



## Personal Online Banking Agreement

Effective Date: September 2013

**NOTICE TO CONSUMERS: This Agreement includes disclosures applicable to consumers as provided under the Electronic Funds Transfer Act (EFTA) and it's implementing Regulation E. Read this document carefully and retain a copy for your records.**

### Online Banking Agreement

This Personal Online Banking Agreement ("Agreement") sets forth the terms and conditions of the online banking Services (the "Services") provided by Fremont Bank ("us" or "we"). This Agreement is a legal contract between you and the Bank and sets forth the terms & conditions of your use of the Services. Please read this Agreement carefully because it contains important information and guidelines for using the Services. We recommend that you print this document or save it to keep a copy for your records.

We may offer additional Services in the future and your enrollment and/or use of any of the Services will be deemed evidence of your agreement to its terms.

By using any of the Services described in this Agreement, you agree to the terms and conditions of the entire Agreement. We may modify or cancel your Service at any time without prior notice, at our discretion, unless otherwise required by law.

This Agreement is in addition to other agreements between Fremont Bank and you, including but not limited to (as applicable), your checking, savings, and other deposit account agreements, as may be modified from time to time. If there is a conflict between the terms and conditions of this Agreement and those contained in the other agreements between you and us, with respect to the Services, this Agreement will control.

### General Terms

*Definitions.* In this Agreement, defined terms have the meaning given to them. In addition:

- An "account" means any account you maintain with us and can include all accounts and products you have accessible to the Services.
- An "authorized representative" is a person with authority of any kind with respect to an Account.
- Your "available balance", "available funds" and similar words mean the balance in your Account as determined under our funds availability policy.
- A "consumer account" shall mean an account that is established primarily for personal, family or household purposes, and is subject to the EFTA as a "consumer account."
- "Documentation" means all documentation, the user manual, any other manuals, all instructions (including on-line instructions) relating to the Services which we may provide to you from time to time in connection with the Services.
- "Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.
- Your "Security Codes" are the credentials (such as codes and passwords) that are associated with you and used by us to verify the authenticity of Communications from you. Security Codes are used to access Accounts and to use the Services. The Security Codes include any supplemental or

alternative method used to verify the authenticity of Communications that may be offered or presented to you by us from time to time.

- The "Service(s)" are the on-line banking interface and the banking services described in this Agreement.
- The word "includes" means "including but not limited to" the examples given.
- The word "may," when used in reference to us, means at our option and sole discretion. Action (or inaction) that we "may" take is authorized by you and allowed to us, but is not required. You agree that we will not be liable for any action taken or any failure to act when action or inaction is at our discretion.
- "UCC" means the California Uniform Commercial Code as amended.
- The words "we," "us", "our", "Bank" and similar terms are used to refer to Fremont Bank.
- The words "you", "your," and similar terms are used to refer to the person entering into this Agreement and to the each person who is an owner of or has an interest in an Account together with the owner's authorized representatives.

*Agreement.* Subject to our approval and to any limits we impose through our Online banking website and for the Services. We may act on requests for information, or requests to facilitate any Service requested on or associated with an Account, from any Account owner (including joint owners) or their authorized representatives. Each time you use our Services or you permit any other person to use our Services, you are agreeing to the terms and conditions that we have set out in this Agreement, including any instructional materials regarding the Services, as amended. You agree not to resell or offer a Service to another, or to process any transactions for others using a Service. If you are a natural person, you certify that you are at least 18 years or older. You authorize us to obtain information about you from others (including credit reporting agencies) as part of our review of your enrollment application and from time to time thereafter. You agree to provide us with information as we request, from time to time.

