



1. Your Information

Use e-mail on file

Authorized Signer

E-mail Address

Current Online Banking ID (field is case sensitive)

New Enrollment  Make set-up changes

Estimated total number of checks to be deposited monthly: \_\_\_\_\_

Estimated total dollar amount of checks to be deposited monthly: \_\_\_\_\_

Estimated maximum amount of any single check deposited: \_\_\_\_\_

2. Designated Account(s)/Capture Device Information

Primary Account (See Section 7 of Online Check Deposit / Mobile Deposit Agreement for details):

Add  Remove Account Number: \_\_\_\_\_

Secondary Account(s) (if applicable):

Add  Remove Account Number: \_\_\_\_\_

Add  Remove Account Number: \_\_\_\_\_

Capture Device type:  TWAIN Compliant Personal Scanner  Network Scanner  Mobile Device  
(For more information on TWAIN compliance and to see if your Capture Device is compatible, visit [www.twain.org](http://www.twain.org))

Operating System:  Windows  Mac  Mobile

3. Signature

By signing this form, you are requesting to be enrolled in Online Check Deposit and/or Mobile Deposit at Private Bank of Buckhead or make set up changes and agree to abide by the terms and conditions set forth in the Online Check Deposit / Mobile Deposit Agreement (Version 3). Your use of Online Check Deposit and/or Mobile Deposit in connection with your account(s) constitutes your acceptance and agreement to be bound by all of the terms and conditions of your Online Check Deposit / Mobile Deposit Agreement (Version 3). Online Check Deposit and/or Mobile Deposit are subject to approval. One form per person.



Authorized Signer

Date

4. Submit Form

Mail form to: Private Bank of Buckhead  
3565 Piedmont Road, Suite 210  
Atlanta, GA 30305  
Attn: Brian McGuire

Or fax or email to: 404-264-7978  
[brianmcguire@privatebankofbuckhead.com](mailto:brianmcguire@privatebankofbuckhead.com)  
Attn: Brian McGuire



## Online Check Deposit / Mobile Deposit Agreement

This Online Check Deposit / Mobile Deposit Agreement (the "Agreement") governs the use of Private Bank of Buckhead's Online Check Deposit Service (the "Service" or "Services") by customers having personal, non-business deposit accounts with us. By submitting an application for the Services or using the Services, you agree to the terms, conditions, and disclosures in this Agreement. This Agreement supplements and amends your Personal Terms and Conditions Agreement for your Designated Account(s) ("Account Agreement").

For purposes of this Agreement, the words "we," "our," "us," "Bank" and other similar terms mean Private Bank of Buckhead. "You," "your," "user" and other similar terms refer to the person applying for or receiving the Services and anyone else authorized by that person to exercise control over his or her deposits through the Service. "Account" or "accounts" means your accounts at Private Bank of Buckhead.

### 1. Definitions

**1.1. "Authentication Method"** means the process of confirming the identity of a person that is attempting to access a system or of confirming the authenticity of a message by utilizing: 1. Something the user knows (e.g., password, PIN); 2. Something the user has (e.g., ATM card); or 3. Something the user is (e.g., biometric characteristic, such as a fingerprint).

**1.2. "Automated Clearing House" and "ACH"** mean a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on Automated Clearing House items or under rules of an Automated Clearing House association.

**1.3. "Business Day"** means every day except Saturdays, Sundays and federal holidays.

**1.4. "Check"** means a draft that is payable on demand, drawn on or payable through or at an office of a U.S. Financial Institution, whether negotiable or not, and payable to you, and includes Original Checks and Substitute Checks. Such term does not include Non-cash Items or items payable in a medium other than United States currency or drawn on a foreign financial institution. The term Check includes a traveler's check drawn on or payable through or at a bank, and a money order.

**1.5. "Check Image"** means an electronic image of an Original Check (including a Substitute Check) created by you in connection with the Service.

