

## Consumer eBanking Disclosure Statement and Agreement

### GENERAL AGREEMENT

This eBanking Disclosure Statement and Agreement (the “**Agreement**”) identifies the terms and conditions that govern the use of National Capital Bank eBanking, Mobile Banking, Bill Payment, Mobile Deposit Service and Zelle Transfer Service (the “**Service**”). You agree that the use of the Service is subject to your Account Agreement and any other applicable agreements you have with us. In the event of a conflict between agreements, this Agreement will control the use of the Service. Any disputes arising from the use of this Service or this Agreement will be handled in accordance your Account Agreement. We reserve the right to modify, add, or remove portions of the Service at any time. This Agreement is subject to change at any time. We will notify you of any material change in these terms via email or letter. Your continued use of the Service will be deemed to be and constitute your acceptance of any such changes to the Service and this Agreement.

### DEFINITIONS OF TERMS

The terms “**you**” and “**your**” refer to users of the Service.

The terms “**we**”, “**us**” and “**our**” refer to either National Capital Bank, a financial institution in the District of Columbia.

The term “**Account(s)**” refers to any demand deposit or savings account(s), including a money market account, certificate of deposit or loan account, which you maintain with us and which can be accessed through the Service.

The term “**Agreement**” refers to this eBanking Disclosure Statement and Agreement, and all amendments and modifications hereto.

The term “**Alert**” refers to an electronic message we send to you that is triggered by a predetermined event like an electronic statement being made available or a Payment being made through the Service.

The term “**Available Account Balance**” is defined in your Account Agreement.

The term “**Bill Payment Service**” refers to the Service that allows you to pay your bills electronically.

The term “**Business Day**” refers to Monday through Friday, excluding observed federal holidays, on which we are open and providing substantially all of our services.

The term “**Due Date**” refers to the date the Merchant has designated for payment and should not be adjusted for any grace period or late date accommodations the Merchant may provide. The term “**email**” refers to a system or means to deliver messages to an electronic mail address. For the purposes of this Agreement, email does not include messages sent or received entirely through the Service.

The term “**Eligible Item**” refers to a paper “**check**” as that term is defined in Federal Reserve Regulation CC (“**Reg. CC**”) and that otherwise fulfills the requirements of this Agreement. When the image of the check is transmitted to us for subsequent presentment and collection, it shall thereafter be an “**item**” within the meaning of Articles 3 and 4 of the Uniform Commercial Code as adopted by the District of Columbia.

Note that any check you attempt to deposit using the Service is subject to verification by us.

The term “**Expedited Payment Service**” refers to an optional feature of the Service for the same day delivery of a Payment to participating Merchants for a fee. Please refer to our Fee Schedule.

The term “**External Transfer**” refers to the movement of money between your Account(s) with us and your account(s) at another financial institution, provided you have successfully completed the enrollment process for those accounts held at other financial institutions prior to initiating an External Transfer request.

The term “**Ineligible Item**” refers to the following types of checks or items which shall be considered ineligible for the Mobile Deposit Service:

- Checks or items payable, in whole or in part, to any person or entity other than the person or entity that owns the Account that the check is being deposited into;
- Checks or items containing an obvious alteration, 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 check or item is drawn;
- Checks or items previously presented for payment electronically or converted to a substitute check, as defined in Reg. CC;
- Checks or items drawn on a financial institution located outside the United States;
- Checks or items that are remotely created checks, as defined in Reg. CC;
- Checks or items not payable in United States currency;
- Checks or items dated more than 6 months prior to the date of deposit;
- Checks or items prohibited by our current procedures relating to the Service or which are otherwise not acceptable under your Account Agreement;
- Checks or items payable on sight or payable through drafts, as defined in Reg. CC;
- Checks or items with any endorsement on the back other than that specified in this Agreement;
- Checks or items that have previously been submitted through the Service or through a remote deposit capture service offered at any other financial institution; and
- Checks or items that are drawn on or otherwise issued by the United States Treasury Department.

The term “**Merchant**” refers to any individual, business, or not-for-profit entity that you choose to pay through the Bill Payment Service, subject to the “requirements & restrictions” listed in the Agreement.