*Sufficient Funds.* You must have sufficient available funds on deposit in your account or available Overdraft Protection coverage (linked account and/or overdraft line of credit) to cover the amount of any transaction that would be debited from your Account. Subject to limitations set out in this Agreement, you can request payments up to the amount of available funds on deposit in your account or available Overdraft Protection coverage (linked account and/or overdraft line of credit). We may hold funds at any time after you have initiated a Service for any reason, including as a means of reducing risks that there will be insufficient funds for completing the Service. If we do hold funds, we may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions. We may allow overdrafts/overlimits or negative balances, but we also may discontinue the practice at any time with or without prior notice to you. If you do not have sufficient available funds on deposit in your account or available Overdraft Protection coverage (linked account and/or overdraft line of credit), you may be charged an overdraft or other fee (such as fees for returned checks or other electronic items. Nothing in this Agreement, or any course of dealing between us, shall be construed as our commitment or obligation to lend you money.

*Waiver of Access Restrictions.* Your Accounts may be subject to access restrictions when you conduct transactions in person or when you are using systems other than with a Service. If access restrictions exist, they do not apply to your use of the Services. We may limit or deny Services to you if there are access restrictions. Conversely, we may process your transactions based on Communications without regard to or any need to comply with access restrictions otherwise applicable to your Accounts.

*Compliance with Laws and Rules.* You agree to comply with all state and federal laws, rules and regulations applicable to you and to your use of the Services (the "Laws"), including the operating rules of all systems used to provide Services to you (the "Rules"), and to provide evidence reasonably satisfactory to us of the same if requested by us. You agree not to use the Service for any illegal purpose, including but not limited to illegal Internet gambling. Without limitation, you agree and acknowledge that the Services may not be used by you in violation of the laws of the United States, including sanctions laws administered by the Office of Foreign Asset Controls. You acknowledge and agree that the software you use to access Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations. You agree and certify that neither the software nor any direct product thereof is being or will be used by you for any purpose prohibited by these Acts.

Additionally, each Account and the Services will be subject to and governed by the following:

- The terms or instructions appearing on a screen when using a Service;
- Our Deposit Account Agreement ("DAA"), and our rules, procedures and policies;
- Applicable provisions of the rules of the National Automated Clearing House Association (NACHA) for bill payments facilitated through the ACH;
- Applicable state and federal laws, rules and regulations; and
- The rules of other funds transfer systems when used in connection with a Service.

Nothing in this Agreement relieves you of any obligation you may have under the Laws or the Rules, and this Agreement is deemed modified to the extent necessary to allow or require you to comply with the same.

*Electronic Records and Signatures.* When any payment order or other Service generates items or transactions to be charged to your Account, you agree that we may charge the affected Account without requiring your signature on an item and without prior notice to you. Any transactions resulting from your instructions which we receive in your name and under your credentials shall be deemed to have been "a writing" and authenticated by you "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by us of transactions under your credentials shall be deemed to have been "signed" and to constitute an "original" when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our written request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

## **Transfer Limitations**

For certain types of transactions/transfers from a money market or savings account, you are permitted to make no more than six transfers and withdrawals, or combination of them, per calendar month, to another account or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, including by check, draft, debit card or similar order by you and payable to third parties. If you exceed these limits, we may impose a fee, close or convert your Account, limit your use of the Services, or any combination of the foregoing.

## **Online Banking Service**

Subject to system limitations, you can use the Service to:

- View current Account balances;
- Review transactions on your Accounts;
- View Account statements and checks that have posted to your Account;
- Transfer funds between your linked Accounts, either on a one-time basis or set up reoccurring transfers. Not available for Certificate of Deposit (CDs) accounts;
- Reorder checks;
- Submit check stop payment requests;
- Print copies of paid checks;
- Export your transaction history into Microsoft Money®, Quicken®, QuickBooks®, or spreadsheet format;
- Use your wireless device to access Services ("Mobile Banking");
- Make payments to companies and individuals online from your linked checking or money market checking account(s) ("Bill Pay Services");
- 
- Send and receive funds to and from third parties ("Popmoney® Personal Payments); and
- Up online banking alerts to automatically notify you by e-mail when specific types of activity occur on your deposit accounts with Fremont Bank ("Alerts").

