transfer to prevent fraud or to meet our regulatory obligations. If we delay or block a payment that you have initiated through a request for money, we will notify you in accordance with your User preferences (*i.e.*, e-mail, push notification).

If you are receiving a payment from a business or government agency, your payment will be delivered in accordance with both this Agreement and the procedures of the business or government agency that is sending you the payment.

We have no control over the actions of other Users, the Network Operator or other Network Financial Institutions that could delay or prevent a transfer of money to you.

## **9. Sending Money; Debits by Network Financial Institutions**

You may send money to another User at your initiation or in response to that User's request for money. You understand that use of this Service by you shall at all times be subject to (i) this Agreement, and (ii) your express authorization at the time of the transaction for us to initiate a debit entry to your bank account. You understand that when you send the payment, you will have no ability to stop it. You may only cancel a payment if the person to whom you sent the money has not yet enrolled in the Service with the e-mail address or U.S. mobile number to which you initiated the payment. If the person you sent money to has already enrolled with Zelle, the money is sent directly to their bank account (except as otherwise provided below) and may not be canceled or revoked. We therefore recommend that you use the Service to send money only to people you know and trust.

In most cases, when you are sending money to another enrolled User, the transfer will occur in minutes; however, there are circumstances when the payment may take longer. For example, in order to protect you, us, Zelle, the other Network Financial Institutions, and other Zelle users, we may need additional time to verify your identity or the identity of the person receiving the money. If you are sending money to someone who has not enrolled as a User with Zelle, they will receive a text or e-mail notification instructing them on how to enroll to receive the money. You understand and acknowledge that a person to whom you are sending money and who is not

enrolling as a User may fail to enroll with Zelle, or otherwise ignore the payment notification, and the transfer may not occur.

The money may also be delayed, or the transfer may be blocked to prevent fraud or comply with regulatory requirements. If we or Zelle delay or block a payment that you have initiated, we will notify you in accordance with your User preferences (*i.e.*, e-mail, push notification).

Neither we nor Zelle have control over the actions of other Users or other Network Financial Institutions that could delay or prevent your money from being delivered to the intended User.

## **10. Liability**

Neither we nor Zelle shall have liability to you for any transfers of money, including without limitation, (i) any failure, through no fault of us or Zelle to complete a transaction in the correct amount, or (ii) any related losses or damages. Neither we nor Zelle shall be liable for any typos or keystroke errors that you may make when using the Service.

THE SERVICE IS INTENDED FOR SENDING MONEY TO FAMILY, FRIENDS, AND OTHERS WHOM YOU TRUST. YOU SHOULD NOT USE ZELLE TO SEND MONEY TO PERSONS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST. ZELLE DOES NOT OFFER PURCHASE PROTECTION FOR AUTHORIZED PAYMENTS MADE THROUGH THE SERVICE (FOR EXAMPLE, IF YOU DO NOT RECEIVE THE GOODS OR SERVICES THAT YOU PAID FOR, OR THE GOODS OR SERVICES THAT YOU RECEIVED ARE DAMAGED OR ARE OTHERWISE NOT WHAT YOU EXPECTED). REIMBURSEMENT IS AVAILABLE FOR UNAUTHORIZED TRANSACTIONS OR TRANSACTIONS RESULTING FROM CERTAIN QUALIFYING IMPOSTER SCAMS. CONTACT US TO DISPUTE A TRANSACTION.

## **11. Send Limits**

You may not make transfers in excess of any of the following limits in the aggregate from all your combined accounts registered with the Service. Transfers may be made in amounts up to \$1,000 per transaction. There is a processing day aggregate dollar limit of \$1,000, and a processing day aggregate transaction limit of 5 transactions. There is a processing week aggregate dollar limit of \$7,000, and a processing week aggregate transaction limit of 10 transactions. There is a calendar processing month aggregate dollar limit of \$28,000, and a calendar processing month aggregate transaction limit of 20 transactions.

We reserve the right to change, from time to time, the dollar amount of transfers you are permitted to make using the Service without prior notice to you. All transfer limits are subject to temporary reductions to protect the security of customer accounts and/or the transfer system. At our discretion, we may refuse to process any transfer transaction that exceeds any of the above limits. In this case, you are responsible for making alternative arrangements or rescheduling the payment or transfer.

## **12. Requesting Money**

You may request money from another User. You understand and acknowledge that Users to whom you send payment requests may reject or ignore your request. Neither we nor Zelle guarantee that you will receive money from other Users by sending a payment request, or that you will receive the amount that you request. Neither we nor Zelle accept responsibility if the other User rejects or

ignores your request or sends you an amount that is less than you request. If a User ignores your request, we may decide or Zelle may decide, in our discretion, that we will not send a reminder or repeat request to that User.