The term “**MICR**” refers to Magnetic Ink Character Recognition and describes the special numbers and symbols on the bottom of a check used to expedite its delivery and posting.

The term “**Mobile Banking Service**” refers to the portion of the Service that allows you to view balances and conduct transactions on your mobile device.

The term “**Mobile Deposit**” refers to a method for capturing the image of a check or other eligible item and depositing it to your enrolled Account via an approved access device, such as a smart phone, using software provided by us or by an authorized agent of ours, subject to certain requirements which may be imposed by us from time to time. Mobile Deposit is an optional feature, but, if implemented by you, it is considered part of the Service.

The term “**Mobile Deposit Service**” refers to that portion of the Service for making a Mobile Deposit.

The term “**Password**” refers to the code or other security technique that you use to access the Service.

The term “**Paying Bank**” refers to the financial institution on which a check is drawn and through which it is payable.

The term “**Payment**” refers to the transfer of funds from one of your Accounts to a Merchant through the Service.

The term “**Service Hours**” refers to the times during which we or our representatives are available for customer assistance. Our eClient Services Center is staffed Monday through Friday from 9:00 a.m. – 4:00 p.m., Eastern Time, excluding federal holidays. Our eClient Services Support Line (202-546-6200) is available for technical support or to report a lost/stolen Password or unauthorized account access or use.

The term “**Software**” refers to the computer programs you and we employ to access and use the Service.

The term “**Terms and Conditions of Your Account**” refers to the agreement that governs your Account opened with us.

The term “**Zelle Transfer Service**” refers to the portion of the Service for making a person-to-person transfer using the Zelle Network. Zelle Transfer Service will be available in June 2020.

The term “**Zelle Network**” refers to a shared network between outside financial institutions and National Capital Bank, that allows for transfers of funds between you and other individuals using that network.

**PURPOSE:** The primary purpose of this Agreement is to authorize and govern banking transactions created through the use of the Service. When you use, or you permit any other person to use, the Service, you agree to the terms and conditions of this Agreement.

**AVAILABLE TRANSACTIONS:** You may use the Service to request the following transactions for Accounts that may be accessed through the Service. All transaction requests are subject to funds availability, dollar amount limits, withdrawal frequency limits, and daily cut-off times as described later in this Agreement. Scheduled and recurring transactions are subject to calendar rules which may change from time to time.

- Transfer funds on a same day basis between your Accounts with us;
- Transfer funds between your Accounts with us on a specified date in the future or on a recurring basis (e.g., weekly, bi-weekly, monthly, etc.);
- Transfer funds on a same day basis from your Account(s) with us to make a payment on a loan or line of credit you have with us;
- Initiate an External Transfer to be completed on a specified date in the future or on a recurring basis (e.g., weekly, bi-weekly, monthly, etc.);
- Obtain certain Account balance and transaction information;
- Schedule a Payment from your Account to a Merchant;
- Order us to stop payment on checks drawn by you on your Account(s) and view stop payments that are currently in place;
- View, add, or delete Alerts from a list of available options;
- Perform self-service account maintenance such as re-ordering checks, Account statements, changing statement options, changing your user ID and/or Password, managing your contact information, and managing mobile banking settings;
- Send us secure online messages regarding the Service and receive electronic messages from us;
- Make a deposit of Eligible Items by means of an approved access device with approved software;

- Use the Mobile Deposit Service and other Mobile Banking services; and
- Transfer funds person to person using the Zelle Transfer Service, once available

**USE OF PASSWORD; AUTHORIZATION:** The Password used with the Service acts as the signature of the owner of the Account. The Password identifies the user of the Service as an individual who is authorized to conduct transactions from the Account and validates the directions given. By using your Password to gain access to the Service and directing us in your use of the Service, you authorize us to follow those directions. All electronic communications that are authenticated by us will be deemed to be valid and given the same effect as written and signed paper communications.

Your Password for the Service is a method for maintaining the security of your Account. Therefore, YOU AGREE TO TAKE ALL REASONABLE PRECAUTIONS TO MAKE SURE THAT NO ONE ELSE LEARNS YOUR PASSWORD. You will be denied access to the Service if you do not enter the correct Password or other requested information. We may require you to change your Password from time to time for security reasons. We may also employ other security techniques to help us authenticate certain transactions and may elect to delay or cancel transactions that fail those security requirements. We will not be liable for any damages associated with delayed or canceled transactions due to security concerns.