Some Services above may not be available on certain accounts. In some cases, we may allow loans and lines of credit to be linked; in which case, you agree that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. Certificate of Deposit (CDs) accounts are VIEW only.

### **Account Balance and Transaction Information**

You can use the Services to obtain account balances and transaction information. Please note that the information provided may not include recent transactions and may include funds that are not available for immediate withdrawal.

### **Transfers**

You may make transfers between your linked Accounts, and lines of credit (subject to the terms and conditions). You may not make transfers from Certificate of Deposits or accounts that require more than one signature for withdrawals.

### **Linked Accounts**

Your Fremont Bank accounts are linked by means of the tax identification number(s) of the person(s) who own(s) the account(s). At our discretion, there may be certain accounts that are not eligible for the Services. Each user must enroll in the Service separately.

### **Check Stop Payment Service**

You may request a stop payment on a check issued on your Account(s) by completing the form presented as part of the check stop payment Service and submitting all the required information to us ("Check Stop Payment"). Check Stop Payments must be received by us in sufficient time prior to presentment of the relevant item for payment that we have a reasonable opportunity to act on the request. Our current processing cut-off time for Check Stop Payment orders is 8:00 pm Pacific Time. For significant or material items, contact us by coming to one of our branches or by telephone in addition to using the Services for Check Stop Payment. There will be a fee assessed for each Check Stop Payment request whether or not we receive the request in time to place the Check Stop Payment.

You must give us timely, complete and accurate information, including the check date, payee, EXACT amount of the check, check number and reason for the stop request. If any information is incomplete or inaccurate, we will not be responsible for failing to stop payment on the check.

You may use the Check Stop Payment Service to stop payment on checks that you have written against your Accounts. If you wish to cancel or amend any other Service transaction (for example, a Bill Pay Service transaction), you should use the process applicable to that Service and you will be subject to any limitations or inability to stop applicable to that Service.

You may not use the Check Stop Payment Service to stop payment on any ACH/EFT transaction, point-of-sale ACH/EFT transfer; any cashier's check, certified check or other official institution check have purchased from Bank or any check which we have guaranteed. You understand that your Check Stop Payment request is conditional and will not be effective if we have not had a reasonable opportunity to respond to your request, or that stopping payment may subject us to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

A Check Stop Payment request against a check is effective only against the check that is described in the Check Stop Payment request form; and does not cancel or revoke any authorization for future or recurring ACH/EFT transfers by you or by the same biller or originator. A Check Stop Payment order is effective for one-hundred eighty days (180 days) from the date of request only; and will expire automatically, at which time you are responsible for any renewal desired by you for one-hundred eighty days (180 days) term.

## **Mobile Banking Service**

### *Mobile Banking Service Definitions.*

- "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Image Exchange Items or Substitute Checks.
- "Electronic Item" means the digitized image of a Paper Item that is created by you and transmitted to us using the Service.
- "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
- "Item" means a Paper Item that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to you, and includes Original Paper Items, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States money.
- "Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Paying Bank.
- "Original" with respect to a Paper Item means the first paper Item issued with respect to a particular payment transaction.
- "Paper Item" means an Original Paper Item, as defined in Regulation CC, except that Paper Item does not include a Substitute Check or a remotely created check.

- "Paying Bank" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.
- "Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.
- "United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

*"Mobile Banking" provides wireless access to your linked Accounts.* The Mobile Banking Services may include, but are not limited to:

- Access your account balance information;
- Review Transaction history;
- Make transfers and loan payments; and
- Make payments using Bill Payment Services

To use Mobile Banking you must be enrolled in the Services. We offer Mobile Banking as an added convenience to you. However, Mobile Banking is not intended to replace your access to, or replace the full functionality of, the Service's capabilities. Mobile Banking cannot replace your computer to access the Services for managing your accounts with us.