By accepting this Agreement, you agree that you are not engaging in the business of debt collection by attempting to use the Service to request money for the payment or collection of an overdue or delinquent debt; to request money that is owed to another person; or to collect any amounts that are owed pursuant to a court order. You agree to indemnify, defend and hold harmless Zelle, its owners, directors, officers, agents, and Network Financial Institutions from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary, and indirect damages), and reasonable attorney's fees, resulting from or arising out of any request for money that you send that is related to overdue or delinquent amounts.

You agree to receive money requests from other Users, and to only send requests for legitimate and lawful purposes. Requests for money are solely between the sender and recipient and are not reviewed or verified by us or by Zelle. Neither we nor Zelle assume responsibility for the accuracy or legality of such requests and do not act as a debt collector on your behalf or on behalf of the sender of a request for money.

We reserve the right, but assume no obligation, to terminate your ability to send requests for money in general, or to specific recipients, if we deem such requests to be potentially unlawful, abusive, offensive or unwelcome by the recipient.

### **13. Transaction Errors**

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, to submit fund transfer instructions on your behalf. 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 agree to accept full responsibility for losses resulting from any of your errors, duplication, ambiguities, or fraud in the information that you provide to us.

The periodic account statements that we send or make available to you will reflect all transfer transactions on your account and will remain the official record of your account or its activity. You may also review transfer transactions through *BerkOnline*®. Our records, kept in the regular course of business, shall be presumed to accurately reflect the content of your instructions to us, and in the absence of manifest error, will be binding and conclusive.

Neither we nor Zelle offer purchase protection for the purchase of goods and/or services (*e.g.*, coverage for non-receipt, damage, or "not as described" claims related to the purchase of such goods and/or services). The Service is not intended for the purchase of goods from retailers, merchants, or the like.

In case of errors or questions about any transfer transaction, or if you think your statement is wrong, or if you need more information about a transfer listed on the statement or receipt, call us at (212) 785-8499, or write us at The Berkshire Bank, Operations Department, 5 Broadway, New York, NY 10004, as soon as you can.

### **14. Your Liability for Unauthorized Transfers**

If you permit other people to use the Service or your access device (including password), you are responsible for any transfer transactions they authorize from your accounts. If you believe that



your access device (including password) has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, notify us AT ONCE, by calling (212) 785-8499, or writing to us at The Berkshire Bank, Operations Department, 5 Broadway, New York, NY 10004.

**For full details of the Consumer Electronic Fund Transfer Act Disclosures relating to personal accounts, refer to Section G of the Bank's Account Agreement and Disclosures, which can be accessed by visiting our Website at [www.berkbank.com](http://www.berkbank.com).**

#### **15. Liability for Failure to Complete Transfers**

If we do not complete a transfer to or from your account on time or for the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- 1) If, through no fault of ours, you do not have enough money in your account to make the transfer.
- 2) If the transfer would go over the credit limit on your overdraft line.
- 3) If the ATM where you are making the transfer does not have enough cash.
- 4) If the terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- 5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- 6) There may be other exceptions stated in our agreement with you.

#### **16. Fees**

There are no fees charged by us for your use of Zelle. However, our Account fees are listed on our Schedule of Fees and Service Charges, and you agree to pay all the fees we charge in connection with the use of your Account.

#### **17. Use of Our Online Banking Site and/or Mobile App**

You agree to access this website and/or mobile app in compliance with our *BerkOnline*® Online Banking Agreement, which are available at [www.berkbank.com](http://www.berkbank.com) and incorporated into and made part of this Agreement by this reference.

#### **18. Cancellation of the Service**

You may cancel the Service at any time by calling (212) 785-8499 or by notifying us in writing. Any cancellation will be effective only for transfer transactions that we receive after the cancellation is effective, which may take up to 3 Business Days. By canceling the Service, any pending, repeating, and future dated transfers, will also be terminated, however any transfer that is in process cannot be cancelled by you. When you cancel the Service, you will no longer be able to access or use the Service and you will not receive a refund of service fees, if any. When you cancel the Service, it will not cancel your other online services or your account relationships, if any, with us. Your obligations and liabilities in this Agreement will survive termination for any transfer transactions that we receive before the termination or cancellation is effective.