**ACCOUNT REQUIREMENTS:** To enroll in the eBanking and Bill Payment Service, you must maintain at least one checking, savings, or money market Account. To enroll in the Mobile Deposit Service, you must also use an approved access device and approved software.

**ALERTS:** Alerts allow you to create a variety of automated messages for your Accounts. Each Alert has different options available, and you will be asked to select from these options upon activation of the Alerts service.

When you activate an Alert, you agree to the following:

- Alerts will be sent to the email address or message-enabled phone number you have provided to us for such Alerts. If you change your email address or message-enabled phone number, you are responsible for updating this information through the Service.
- You understand and agree that your Alerts may be delayed or prevented by a variety of factors and that we do not guarantee the delivery or the accuracy of the contents of any Alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any Alert; for any errors in the content of an Alert; or for any actions taken or not taken by you or any third party in reliance on an Alert.
- Message charges and other fees may be assessed by your phone carrier or service provider for the delivery of Alerts. These costs, if any, are your responsibility.
- Additional information about text messages (also known as SMS or Short Message Service) is contained in our "SMS Text Message Terms of Use" which is available from our website.

**ELECTRONIC MAIL:** Email and other forms of electronic messages you send to us may be delayed; therefore, if you need us to receive information concerning your Account immediately (e.g., requesting a stop payment or reporting unauthorized use of your Account), you must contact us in person at a branch or by telephone at 202-546-6200.

When using email, we shall have a reasonable period of time after receipt to act on your requests. We may also require authentication of messages received via email before acting on them, in which case we will contact you for additional information before proceeding.

**AVAILABILITY:** Transactions other than Bill Payments, External Transfers and Mobile Deposits conducted through the Service are available on the Business Day received. If your periodic statement date coincides with a transaction date, transactions conducted at or after 6:00 p.m. Eastern Time, may not be reflected until your next periodic statement.

Preauthorized transactions scheduled to be completed on a Business Day will be posted to your account as of that Business Day. Preauthorized transactions scheduled to be completed on a day other than a Business Day will be completed and posted to your account as of the next Business Day. Preauthorized transactions scheduled to be completed on a day which does not exist in a certain month (e.g., February 30th) will be completed and posted to your Account as of the last Business Day of that month.

Transactions posted to your Account as of a certain Business Day may not be reflected in Account balances displayed through the Service until the next Business Day.

**BILL PAYMENT SERVICE:** By furnishing us with the names of your Merchants and their addresses, you give us authorization to follow the Payment instructions that you provide to us. When we receive a Payment instruction for the current date or a future date, we will remit the funds to the Merchant on your behalf from the funds in your designated Account. Funds for a Payment will be withdrawn from your Account the Business Day it is scheduled by you to be sent to the merchant.

- **Requirements & Restrictions:**
  - a. We are not obligated to initiate a requested Payment if the Available Account Balance in your designated Account is insufficient to cover that Payment.
  - b. We are not responsible if a Payment cannot be made due to incomplete, incorrect, or outdated information provided by you regarding a Merchant.
  - c. Bill Payment may only be used by individuals (i.e., natural persons) and sole proprietors.
  - d. Requirements for dual signatures on checks do not apply to the Bill Payment Service.
  - e. We reserve the right to refuse to pay any Merchant to whom you may direct a Payment for any reason and without notice.
  - f. Unless we otherwise agree, Payments are limited to maximum of \$9,999 initiated to a single Merchant on a Business Day and a maximum of \$20,000 for all Merchant Payments initiated on a Business Day.
- **Merchant Limitations:** Bill Payment cannot be used for any of the following types of transactions:
  - a. Tax payments to the Internal Revenue Service or any state, local, or other government agency;
  - b. Court-ordered payments such as child support or alimony;
  - c. Payments to Merchants located outside of the United States; and
  - d. Payments for illegal goods and services or that would otherwise be unlawful under United States law.
- **Making/Scheduling Payments:** You may use the Bill Payment Service to authorize recurring Payments and non-recurring Payments. Recurring Payments are Payments that you schedule in advance to take place at substantially regular intervals in the same amount to the same Merchant.