*Mobile Deposit Feature.* The mobile deposit feature ("Mobile Deposit Service" or "Service") enables you to use a Fremont Bank Mobile Banking application and certain hardware (such as a smartphone or other mobile device) approved by us to: create electronic images of the front and back of certain Original Paper Items and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition ("MICR") line, to us for review and processing in accordance with this Agreement.

*Processing Your Electronic Item(s).* For all Electronic Items processed by you pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. We may in our sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation and as otherwise established by us from time to time.

Unless otherwise agreed by you and us, we will process any returned Items in accordance with applicable law and the deposit account agreements.

*Mobile Deposit Cut-off Time.* Our current cut-off time for mobile deposits is 5:30 pm Pacific Time. For determining the availability of your deposits, every day is considered a business day except Saturdays, Sundays, and federal holidays. If you make a mobile deposit before the cutoff time, on a business day that we are open, we will consider that day of your deposit. However if you make a deposit after the cutoff time, or on a day we are not open, we will consider the deposit was made on the next business day we are open.

*Exception Items.* Each business day on which we review and process your Electronic Item(s), we will use commercially reasonable efforts to review each Electronic Item and to reject any Electronic Item that we in our sole discretion determine to be ineligible for the Service (each, an "Exception Item"). By way of example, "Exception Item" includes, without limitation, an Electronic Item that (a) is illegible or contains MICR data that is not machine-readable, (b) was previously processed as an Electronic Item, or (c) is drawn on banks located outside the United States and is not payable at or through a bank located within the United States. We will notify you of each Exception Item through the Service, or other communication channels, at

our discretion. If you wish to attempt to deposit any Exception Item to your Account, you shall do so only by depositing the Original Paper Item on which the Exception Item is based at one of our branches, or as otherwise agreed between us. Even if we do not initially identify an Electronic Item as an Exception Item when we review and process the Electronic Item to which the Exception Item relates, the Electronic Item, Substitute Check, or Imaged Exchange Item may nevertheless be returned to us because, among other reasons, the Paying Bank determines that such item or check is illegible or missing an image. Our failure to identify an Exception Item shall not limit our rights, or preclude or limit your obligation to Fremont Bank as outlined in this Agreement.

*Deposits to the Account.* Electronic Items processed for deposit through the Service will be deemed to have been received by us for deposit at the time the Electronic Items are actually received and accepted. A deposit of Electronic Items will be deemed to have been received and accepted by us for deposit when all of the following have occurred: (i) we have preliminarily verified that the image quality of the Electronic Items is acceptable to us in our discretion; (ii) all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (iii) we have successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Electronic Items received by us for deposit may be rejected by us in our sole discretion.

Each Electronic Item deposited pursuant to this Agreement will be deemed to have been deposited at the office where the Account is maintained.

*Dollar Limitations.* In addition to any restrictions already provided in this Agreement, we may from time to time establish exposure limitations and assign them to you. At this time, the maximum aggregate amount you may deposit using the Service each business day is \$1,000.00 with a maximum of \$3,000.00 per thirty (30) calendar days.

*Creating and Transmitting Electronic Items to Fremont Bank.* The following items may not be deposited through the Service: international checks, remotely created checks (whether in paper form or electronically created), checks drawn against a line of credit, or cash. Except as noted in the preceding sentence, only checks, money orders, cashier's checks, or traveler's checks, drawn on or payable at or through a U.S. bank, can be transmitted through the Service. Additionally, only Items that are made payable to, and indorsed by, you may be transmitted through the Service.

*Availability of Funds.* Subject to our right to hold funds as otherwise provided under this Agreement and the deposit account agreements, availability of credit from Items processed under this Agreement will be subject without limitation to our funds availability schedule, which may be amended. You recognize that under the UCC, Regulation CC and the rules of any image exchange network our representations and warranties with regards to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check. Funds from deposit made via the Service generally will be available for withdrawal by the first business day after the day of deposit. The first \$200 of your deposits will generally be available no later than the first business day after the day of deposit. If funds will be delayed beyond the first business day on any part of your deposit, we will mail you information about when your funds will be available.