#### **19. Right to Terminate Access**

We may terminate, suspend, or limit your access privileges to use of the Service, in whole or part, at any time for any reason, with or without cause, and without notice, including for reasons

involving your use of the Service which we may deem to be illegal or potentially brand damaging, and when you no longer have an eligible account at 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. If your account is not in good standing, that account will not be eligible to be used in Zelle transfer transactions. We may determine other eligibility criteria in our sole discretion. We also reserve the right to terminate or suspend our participation in the Zelle network or with a particular financial institution at any time.

## **20. Disclaimer of Warranties**

EXCEPT AS OTHERWISE PROVIDED HEREIN, AND SUBJECT TO APPLICABLE LAW, NEITHER WE NOR ZELLE MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR ENDORSEMENTS WHATSOEVER WITH RESPECT TO THE SERVICE. WE AND ZELLE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SERVICE DESCRIBED OR PROVIDED. NEITHER WE NOR ZELLE WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, INVULNERABLE TO CYBER ATTACK, OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS.

## **21. Limitation of Liability**

EXCEPT AS OTHERWISE PROVIDED HEREIN AND SUBJECT TO APPLICABLE LAW, IN NO EVENT WILL ZELLE, ITS OWNERS, DIRECTORS, OFFICERS, AGENTS, OR NETWORK FINANCIAL INSTITUTIONS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES ARISING OUT OF (I) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY THE SERVICE; (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SERVICES DESCRIBED OR PROVIDED; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (IV) ANY OTHER MATTER RELATING TO THE SERVICES DESCRIBED OR PROVIDED, EVEN IF ZELLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE ZELLE SERVICE OR WITH THE TERMS OF THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE.

IN THOSE STATES WHERE THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES MAY NOT APPLY, ANY LIABILITY OF ZELLE, ITS OWNERS, DIRECTORS, OFFICERS, AND AGENTS, OR THE NETWORK FINANCIAL INSTITUTIONS LIABILITY IN THOSE STATES IS LIMITED AND WARRANTIES ARE EXCLUDED TO THE GREATEST EXTENT PERMITTED BY LAW, BUT SHALL, IN NO EVENT, EXCEED ONE HUNDRED DOLLARS (\$100.00).

## **22. Indemnification**

You acknowledge and agree that you are personally responsible for your conduct while using the Service, and except as otherwise provided in this Agreement, you agree to indemnify, defend and

hold harmless Zelle, its owners, directors, officers, agents, and Network Financial Institutions from and against all claims, losses, expenses, damages, and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, errors, or inability to use the Service, or any violation by you of the terms of this Agreement.

### **23. Governing Law; Choice of Law; Severability**

This Agreement is governed by and interpreted in accordance with the laws of the State of New York. You consent to the exclusive 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. You consent to have any dispute regarding transactions submitted to the Commercial Division of the Supreme Court of the State of New York, New York County, if the dispute is within the jurisdiction of the Commercial Division.

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remainder of this Agreement shall remain valid and enforceable.

### **24. Miscellaneous**

Subject to the terms of this Agreement, the Services are generally available 24 hours a day, seven days a week with the exception of outages for maintenance and circumstances beyond the control of us or Zelle. Live customer service generally will be available Monday through Friday, excluding US bank holidays.

Zelle and the Zelle related marks are wholly owned by Early Warning Services, LLC and are used herein under license.

### **Bill Pay**

Berk Bill Pay service is available for individuals or businesses with a *BerkOnline*® online banking account and requires separate enrollment. By enrolling in this service, you acknowledge that you request that your online bill payments be processed by an independent third party, and that the Bank has no responsibility for the completion or accuracy of transactions performed by you through this service.

### **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 you provide the Instructions 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 from ever asserting such discrepancy against us and we shall not be liable for any losses or interest resulting from your failure to provide such notice. With *BerkOnline*® you may receive monthly statements by e-mail instead of U.S. Mail by clicking on e- Statements the next time you log-in to

activate this service. If you no longer wish to have e-Statements, you may cancel via *BerkOnline*® as well.

### **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. 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 Bank official check, 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 Bank official check; (3) the item in question is a postdated item; or (4) the item was not stoppable or was a blank check, or check was payable to cash.

### **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 onto 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.

### **E-mail alerts**

E-mail alerts can be set up within *BerkOnline*® to receive an e-mail for a high or low balance or if a credit or debit transaction is made on the account. Generally, these alerts are generated once per day and not necessarily at the time of the transaction.

### **Charges**

We do not charge any fees for using *BerkOnline*® or Mobile Banking. 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 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. 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.