Recurring Payments will continue until you cancel them or until a termination date you have specified is reached. Non-recurring Payments are a single, one-time Payment to a specified Merchant. Non-recurring Payments may be scheduled for initiation up to three hundred and sixty-four (364) days in advance.

Bill Payments are processed Monday through Friday at 4:00 p.m. EST, except on observed federal holidays. If you attempt to schedule a Payment to occur on a weekend or federal holiday, you will be prompted to select a different date, or the Payment will be processed on the following Business Day if it is a recurring Payment. The first Payment to a Merchant must be scheduled at least five (5) Business Days prior to the Due Date for that Payment (recurring or non-recurring) to allow adequate time for the Payment to reach the Merchant. After the first Payment is processed and we have determined whether a Merchant accepts electronic payments or requires a paper check, the Service will display a message indicating that the Merchant requires either a two (2) day lead time for an electronic payment, or a five (5) day lead time if a paper check sent by regular mail is required.

- **Changing or Deleting Payments:** Any Payment, recurring or nonrecurring, can be changed or cancelled if you access the Service prior to 4:00 p.m. EST, on the Business Day the Payment is scheduled to be initiated. For any assistance with cancelling a Payment please contact us at 202-546-6200 during our normal Service Hours at least one (1) Business Day prior to the date on which the payment is scheduled to be initiated.
- **Expedited Payments Service:** You may use the Bill Payment Service to access our Expedited Payments Service, subject to specific terms and conditions that are disclosed when you use the service, including the Expedited Payments fee.
- **Termination:** We reserve the right to terminate your use of Bill Payment at any time without prior notice to you. If, for any reason, you should want to terminate your use of our Bill Payment Service, we recommend that you cancel all future Payments and transfers at the same time you terminate the Service, either by deleting the Payments yourself or by contacting us as described below. We will delete all outstanding Payments, both non-recurring and recurring, as part of your Service termination upon receipt of proper notification.

We are not responsible for any Payment made before we have a reasonable opportunity to act on your termination notice. You remain obligated for any and all Payments made by us on your behalf through the Bill Payment Service.

Should you desire our assistance in disabling or deleting any aspect of the Bill Payment Service, your request should be directed to National Capital Bank, Attn: eClient Services, 316 Pennsylvania Avenue, S.E., Washington, DC 20003 or via email to [eServices@ncbwash.com](mailto:eServices@ncbwash.com)

**EXTERNAL TRANSFER SERVICE:** Our External Transfer Service allows you to transfer funds between your Account(s) and designated account(s) you own at another financial institution (External Account). By using our External Transfer Service, you agree to comply with the following requirements:

- a. **Ownership:** You agree that any External Account you establish is an account over which you have legal ownership at the financial institution where the account is located. You may have no more than three (3) External Accounts at one time. To establish an External Account, you will be asked to provide the routing number and account number at the external financial institution. To establish ownership of an External Account, two (2) small dollar deposits will post to each account at the external financial institution. You will need to verify the exact dollar amount of those deposits through the Service during setup.

- b. **Processing of Transfers:** We reserve the right to reject or reverse any payment instruction transmitted through the External Transfer Service, at our discretion, without liability to you, including, but not limited to:
1. transfers sent to or received from third-party accounts,
  2. transfers not consistent with United States law,
  3. transfers that are returned, reversed, or rejected by the financial institution holding your External Account.
- **Availability of Funds:** If a transfer is transmitted through the Service before 7:00 PM EST on a Business Day, the transaction will be processed on that day. Otherwise, we will consider that the transfer was made on the following Business Day. Funds coming to or from your External Account are generally available by the Business Day following the day on which the transfer was processed. Availability of funds may be delayed for new accounts.
  - **Transfer Limits:** We reserve the right to impose limits on the dollar amount(s) and/or number of items that you transmit using the External Transfer Service and to modify such limits in our sole discretion. If you attempt to initiate a transfer in excess of these limits, we may reject your transfer. If we permit you to make a transfer in excess of these limits, such transfer will still be subject to the terms of this Agreement, and we will not be obligated to allow such a transfer at other times. The current daily dollar limit is \$2,000.00 on each Business Day with an aggregate dollar limit of \$5,000.00 per calendar month. The current daily item limit is three (3) transfers and the aggregate items per month limit is twelve (12).
  - **Termination:** We reserve the right to terminate your use of External Transfers at any time without prior notice to you. If, for any reason, you should want to terminate your use of our External Transfer Service, we recommend that you cancel all future transfers and then contact us in writing at National Capital Bank, Attn: eClient Services, 316 Pennsylvania Avenue, S.E., Washington, DC 20003, or via email to eServices@ncbwash.com indicating which External Account numbers at which financial institutions you would like removed. We are not responsible for any transfer made before we have a reasonable opportunity to act on your termination notice.