*Your Representations, Warranties and Commitments.* In connection with the Services, you represent, warrant, and commit to each of the following:

(i) You shall maintain the Account for the receipt of deposits of Items;

(ii) You will only submit Paper Items for processing to us that meet the definition of "Paper Item" as provided in this Agreement and will ensure that the Paper Items scanned meet the ANSI X9.37 standards for image quality required by Regulation CC, or other standards established or required by us or applicable law. You will not process any third-party checks. Our processing of any Exception Items shall not constitute a waiver

by us or obligate us to process such Exception Items in the future. We may discontinue processing of Exception Items at any time, without cause or prior notice;

(iii) You will not attempt to scan and transmit to us any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with us. Notwithstanding the foregoing, we may redeposit any returned Substitute Check or Image Exchange Item consistent with the our deposit account terms and conditions;

(iv) You will (a) ensure that Paper Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (b) handle, process, maintain and destroy Original Paper Items as set forth in this Agreement, and (c) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form;

(v) The Electronic Item is a digitized image of the front and back of the Paper Item and accurately represents all of the information on the front and back of the Paper Item as of the time you converted the Paper Item to an Electronic Item;

(vi) You shall be responsible for verifying our receipt of your transmission(s) by verifying that deposits have been posted to the Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with us;

(vii) You understand and agree that a Paper Item that is not paid by a Paying Bank, or is otherwise returned for any reason, will be returned to you and your Account charged for the amount of the Item plus any associated fee. Our right to charge your Account will apply without regard to whether the Item is timely returned to us or whether there is any other claim or defense that the Item has been improperly returned to us;

(viii) You shall comply with all laws, rules, and regulations applicable to the Services, including, without limitation, Regulation CC, Regulation J, the Uniform Commercial Code and any rules established by an image exchange network through which Electronic Items are processed pursuant to this Agreement;

(ix) You provide to us all encoding, transfer, presentment and other warranties made under applicable law as we are deemed to make under applicable law, including without limitation those applicable under the UCC, Regulation CC, Regulation J, and the rules of any image exchange network;

(x) You will properly secure all hardware you use in connection with the Service (including, but not limited to, securing the hardware with Security Codes to prevent unauthorized use). You will maintain control over and be responsible for secure retention, storage, and destruction of original Paper Items for which you have created an Electronic Item. After transmitting the Electronic Item to us, you will retain the original Paper Items for a minimum of five (5) calendar days, but no longer than fourteen (14) calendar days, from the transmission date ("Retention Period"). You will retain and store the original Paper Items in a secure and locked container that is only accessible by persons needing access to such;

(xi) During the Retention Period and upon our request, you agree to provide us with the original Paper Item(s). Once the Retention Period has expired, you will securely and irretrievably destroy original Paper Items from which you have previously created and submitted to us an Electronic Item;

(xii) You will not store or make a back-up copy of the Electronic Item(s); and

The availability, timeliness and proper functioning of the Services depends on many factors, including your wireless access device location, wireless network availability and signal strength, and the proper functioning and configuration of hardware, software and your wireless access device. Neither we nor any of our service



providers warrants that the Service will operate without interruption, without defect or viruses. Neither we nor any of our service providers assumes responsibility for the operation, security, functionality or availability of any wireless access device or mobile network which you utilize to access the Services. Your use of the Service and software will be at your own risk. You agree to exercise caution when utilizing the Services on your wireless access device and use good judgment and discretion when obtaining or transmitting information.