**This section applies to Consumer Electronic Fund Transfers governed by Regulation E.**

**NOTICE IF YOU LOSE YOUR ACCESS DEVICE OR IF YOU THINK THERE IS AN UNAUTHORIZED ELECTRONIC FUND TRANSFER**

Tell us AT ONCE if you believe your User ID, Password, and one-time PIN has been lost or stolen, or if you believe that an EFT has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your User ID and Password, or other transfer without your permission, you can lose no more than \$50 if someone used your User ID and Password without your permission or made any other transfer without your permission.

If you do NOT tell us within 2 business days after you learn of an unauthorized EFT, or within 2 business days after the loss or theft of your User ID and Password, and we can prove we could have stopped someone from using your User ID and Password without your permission, or making any other unauthorized EFT covered by this Section, if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code, or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

If you believe your User ID and Password has been lost or stolen, or if you are aware of any unauthorized transfer, call us at (212) 785-8499, or write to us at The Berkshire Bank, Operations Department, 5 Broadway, New York, New York 10004.

#### **Error resolution notice**

In case of errors or questions about your electronic transfers, 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 or receipt is wrong, or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement in which the problem or error appeared.

- (1) Tell us your name and account number.
- (2) Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send 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 will correct any error 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 credit your account within 10 business days for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. We will tell you about 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 used in our investigation.

**For full details of the [Consumer Electronic Fund Transfer Act Disclosures, relating to personal accounts, refer to Section G of the Bank's Account Agreement and Disclosures, which can be accessed by visiting our Website at \[www.berkbank.com\]\(http://www.berkbank.com\).](#)**

### **Amendments**

We may change the terms of this Agreement, including fees and features of your account, at any time, by adding new terms or conditions, or by modifying or deleting existing ones. We may do so without advance notice unless the law requires advance notice. If we are required to notify you of a change to this Agreement, we will describe the change and its effective date either (i) by a message within your account statement; (ii) by posting it on [berkbank.com](http://berkbank.com); (iii) by sending you an e-mail message; (iv) by directing you to a branch for the content of any change of the revised Agreement; or (v) by otherwise making the change available to you. If the law requires a different method of giving notice, we will use a method that the law requires. You can obtain a copy of the current version of this Agreement anytime at [berkbank.com](http://berkbank.com) or by requesting it from your branch. Continuing to maintain or use your account after the effective date of any change is considered your consent to the change. We will mail or deliver a notice to you at least 30 days before any change is effective if the change would result in (i) an increase in fees; (ii) an increase in your liability; (iii) a reduction in the types of available electronic fund transfers ("EFTs"); or (iv) stricter limitations on the frequency or dollar amount of transfers that you may make. We are not required to give you prior notice if an immediate change is necessary to maintain or restore the security of *BerkOnline*®, your account, or our EFT system. If we make such a change permanent and disclose to you that it will not jeopardize the security of your account or our system, we will notify you in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

### **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 written 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. 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 non-personal accountholders, you are responsible for all transfers which are authorized using your User ID, Password, and one-time PIN. If you permit other persons to use *BerkOnline*® or your User ID and Password, you are responsible for any transactions they authorize. You assume the entire risk for the fraudulent, unauthorized, or otherwise improper use of your User ID and Password. We shall be entitled to rely on the genuineness and authority of all Instructions received by us when accompanied by such User ID and Password, and to act on such Instructions. 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

### **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 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 we have reasonable cause not to honor for our or your protection; (7) if your *BerkOnline*® access has been suspended; (8) if the transaction would violate any applicable provision of any risk control program or applicable policies, procedures or practices, or government regulations; or (9) 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 User ID, Password, and one-time PIN, unless you prove that your User ID, Password, and one-time PIN was wrongfully used by one of our employees or by a person who obtains access to our records and wrongfully obtains your User ID, Password, and one-time PIN from us. We will not be liable if you or any person you give your User ID, Password, and one-time PIN to, or who obtains your User ID, Password, and one-time PIN from or through you, directly or indirectly, contributes to the event which causes the loss.

### **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.



## **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, or viewing our Account Agreement and Disclosures 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. We shall not be liable for any damages because we terminate, suspend, or limit your access privileges to *BerkOnline*®. 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. This Agreement continues to apply to your account and issues relating to your account even after your *BerkOnline*® access is terminated.

### **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 require 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 the 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 by 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 Operations Department 5 Broadway New York, New York 10004
Call us at:	(212) 785-8499
E-mail us at:	BerkOnline@berkbank.com

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

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Accountholder Signature

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Date

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Accountholder Signature

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Date