## MOBILE BANKING SERVICES

- A. **MOBILE DEPOSIT SERVICE:** Our mobile remote deposit capture service allows you to make a Mobile Deposit to your enrolled Account. By using our Mobile Deposit Service, you agree to comply with the following requirements:
- **Endorsements:** You agree to restrictively endorse any check transmitted through Mobile Deposit with your signature and “For Mobile Deposit Only at National Capital Bank” or as otherwise instructed by us. We reserve the right to reject any item without proper endorsement.
  - **Image Quality:** The image of a check transmitted to us through Mobile Deposit must be legible, as determined in our sole discretion. Without limiting the foregoing, the image quality of the check or item must comply with the requirements established by the American

National Standards Institute (ANSI), the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house, or association with which we interact.

- **Processing of Items:** We reserve the right to reject any item transmitted through Mobile Deposit, at our discretion, without liability to you. In such a case, you will need to deposit the check by using other means, such as visiting one of our branches. We are not responsible for items we do not receive or that otherwise fail to meet our requirements for processing. We will send to you a confirmation when we have received an item for deposit; however, receipt of such a confirmation does not mean that the transmission was error free, complete, or will be considered a deposit and credited to your Account. We reserve the right to charge back to your Account, at any time, any item that we subsequently determine was not an Eligible Item or any item that is returned by the Paying Bank.
- **Exception Items:** On each Business Day on which we review and process your item(s), we will use commercially reasonable efforts to identify items which, in our sole discretion, are ineligible for Mobile Deposit (each, an “**Exception Item**”). “**Exception Item**” includes, without limitation, an item that: (i) is illegible or contains MICR data that is not machine-readable, (ii) was previously processed for deposit, or (iii) is drawn on a financial institution located outside the United States. We will notify you of each Exception Item through the contact information you have on file with NCB. If you want to attempt to deposit any Exception Item to your Account after it has been determined ineligible for this Service, you may do so only by depositing the original check on which the Exception Item is based or as otherwise agreed between us.
- **Availability of Funds:** If an image of an item you transmit through the Service is received and accepted before 6:00 PM Eastern Time on a Business Day, we consider that day to be the day of your deposit. Otherwise, we will consider that the deposit was made on the following Business Day. Funds from items deposited through Mobile Deposit will generally be made available in accordance with our published availability schedule; however, we may adjust when funds are made available based on credit worthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors that we, in our sole discretion, deem relevant.
- **Disposal of Transmitted Items:** Upon your receipt of a confirmation from us that we have received an item you have transmitted; you agree to retain the check for at least thirty (30) calendar days from the date of the image transmission. You must store the check securely, using precautions at least as secure as you would use to protect your own checks. After that time, you agree to prominently mark the item as “VOID” and to properly dispose of the item or otherwise render it incapable of further transmission, deposit, or presentment. During the time the retained check is available, you agree to promptly provide it, or a sufficient copy of the front and the back of the check, to us as and when requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any item, or for our audit purposes. Failure to provide an original check or a sufficient copy thereof upon request may result in the reversal of any funds previously made available based on the deposit of that item.

**Deposit Limits:** All Mobile Deposits are subject to our review and/or approval. We reserve the right to impose limits on the dollar amount(s) and/or number of items that you transmit using Mobile Deposit and to modify such limits in our sole discretion. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to



make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.