**1.6. "Copy"** of an Original Check means any paper reproduction of an Original Check, including:

1. A paper printout of an electronic image of the Original Check,
2. A photocopy of the Original Check, or
3. A Substitute Check.

**1.7. "Designated Account"** means your account at the Bank designated by you on our Online Check Deposit form into which the funds relating to your Check Images will be deposited. You may have more than one Designated Account.

**1.8. "Image Exchange Item"** means a digitized image of a Check cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

**1.9. "Item"** means a Check or Check Image.

**1.10. "Magnetic Ink Character Recognition Line" and "MICR Line"** means the numbers, which may include the Routing Number, account number, Check number, Check amount, and other information, that are printed near the bottom of a Check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing for an Original Check and American National Standard Specifications for an Image Replacement Document for a Substitute Check (unless the Federal Reserve Board, by rule or order, determines that different standards apply).

**1.11. "Non-cash Item"** means an item that would otherwise be a Check, except that: 1. A passbook, certificate or other document is attached; 2. It is accompanied by special instructions, such as a request for special advice of payment or dishonor; 3. it consists of more than a single thickness of paper, except a Check that qualifies for handling by automated Check processing equipment; or 4. It has not been pre-printed or post-encoded in magnetic ink with the Routing Number of the Payor Financial Institution.

**1.12. "Original Check"** means the first paper Check issued with respect to a particular payment transaction.

**1.13. "Payor Financial Institution"** means the U.S. Financial Institution ordered in a Check to make payment to the payee(s) named on the Check.

**1.14. "Qualifying Account"** has the meaning given in the Requirements section of this Agreement.

**1.15. "Routing Number"** means the number printed on the face of a Check in fractional form or in nine digit form; or the number in a bank's endorsement in fractional or nine digit form.

**1.16. "Capture Device"** has the meaning given in the Requirements section of this Agreement.

**1.17. "Substitute Check"** means a paper reproduction of an Original Check that: 1. contains an image of the front and back of the Original Check; 2. bears a MICR line that contains all the information appearing on the MICR line of the Original Check at the time that the Original Check was issued and any additional information that was encoded on the Original Check's MICR line before an image of the Original Check was captured; 3. Conforms in paper stock, dimension, and otherwise; and 4. is suitable for automated processing in the same manner as the Original Check.

**1.18. "Sufficient Copy"** means a copy of an Original Check that accurately represents all of the information on the front and back of the original Check as of the time the original Check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

**1.19. "Service"** means the Online Check Deposit service described in this Agreement.

**1.20. "U.S. Financial Institution"** means: 1. Any person, located in the United States, engaged in the business of banking; 2. A Federal Reserve Bank; 3. A Federal Home Loan Bank; and 4. To the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government. All other capitalized terms used in this Agreement and not defined herein are defined in your Account Agreement.

## **2. Your Account Agreement.**

**2.1. Our and Your Rights and Obligations:** Your Account Agreement contains additional terms and conditions applying to your Designated Account(s) and this Service. Those terms and conditions include, without limitation, terms relating to the presentment, collection and return of Checks and other items. Your Account Agreement also includes provisions relating to your rights and your obligations and liabilities to us, and our rights and our obligations to you. Except as expressly amended by this Agreement, all terms and conditions of your Account Agreement apply to the Services and your Checks and Check Images processed through the Service. In the event of any inconsistency between this Agreement and your Account Agreement, this Agreement shall control. All other terms and conditions of your Account Agreement shall remain in full force and effect.

**2.2. Checks and Check Images:** All Checks and Check Images processed through the Service are "checks" and "items" for purposes of the Account Agreement and shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code.

### **2.3 Funds Availability**

**2.3.1.** Funds from deposited Check Images will be available according to our Funds Availability disclosure included in the booklet with your Account Agreement.

**2.3.2.** For purposes of determining the availability of funds, Check Images deposited through the Service are considered received by us upon the Bank's successful receipt of the transmission of such images that are complete, usable, and adhere to the data specifications provided to you by the Bank. If the Check Images are not complete, are not usable, or do not adhere to such data specifications, the Bank may be unable to process such Items, in which case your deposit will be adjusted as appropriate.