*Fremont Bank's Limited Liability.* In addition to any other limitation on our liability provided in the Agreement, and except to the extent otherwise expressly prohibited by applicable law, neither we nor our providers will be liable to you for any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than gross negligence or willful misconduct by us), including without limitation, that the Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

*Security of Data Transmission and Storage.* You expressly acknowledge that any wireless access to your accounts may not be secure and, as such, you assume the risk associated with unauthorized access to the Services and any information contained therein, resulting from such wireless connectivity. You assume all risk that any information you download or otherwise store on your wireless access device may be accessed by unauthorized third parties. We are not responsible for the security and confidentiality of information when you: (i) use wireless connections to download your account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded, or (ii) allow other persons access to your wireless access device. You agree that any account information that you download is done at your own risk and you are solely responsible for any damage that might occur to the electronic device to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

*Refusals, Funds Held.* We may at our sole option, with or without cause, at any time and from time to time, refuse to process any Electronic Items and will not be liable for doing so even if such action causes outstanding checks or other debits to your Account to be dishonored and returned. Without limiting the foregoing, we shall be excused from failing to act or delay in acting, if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond our control. In the event of any of the foregoing failure or delays, you acknowledge that you may instead deposit directly with us any Original Paper Items for processing and presentment provided such Original Items have not been previously imaged and processed in connection with the Services.

## **Popmoney®**

### **Personal Payments Service**

If you apply and are approved for the Popmoney® Personal Payments Service ("Popmoney® Service"), payments may be made only from a Fremont Bank checking account or money market checking account ("Eligible Transaction Account"). If you link more than one checking account to the Service, you must specify which account you wish to use in making payments. You may not initiate payments from a checking account that requires more than one signature for withdrawals or from a Savings or Certificate of Deposit account.

#### *Popmoney® Service Definitions*

- "Popmoney® Service" means the payment service offered by Fremont Bank through its provider.
- "Payment Instruction" means your payment instruction submitted using the Popmoney® Service.

- "Payee(s)" is the person or entity to which you wish a Payment Instruction to be directed or is the person or entity from which you receive electronic bills.
- "Eligible Transaction Account" is the checking account from which Payment Instructions will be debited and all Popmoney® Service fees will be automatically debited.
- "Payment Processing Date" is the day your Eligible Transaction Account will be debited, unless the Payment Processing Date falls on a non-business day in which case the next business day will be considered to be the Payment Processing Date.
- "Due Date" is the date reflected on your Payee statement for which the payment is due. It is not the late date or grace period.

*One -Time Payment.* You can use the Popmoney® Service to make a one-time Payment Instruction. A one-time Payment Instruction will be processed on the Payment Processing Date; provided that the Payment Processing Date selected by you is a business day and you submit your one-time Payment Instruction prior to the applicable cut-off hour for that date. If you select a Payment Processing Date that is not a business day or submit your Payment Instruction after the cut-off hour for that date, then the Payment Processing Date may be the next business day.

*Recurring Payments.* You can use the Popmoney® Service to submit recurring Payment Instructions. The Popmoney® Service will allow you to schedule Payment Instructions that will cause a payment to be processed from the selected Eligible Transaction Account on your selected frequency on an ongoing basis. However, if the future Payment Processing Date is on a non-business day, then the new future Payment Processing Date may be the next business day.

*Two-Step Transfer.* As an alternative to initiating a Payment Instruction by providing all the necessary information on the Payee in the system, the Popmoney® Service may allow you to provide limited Payee contact information (such as telephone number or e-mail address). The Popmoney® Service will then use this information to contact the Payee and obtain the additional necessary information to process your Payment Instruction(s) to the Payee. This process is referred to as the "Two-Step Transfer" process. Payment Instructions using the Two-Step Transfer process may be delayed if the Payee fails to provide timely, accurate and complete information. You acknowledge that we will begin to process the Payment Instruction once the Payee has provided (or we otherwise obtain) all required information, and you hereby authorize and direct us to retain such funds until the earlier of such time as the Payee has provided (or we otherwise obtain) all required information or ten (10) business days. Our obligation to complete the Payment Instruction shall not begin until such time as the Payee provides us with (or we otherwise obtain) all required information necessary to process the transactions in accordance with this Agreement.