Daily Limit	\$10,000
Multi-Day Limit ( <i>rolling 20 business days</i> )	\$20,000

- **Warranties and Indemnifications:** You represent, warrant, and covenant to us that:
  - a. You will transmit only Eligible Items and will not transmit any Ineligible Items.
  - b. You will not transmit items that have been previously deposited through this Service or elsewhere.
  - c. You will not deposit or re-present the original check submitted for deposit through this Mobile Deposit Service unless that item has been determined to be an Exception Item.
  - d. All information you provide to us is accurate and true, and all images transmitted us accurately reflect the front and the back of the check at the time it was scanned.
  - e. You are not aware of any factor that may impact the collectability of an item deposited through the Service.
  - f. You will use the Service only for your own deposits.
  - g. You will comply with the terms of this Agreement.
  
- **Hardware and Software:** In order to use the Mobile Deposit Service, you must obtain and maintain, at your expense, compatible hardware and software as specified by us from time to time. We are not responsible for any third-party software you may need to use the Mobile Deposit Service. Any such software is accepted by you as is and is subject to the terms and conditions of the software agreement you enter into directly with the third-party software provider at time of download and installation.

**B.** The Zelle Network permits you to transfer money directly to other National Capital Bank customers, such as friends and family, or to individuals at other U.S. financial institutions that participate in the Zelle Network. Zelle Transfer Service will be available in June 2020.

**ACCOUNT TRANSFER LIMITS:** Transfers out of your savings account, including a money market deposit account (“MMDA”), to another account or to a third party by preauthorized, automatic, computer, or telephone transfer or by check, draft, debit card, or similar order are limited to six (6) per month in accordance with the agreement that governs the Account. These limits are imposed by federal law. If the limits are exceeded, we reserve the right to charge a fee, close the Account or reclassify the Account as a transaction account.

**STOP PAYMENTS:** You may request a stop payment on any check you have written, including checks issued to Merchants through the Bill Payment Service, by providing the information required under the Customer Service tab of the Service or by calling us at 202-546-6200 during our normal Service Hours. Our policy governing stop payments is defined in your Account Agreement.

**FEES:** We may charge a fee for an order to stop payment of a check drawn by you and for excess account transfers on savings and money market accounts, as provided in our fee schedule. For additional information, please refer to your Account Agreement.

**IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR TRANSACTIONS:** Please refer to the Error Resolution Notice provisions of your Account Agreement and your Electronic Funds Transfer Disclosure and Agreement for information about the handling of errors and questions involving this Service.

**CONSUMER LIABILITY:** It is your responsibility to notify us immediately at 202-546-6200 if you believe your Password has been lost or stolen, your Account has been accessed or used without your authorization, or someone has used your Password to access to the Service without authorization. You can call this number at any time, day or night. The limits of your liability are defined in the Electronic Funds Transfer Disclosure and Agreement.

If you disclose your Password to anyone, you assume all risks and losses associated with such disclosure. You are responsible for all transactions you authorize using the Service, as well as transactions authorized by any party to whom you have disclosed your password.

**DISCLOSURE OF ACCOUNT INFORMATION:** We may disclose information to third parties about your Accounts or the transactions you make:

- Where it is necessary to complete transactions or investigate transaction errors and verify transactions;
- In order to verify the existence and standing of your Accounts with us upon the request of a third party, such as a credit bureau or Merchant;
- In accordance with your written permission; or
- In order to comply with court orders or government or administrative agency summonses, subpoenas, orders, examinations, and escheat reports.

**DISCLAIMER OF WARRANTIES:** YOU AGREE YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT: (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE; OR (iv) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED.

**OUR LIABILITY:** If we fail to complete a transfer to or from your Account on time or in the correct amount according to our Agreement with you, our liability will be limited to the lesser of your actual loss or the amount of the transfer in question; however, we will not be liable if:

- There are insufficient funds in your Account to make the transfer through no fault of ours;
- The funds in your Account are unavailable;
- The funds in your Account are subject to legal process;
- The transaction you requested would exceed the funds in your Account plus any available overdraft line of credit;
- Your Password has been reported lost or stolen or your Service privileges have been suspended;
- We have a reason to believe that the transaction requested is unauthorized;
- The failure is due to an equipment breakdown known to you when you started the transaction;

- The failure was caused by an event not reasonably fore seeable and/or under our control, including but not limited to, acts of God, fire, floods, explosions, riots, wars, hurricanes, sabotage, terrorism, vandalism, governmental acts, injunctions, labor strikes, and electrical or computer outages, experienced by us or by our agents, despite reasonable precautions we have taken;
- You attempt to complete a transaction using the Service which is not a permissible transaction;
- The transaction would exceed security limitations on the use of the Service;
- You have not given us complete information or properly followed our procedures on how to complete the transaction; or
- The Merchant does not credit your Payment properly.