### **3. Using the Online Check Deposit / Mobile Deposit Service.**

#### **3.1. Requirements.**

To use the Service, you must:

1. Have at least one eligible checking account or money market account with us that is an account for your personal, family, household, or small business purposes (a “Qualifying Account”);
2. Identify your Designated Account(s);
3. Maintain a valid e-mail address on file with us.
4. Acquire and maintain a scanner-copier, a flatbed scanner, or mobile device meeting the minimum specifications we provide to you (the “Capture Device”);
  - Online Check Deposit
    - Windows 2000 Professional SP6, XP SP2, Vista, MAC OSX 10.4 and above Windows XP (32-bit) Note for Mac users: ONLY Twain-compliant scanners or an Ethernet-attached.
    - 933MHZ or equivalent, 512 MB RAM, USB 2.0 Port, keyboard, mouse, monitor
    - Acquire and maintain Adobe Acrobat Reader version 6.0 or higher and Java plug-in version 1.4.2 or higher (you can find the Adobe reader at <http://www.adobe.com/downloads/> and Java at [www.java.com](http://www.java.com));
    - Maintain Internet access via a secure Internet Service Provider (“ISP”);
    - Maintain an Internet browser that supports a minimum 128-bit encryption standard and antivirus software;
  - Mobile Deposit
    - Apple iPhone: iPhone 3, 3GS, and 4
    - BlackBerry: All models with an 3.2+ Mp auto-focus camera
    - Android: All models with an 2+ Mp auto-focus camera

**3.2. Approval for the Services:** Once we have received your signed Online Check Deposit form, we will review and verify your account information. If we agree to accept your enrollment, we will send you, either by e-mail or by postal mail, confirmation of our acceptance of your enrollment, along with instructions on how to access your account. Designated Account(s):

1. The Services can be used to send Check Images for deposit to only your Designated Account(s). All Checks transmitted by you to us as Check Images under the terms of this Agreement shall be, subject to finally collected funds and the Account Agreement, credited to your Designated Account. If you have more than one Designated Account, you must identify the Designated Account to be credited with your Check Images when you transmit those Check Images to us, by selecting the account before scanning.
2. Your Designated Account must be a Qualifying Account.
3. You may change any of your Designated Accounts to another Qualifying Account with us, or you may add or delete Designated Accounts, by completing and delivering to us a new Online Check Deposit form. Any change to Designated Accounts will be effective only after we have received a properly completed Online Check Deposit form and had a reasonable opportunity to process such change.

### **4. Online Check Deposit / Mobile Deposit Process.**

**4.1. General.** You may scan Checks using the Capture Device that you have obtained in accordance with this Agreement and our specifications. You agree that the manner (e.g., Substitute Check, image exchange, Automated Clearing House) in which we clear or present Items for payment shall be determined by us, in our sole discretion. We reserve the right to select the clearing agents through which we clear Items. You agree to be bound by any clearinghouse agreements, operating circulars and image exchange agreements to which we are a party.

**4.2. Daily and Item Limits:** A daily deposit limit and item limit will be assigned to your accounts based on your relationship with the bank and you will be notified of the limits before activation of service. If you exceed these limits, we may, in our sole discretion, either:

1. Accept the deposited Checks in excess of this limit, or
2. Refuse to accept the Checks that would cause you to exceed your limit or that are submitted to us when you have already exceeded the applicable limit. If you exceed your transaction limits, we also may terminate the Service without notice, except as such notice is required by law. If we do at any time accept a Check for deposit when the Check would cause you to exceed your limits or when you have already exceeded your limits, we will have no obligation to do so in the future. We may at any time in our discretion raise or lower your daily and individual limits without notice to you, except as is required by law.