*Payment Authorization and Payment Remittance.* By providing the Popmoney® Service with names and account information of Payees to whom you wish to direct payments, you authorize us and our provider to follow the Payment Instructions that is received through the payment system. However, the Payee is not required to accept your Payment Instruction. The Payee will have ten (10) business days to claim the funds from a processed Payment Instruction. You agree that we will not be liable for any damages resulting from a Payee's decision or failure to accept your Payment Instruction. We will, to the extent permitted by law, make reasonable attempts to return any unclaimed, refused, refunded, prohibited, or denied payments to your Eligible Transaction Account, or use other reasonable efforts to return such payment to you as permitted by law.

*Failed or Returned Payment Instructions.* In using the Service, you are requesting us to attempt to make payments for you from your Eligible Transaction Account. If we are unable to complete the Payment Instruction for any reason associated with your Eligible Transaction Account (for example, there are

insufficient funds in your Eligible Transaction Account, or the Payment Instruction would exceed the credit or overdraft protection limit of your Eligible Transaction Account, to cover the payment), the Payment Instruction may not be completed. In some instances, you will receive a return notice from us. In each such case, you agree that:

- You will reimburse us immediately upon demand the amount of the Payment Instruction if we have delivered the payment to the Receiver but there are insufficient funds in, or insufficient overdraft credits associated with, your Eligible Transaction Account to allow us to complete the debit processing;
- To the extent your activity results in a reimbursement of funds to us and you fail to reimburse us within fifteen (15) business days of our initial notification to you, a late charge equal to one and a half percent (1.5%) monthly interest or the legal maximum, whichever is lower, for any unpaid amounts will be imposed;
- You may be assessed a fee by our Service Provider and by us if the Payment Instruction cannot be debited because you have insufficient funds in your Eligible Transaction Account, or the transaction would exceed the credit or overdraft protection limit of your Eligible Transaction Account, to cover the payment, or if we cannot otherwise collect the funds from you; the fee amount will be as set forth in your fee schedule from us or your account agreement with us. You hereby authorize us to deduct these amounts from your designated Eligible transaction Account, including by ACH debit;
- You will reimburse us for any fees or costs we incur in attempting to collect any amounts from you; and;
- We are authorized to report the facts concerning the return to any credit reporting agency.

*Payment Methods.* We and our providers reserve the right to select the method in which to remit funds on your behalf to your Payee. These payment methods may include, but may not be limited to, an electronic payment, an electronic to check payment, or a draft payment.

*Popmoney® Service Fees and Charges.* As reflected on the online payment request page of Popmoney® Service, you are responsible for the fees and charges applicable to Popmoney® Services. You acknowledge and agree that any applicable Popmoney® Service fees and charges will be charged regardless of whether the Payment Instruction is completed, unless the failure to complete the Payment Instruction is solely due to our failure.

*Payment Cancellation Requests.* You may cancel or edit any Payment Instruction (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Payment Instruction. Once the Popmoney® Service has begun processing a payment it cannot be cancelled or edited.

*Prohibited Payments.* The following types of payments are prohibited through the Popmoney® Service, and we have the right but not the obligation to monitor for, block, cancel and/or reverse such payments:

- Payments to or from persons or entities located in prohibited territories (including any territory outside of the United States);
- Payments that violate any law, statute, ordinance or regulation;
- Payments that violate this Agreement; and
- Payments related to: (1) tobacco products, (2) prescription drugs and devices; (3) narcotics, steroids, controlled substances or other products that present a risk to consumer safety; (4) drug paraphernalia; (5) ammunition, firearms, or firearm parts or related accessories; (6) weapons or knives regulated under applicable law; (7) goods or services that encourage, promote, facilitate or instruct others to engage in illegal activity; (8) goods or services that are sexually oriented; (9) goods or services that promote hate, violence, racial intolerance, or the financial exploitation of a crime; (10) goods or services that defame, abuse, harass or threaten others; (11) goods or services that include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene,

indecent or discourteous; (12) goods or services that advertise or sell to, or solicit others; or (13) goods or services that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction;