There may be other exceptions in your Account Agreement, or other agreements between us.

**LIMITATION ON OUR LIABILITY:** UNLESS OTHERWISE PROVIDED FOR IN THIS AGREEMENT OR REQUIRED BY LAW, WE WILL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES FROM THE USE OF THE SERVICES DESCRIBED IN THIS AGREEMENT, INCLUDING DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES.

WE WILL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES FROM THE USE OF THE SOFTWARE OR THE EQUIPMENT YOU USE TO ACCESS THE SERVICE, INCLUDING DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES.

**AGREEMENT ASSIGNMENT AND AMENDMENT:** We may assign this Agreement to any affiliate, parent, or other company. We may also assign or delegate certain of our rights and responsibilities under this Agreement to such third parties as we may elect.

We reserve the right to amend or cancel any of the provisions of this Agreement, including changes to any fees, costs, or assessments, by disclosing the change electronically, and, at our option, by sending you notification in addition thereto. We will provide notice 21 days in advance of any changes (or such lesser period as may be allowed by applicable law) unless an immediate change is necessary to maintain the security of the system. You may choose to accept or decline amendments, cancellations or changes by continuing or discontinuing the Accounts or Services to which these changes relate, at your option. Your continued use of the Service will signify your acceptance of any and all changes to this Agreement. We also reserve the option, in our sole judgment, to waive, reduce or reverse charges or fees in individual situations.

**SUSPENSION/CANCELLATION:** We have the right to limit, suspend or cancel your access to the Service, in whole or in part, at any time, without cause or notice. Your Service privileges may also be suspended or revoked if your Account becomes overdrawn. If the Service is suspended or cancelled, you understand that any scheduled transactions will not be made as scheduled. Suspension or cancellation shall not affect your liability or obligations under this Agreement.

Your eBanking, Mobile Deposit and Bill Payment Service remains in effect until terminated by you and/or us. You may cancel your Service at any time by notifying us of your intent to cancel in writing, or via email. This cancellation applies to your eBanking, Mobile Deposit and Bill Payment Service and does not terminate your Accounts. We recommend that you cancel any scheduled Payments prior to notifying us that you are discontinuing the Service.

**INACTIVITY:** If you do not log in for one hundred eighty (180) days or more and have no outstanding scheduled Payments or transfers through eBanking, Mobile Deposit and Bill Payment, we may cancel your Service without further notice.

**CONTACT BY NATIONAL CAPITAL BANK:** None of our employees, nor any company affiliated with eBanking, Mobile Deposit and Bill Payment Service, will contact you via email, phone or text message requesting your eBanking User ID or Password. If you are asby anyone to provide this information, please do not provide the requested information and contact us immediately at 202-546-6200.

**GOVERNING LAW:** The terms and conditions of this Agreement are governed in accordance with the choice of law provisions described in your Account Agreement.

**ENFORCEABILITY:** We may waive enforcement of any provision of this Agreement without impacting the enforceability of the remaining provisions of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any subsequent or prior breach of this Agreement. Any such waiver shall not affect our rights with respect to any other transactions or modify the terms of this Agreement.

**OWNERSHIP AND LICENSE:** You agree that we and our third-party service providers retain all ownership and proprietary rights in the Service, associated content, technology, and website(s). Your use of the Service is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Service. Without limiting the foregoing restriction, you may not use the Service: (i) in any anti-competitive manner, (ii) for any purpose which would be contrary to National Capital Bank's business interest, or (iii) to our actual or potential economic disadvantage in any aspect. You may use the Service only for personal use in accordance with this Agreement. You may not copy, reproduce, distribute, or create derivative works from the content of this Agreement and agree not to reverse engineer or reverse compile any of the technology used to provide the Service.

**ELECTRONIC RECORDS:** The use of this Service requires us to maintain an electronic record of (i) this Agreement, and (ii) your authorizations (the "Authorizations") of any electronic fund transfers from your Account that were established through the Service.