**4.3. Receipt of Checks:** You agree that you're scanning and transmitting of Checks does not constitute receipt by us. Generally, Check-Images scanned and transmitted via Online Check Deposit before 5 p.m. ET on a Business Day will be received by us on that day. A Check Image is considered received by us when a complete copy of a file containing the Check Images ("File") has been written on our electronic storage device in conformity with our technical and operational requirements. For purposes of determining when a File has been delivered and received, our records shall be determinative. A File which is not balanced in accordance with the procedures or which is received after the Cut-Off Time shall be deemed to have been received on the business day following the business day on which the File is actually received by us. Acknowledgment of receipt or delivery does not constitute an acknowledgment by us that the transmission of a Check Image or Images does not contain errors. You agree that we may at any time, in our sole discretion, refuse to accept deposits of Checks from you via the Services. In the event that the Services are interrupted or are otherwise unavailable, you may, at your option, deposit Checks using an alternative method such as in-person at one of our Financial Centers, by courier service, via night drop, or postal mail. You hereby acknowledge and agree that we shall not be liable to you for any loss or damage of any nature sustained by you as the result of the inability of you to use the Service.

**4.4. Your Obligations.**

**4.4.1.** You agree that you will use the Service to deposit only Checks drawn on financial institutions with a valid United States ABA/Routing Number and denominated in U.S. dollars. You further agree that you will not remotely deposit any check or other items that: (a) are payable to any person or entity other than you, (b) are drawn, or otherwise issued, by you on any of your accounts, (c) are prohibited by our then current procedures pertaining to the Service (the "Procedures") or are in violation of any law, rule or regulation, (d) you know or suspect, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn, (e) have not been previously endorsed by a bank and are either "substitute checks" (as defined in Reg CC or other applicable federal law or regulation) or "image replacement documents" that purport to be substitute checks, without our prior written consent, (f) are drawn on financial institutions that are located outside of the United States or Territories of the United States, (g) is a Remotely Created Check, or (h) which are not acceptable to us for deposit into a deposit account as provided in the Account Agreement (Checks described in clauses (a) through (h) each a "Prohibited Check" and, collectively, "Prohibited Checks"). All other items must be deposited by alternative means such as in person, via courier, using a night drop facility, or by postal mail accompanied by a deposit slip issued by us. Furthermore, you agree you will use the Service only when you are physically located within the United States to deposit Checks with us, as the term "Check" is defined above. You agree to endorse checks in accordance with the provisions of the Account Agreement.

**4.4.2.** When you transmit Check Images to us, you must at that time specify which of your Designated Accounts (if you have more than one Designated Account) is to be credited with the funds from the Check. We shall provide you with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to the Service. You shall be responsible for auditing and balancing all of your Designated Accounts.

**4.4.3.** After you scan your Check and send us the Check Image, and once we receive your Check Image; we will send you an e-mail to confirm our receipt of your Check Image. As soon as you receive our

“Deposit Approved” e-mail notification, you must destroy the original Check using a method designed to ensure that the Check is no longer readable. Use of a competent shredder is one such method.

**4.4.4.** You will retain all information relating to Check Images, including without limitation computerized information, for no less than 14 days. In the event of lost, mistaken, incomplete or unusable Check Images, or in the event of claims of fraud, alteration, counterfeit or otherwise, you agree to cooperate fully with us in providing information, including access to such records.

**4.4.5.** You grant us a security interest in all of your accounts or other deposits (whether general or special) at our bank, and in all funds in such accounts or other deposits, to secure your obligations to us under this Agreement. This security interest will survive termination of this Agreement.

**4.4.6.** Except as limited by law, you are, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds, associated with accessing the Service.

**4.4.7.** Except as limited by law, you assume exclusive responsibility for the consequences of any instructions you may give to us, for your failure to access the Service properly in a manner prescribed by us, and for your failure to supply accurate input information, including, without limitation, any information contained in an application.

**4.4.8.** You are strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. You agree to take appropriate steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by us in connection with this Agreement. If you believe or suspect that any such information or instructions have been known or accessed by unauthorized persons, you agree to notify us immediately, by calling Private Bank of Buckhead Customer Care, followed by written confirmation.

**4.4.9.** If a Check Image is sent to us using your User ID and Password, we may deem it as having been sent by you and you shall be liable under this Agreement and your Account Agreement for that Check Image even if you did not authorize the sending of that Check Image. We undertake no obligation to monitor transactions through the Service to determine that they are made on your behalf. If a Check Image is sent to us by you, or was authorized by you to be sent to us, you shall be liable under this Agreement and your Account Agreement for that Check Image even if it was not sent using your User ID and Password.

**4.4.10.** You will use the Service only for your own personal, family and household use in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, you agree not to make the Service available or allow use of the Service by or for the benefit of any third party.

**4.4.11** Each File transmitted by you to us shall contain Images of the front and the back of the Checks scanned and remotely deposited by you. Each Image of each Check shall be of such quality that the amount of the Check, the payee of the Check, the signature of the drawer of the Check, the date of the Check, the Check number, the information identifying the drawer and the paying bank that is preprinted on the Check, including the MICR line, and all other information placed on the Check prior to the time an image of the Check is captured, such as any required identification written on the front of the Check and any indorsements applied to the back of the Check can be clearly read and understood by sight review of such Image. Each Image shall also meet all standards for image quality established by the American National Standards Institute (“ANSI”), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

**4.4.12** You agree to comply with all existing and future operating procedures used by us for processing of transactions. You further agree to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts, including, but not limited to, all rules and procedural guidelines established by the Board of Governors of the Federal Reserve.

**4.4.13** We may from time to time request information from you in order to evaluate a continuation of the Service to be provided by us hereunder and/or adjustment of any limits set by this Agreement. You agree to provide the requested financial information immediately upon request by us, in the form required by us. You authorize us to investigate or reinvestigate at any time any information you provide in connection with this Agreement or the Service and to request reports from credit bureaus and reporting agencies for such purpose. Upon our request, you hereby authorize us to enter your premises for the purpose of ensuring that you are in compliance with this Agreement. If you refuse to provide the

requested financial information, or if we conclude, in our sole discretion, that the risk is unacceptable, or if you refuse to give us access to your premises, we may terminate the Service according to the provisions hereof.

## 5. Our Obligations.

**5.1.** You understand that Service availability is at all times conditioned upon the corresponding operation and availability of those computer Services and systems used in communicating your instructions and requests to us and our response. We shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by you in the event of any failure or interruption of such Service or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within our control.

**5.2.** We shall exercise due care in seeking both to preserve the confidentiality of your assigned User ID, Password, and Authentication Method and to prevent the use of the Service by unauthorized persons (and in this connection it is understood and agreed that implementation by us of our normal procedures for maintaining the confidentiality of information relating to our customers, and where practicable the obtaining by us from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of our obligation so to exercise due care) but we shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by you by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the Service.

## 6. Your Representations and Warranties.

**6.1.** You represent, warrant and covenant the following to us:

1. Checks Deposited. You shall only deposit Checks that are authorized by this Agreement, the Procedures and the Deposit Agreement;
2. Image Quality. Each Image transmitted by you to us contains an accurate representation of the front and the back of each Check and complies with the requirements of this Agreement;
3. Accuracy of Information. All data and other information submitted by you to us, including but not limited to data contained in the MICR line of each Check, is complete and accurate and complies with the requirements of this Agreement;
4. No Duplicates. You will not: (i) create duplicate Images of the Checks, (ii) transmit a duplicate Image or File to us, or (iii) deposit or otherwise negotiate the original of any Check of which an Image was created. You further warrant that no subsequent transferee, including but not limited to us, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Item(s);
5. No Loss. No Subsequent transferees of the Item(s), including but not limited to us, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check;
6. Information. All information provided by you to us is true, complete and accurate and properly reflects the business, financial condition and your principal partners, owners or officers.
7. Legality. The entry into, and performance of, this Agreement by you will not violate any law, or conflict with any other agreement, to which you are subject;
8. No Litigation. There is no action, suit or proceeding pending or, to your knowledge, threatened which, if decided adversely, would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations.
9. Transactions. All of your Checks and business transactions are, and will be, bona fide. All signatures on Checks are authentic and authorized.
10. Rule Compliance. You conduct your business, and submit Checks and Files in compliance with this Agreement, the Procedures, applicable law and the Rules.
11. Computer Virus. No Files or Checks contain any computer viruses or other harmful, intrusive or invasive codes.