You may request that this Agreement or any Authorizations be provided to you on paper, now or at any point in the future, by contacting one of our branches, by writing us at National Capital Bank, Attn: eClient Services, 316 Pennsylvania Avenue, S.E., Washington, DC 20003, via email to [eServices@ncbwash.com](mailto:eServices@ncbwash.com) calling 202-546-6200. There will be no fee charged if you request that this Agreement or your Authorizations be provided to you on paper. You may withdraw your consent to electronic records at any time; however, should you withdraw this consent, you will no longer be eligible for the Service.

## II. Software License Agreement

In addition to the terms presented in the Agreement above, if you elect to use our Mobile Banking Application, the subsequent terms and conditions apply to your use of the Software (defined below) which makes our Mobile Banking Application and Mobile Banking Service possible. By using the Mobile Banking Service, you are agreeing to and accepting the following terms and conditions:

**GENERAL:** Access to your financial institution's services via your mobile device is powered by the mobile technology solution owned by FIS (the "Licensor"). The Licensor is not the provider of any of the financial services available to you through the Software (defined below), and the Licensor is not responsible for any of the materials, information, products or services made available to you through the Software.

**OWNERSHIP:** You acknowledge and agree that the Licensor is the owner of all rights, title and interest in and to the mobile technology solution made available to you hereunder, including but not limited to, any downloaded software and the computer programs contained therein, as well as any accompanying user documentation, and all subsequent copies, updates or versions thereof, regardless of the media or form in which they may exist (all of which is collectively referred to herein as the “**Software**”). You may not use the Software unless you have first accepted the terms of this Agreement.

**LICENSE:** Subject to the terms and conditions of this Agreement, you are hereby granted a personal, nonexclusive, nontransferable license to use the Software (in machine readable object code form only) in accordance with the terms of this Agreement and for the sole purpose of enabling you to use and enjoy the benefits of your financial institution's services made available via the Software. This is not a sale of the Software. All rights not expressly granted to you by this Agreement are hereby reserved by the Licensor. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This license may be terminated at any time, for any reason or no reason, by you or the Licensor. Upon termination, you agree to immediately destroy all copies of any Software which had been downloaded to your mobile device or otherwise in your possession or control.

**RESTRICTIONS:** You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

**UPDATES:** The terms of this Agreement will govern any updates that replace and/or supplement the original Software, unless such update is accompanied by a separate license in which case the terms of that license will govern.

**TEXT MESSAGES:** Text messaging services are provided by your financial institution and not by any other third party. You and your financial institution are solely responsible for the content transmitted through text messages sent between you and your financial institution. You must provide source indication in any text messages you send (e.g. mobile telephone number, "From" field in text message, etc.) You are responsible for any text message fees charged by your wireless carrier.

**CONSENT TO USE OF DATA:** You agree that the Licensor may collect and use technical data and related information, including but not limited to, technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services (if any) related to the Software. The Licensor may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies.

**EXPORT RESTRICTIONS:** You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear missiles, or chemical or biological weapons.

**U.S. GOVERNMENT RESTRICTED RIGHTS:** The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and

disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

**DISCLAIMER OF WARRANTY:** The software is provided on an 'as is' and 'as available' basis without warranties of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. No warranty is provided that the software will be free from defects or viruses or that operation of the software will be uninterrupted. Your use of the software and any material or services obtained or accessed via the software is at your own discretion and risk, and you are solely responsible for any damage resulting from their use. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above limitations may not apply to you.

**LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, in no event will the licensor or its affiliates or licensors be liable for any damages arising out of the use or inability to use the software, including but not limited to any general, special, incidental or consequential damages, even if advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which any claim is based. In any case, the licensor's liability arising out of the use or inability to use the software shall not exceed in the aggregate the sum of the fees paid by you for this license. Some jurisdictions do not allow the limitation or exclusion of liability for certain types of damages, so some of the above limitations may not apply to you.

**MISCELLANEOUS:** This Agreement constitutes the entire agreement between you and the Licensor concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the District of Columbia, excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of District of Columbia and you expressly consent to jurisdiction and venue thereof and therein. This Agreement and all related documentation is and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.