**6.2. Chargeback of Returned Checks.** If Images of Checks you deposit are dishonored or otherwise returned unpaid by the drawee bank, or are returned by a clearing agent for any reason, including, but not limited to, issues relating to the quality of the Image, you understand and agree that, since you either maintain the original Check or have destroyed the original Check, the original Check will not be returned, and we may charge back an Image of the Check to your Account. You understand and agree that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by us, you agree not to deposit the original Check if an Image or other debit as previously described is charged back to you.

## **7. Fees and Charges**

You agree to pay to us promptly all fees described in your Account Agreement. Such fees may be changed by us from time to time. We will charge to and debit from your Designated Account all fees when due. If you have more than one Designated Account, we will debit fees from your Primary Account as identified by you on our Online Check Deposit form.

## **8. Termination.**

**8.1.** Termination by Private Bank of Buckhead: We reserve the right to terminate this Agreement or limit your use of the Service at any time and for any reason. We may terminate this Agreement at any time, with or without cause and without prior notice.

**8.2.** Termination by You: You may cancel this Service at any time by fax, e-mail, calling Private Bank of Buckhead, or by writing us at 3565 Piedmont Road, Suite 210, Atlanta GA 30305.

**8.3.** Effect of Termination: Termination by either you or Private Bank of Buckhead will not affect any obligations arising prior to termination, such as the obligation to process any Checks and electronic items (including returned electronic items) that were in the process of being transmitted or collected prior to the termination date. Termination will not affect your liability or obligations under this Agreement for transactions that have been processed on your behalf. You will remain responsible for all outstanding fees and charges incurred prior to the date of termination and shall promptly pay us for any sums due us under this Agreement. Upon termination, you shall have no further right to use the Service. Termination will apply only to the Service and does not terminate your other relationships with us.

## **9. Limitation of Liability.**

**9.1.** ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, WE SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND OUR LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) YOUR ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY YOU TO US FOR THE SERVICE FOR THE PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE ALLEGED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT SHALL WE OR ANY PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSSES OR INJURIES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR COST OF COVER) ARISING OUT OF, OR RELATED TO, YOUR USE OF THE SERVICE OR ANY SERVICE OR OUR FAILURE OR THE FAILURE OF ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER, EVEN IF WE OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.

**9.2** YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICE SHALL BE AT YOUR SOLE RISK, AND THAT THE SERVICE IS PROVIDED BY US ON AN "AS IS" BASIS.

**9.3** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WE MAKE ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO YOU OR TO ANY OTHER PERSON, AS TO THE SERVICE OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY, AND WE HEREBY DISCLAIM ANY AND ALL OF THE SAME. YOU AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY OF OUR EMPLOYEES OR

REPRESENTATIVES SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE SERVICE TO BE PERFORMED PURSUANT HERETO.

**9.4** TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH OUR LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OUR LIABILITY TO YOU UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM OUR FAILURE TO EXERCISE ORDINARY CARE.

**9.5** WE MAKE ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO YOU OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH THE SERVICE, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEMS, WIRELESS ACCESS DEVICE OR RELATED EQUIPMENT, YOUR SOFTWARE, OR YOUR VOICE OR DATA SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF OUR SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT YOUR USE, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**9.6** WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, YOUR EQUIPMENT OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY US TO YOU IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM YOU TO US, FROM US TO YOU, FROM YOU TO ANY PROCESSOR, FROM ANY PROCESSOR TO US, OR OTHERWISE. WE SHALL NOT BE RESPONSIBLE FOR NOTIFYING YOU OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF OUR EQUIPMENT OR SOFTWARE. WE ARE NOT RESPONSIBLE FOR, AND YOU HEREBY RELEASE US FROM ANY AND ALL CLAIMS OR DAMAGES RESULTING FROM, OR RELATED TO, ANY COMPUTER VIRUS OR RELATED PROBLEMS THAT MAY BE ASSOCIATED WITH USING ELECTRONIC MAIL OR THE INTERNET.

## **10. Indemnification and Liability.**

You hereby indemnify us and each of our parents, subsidiaries and affiliates and our respective officers, directors, employees, members, partners, agents, insurers and attorneys (each and “Indemnified Party” and, collectively, the “Indemnified Parties”) for, and hold each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorneys’ fees) of any nature or kind (including those by third parties) arising out of, or related to, this Agreement, including all actions, causes of action, claims, damages, liabilities and expenses arising out of, related to or resulting from: (a) your (i) failure to report required changes, (ii) transmission of incorrect data to us or (iii) failure to maintain compliance with the Rules, (iv) destruction of original Checks, (v) deposit of an electronic representation of a substitute check into an Account instead of an original Check, (vi) deposit of a prohibited check; (b) our (i) provision of the Service, (ii) action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by us to be your authorized representative, (c) your breach of any of your warranties, representations and/or obligations under this Agreement or any other agreement between you and us, including, but not limited to, the Deposit Agreement, and the terms of this paragraph shall survive the termination of this Agreement, and/or (d) your breach or violation of any Rules; provided, however, you are not obligated to indemnify us for any damages solely and proximately caused by our gross negligence or willful misconduct.

## **11. Complete Agreement.**

The parties hereto agree that this Agreement and any modifications made pursuant to it, as well as your Account Agreement provided by us to you, constitute the complete and exclusive expression of the terms of this Agreement between the parties, and supersedes all other proposals, whether oral or written, understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating to the subject matter of this Agreement. The parties further agree that this Agreement may not in any way be explained or supplemented by a prior or

existing course of dealings between the parties or by any prior performance between the parties pursuant to this Agreement or otherwise.

## **12. Your Security Obligations.**

If we inform you that it is necessary for you to implement new or additional security procedures, alter your software or systems for sending Check Images, or obtain different Capture Devices, you agree that you shall do so with reasonable promptness. Your failure to follow these instructions may result in our terminating your rights to use the Service.

## **13. Third Party Service(s).**

You acknowledge that, in providing the Service hereunder, we may utilize and rely upon certain third party service providers (“TPSPs”) to provide database storage, database access, switching and other data communications services to us. You further acknowledge and agree that your rights under this Agreement shall be solely and exclusively against us, and you shall have no right or recourse against any TPSP hereunder whatsoever, and hereby waive any and all such rights or recourse, directly or indirectly, against any TPSP, the State of Georgia and the Federal Deposit Insurance Corporation.

## **14. Change in Terms.**

We may at any time amend, modify, add or delete (collectively and individually a “change”) the terms of this Agreement with or without notice unless prohibited by applicable law. If advance notice of the change is not required, and disclosure does not jeopardize the security of the account or our electronic fund transfer system, you agree that we may notify you of the change in terms by electronic mail, postal mail or by posting a notice on our website. Further you agree that your continued use of the Service(s) constitutes your agreement to the change. If you wish to decline to be bound by the change, you must terminate the account or discontinue the Service to which the change relates; otherwise you will be deemed to have accepted and agreed to the change.

## **15. Governing Law.**

Except to the extent superseded by Federal law, the provision of Services shall be governed by the laws of the state of Georgia in which the principal office of Bank is located. Customer agrees that the courts of such state shall have jurisdiction to hear any dispute arising out of the Service and submits to the jurisdiction of such courts. Any provision of this Agreement, which is unenforceable shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of the Services would result in violation of any law, regulation or governmental policy, this Agreement shall be deemed amended to the extent necessary to comply therewith.