- Payments related to gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to casino games, sports betting, horse or greyhound racing, lottery tickets, other ventures that facilitate gambling, games of skill (whether or not it is legally defined as a lottery) and sweepstakes;
- Payments relating to transactions that (1) support pyramid or ponzi schemes, matrix programs, other "get rich quick" schemes or multi-level marketing programs, (2) are associated with purchases of real property, annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, (3) are for the sale of items before the seller has control or possession of the item, (4) constitute money-laundering or terrorist financing; (5) are associated with the following "money service business" activities: the sale of traveler's checks or money orders, currency dealers or exchanges or check cashing, or (6) provide credit repair or debt settlement services; and
- Tax payments and court ordered payments.

In addition to the above-referenced prohibited payments, our providers may also block and/or reverse payments that involve donations or payments to an unauthorized charity or non-profit organization, unless they have performed appropriate due diligence on and investigation of such charity or non-profit organization and have determined its legitimacy, in their sole discretion. In no event shall we or our providers be liable for any claims or damages resulting from your scheduling of prohibited payments. We have no obligation to research or resolve any claim resulting from a prohibited payment. All research and resolution for any misapplied, mis-posted or misdirected prohibited payments will be your sole responsibility and not ours.

*Payee Limitation.* We reserve the right to refuse to pay any Payee to whom you may direct a payment. The Service will notify you if we decide to refuse to pay a Payee designated by you. This notification is not required if you attempt to make a prohibited payment under this Agreement.

This Agreement does not alter your liability or obligations that currently exist between you and your Payees.

*Returned Payments.* In using the Popmoney® Service, you understand that Payees and/or the United States Postal Service may return payments to us for various reasons such as, but not limited to, Payee's forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or Payee account is paid in full. We will notify you of returned Payment Instructions via the system.

*Payment Instruction Cut-Off Time.* The current cut-off time for Payment Instruction is 7:00 pm Pacific Time for all payments processing as Next Day Delivery (business day), and 10:00 pm Pacific Time for all payments processing as 3 Day Delivery (business days).

## **Bill Pay Service**

If you apply and are approved for the Bill Pay Service, payments may be made only from a checking account or money market checking account. If you link more than one checking account to the Service, you must specify which account you wish to use in making payments. You may not initiate payments from a checking account that requires more than one signature for withdrawals or from a Savings or Certificate of Deposit account.

### *Bill Pay Service Definitions*

- "Bill Pay Service" means the bill payment service offered by Fremont Bank through its third party provider.

- "Bill Payment" means your payment instruction submitted using the Bill Pay Service.
- "Biller(s)" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills.
- "Payment Account" is the checking account from which bill payments will be debited.
- "Billing Account" is the checking account from which all Bill Pay Service fees will be automatically debited.
- "Scheduled Payment Date" is the day you want your Biller to receive your bill payment and is also the day your Payment Account will be debited, unless the Scheduled Payment Date falls on a non-business day in which case the previous business day will be considered to be the Scheduled Payment Date.
- "Due Date" is the date reflected on your Biller statement for which the payment is due. It is not the late date or grace period.
- "Scheduled Payment" is a payment that has been scheduled through the Bill Pay Service but has not begun processing.

*Payment Scheduling.* The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer business days from the current date) will be designated within the application when you are scheduling the payment. Therefore, the application will not permit you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Biller. When scheduling payments you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Biller statement unless the Due Date falls on a non-business day. If the actual Due Date falls on a non-business day, you must select a Scheduled Payment Date that is at least one (1) business day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period.

*Payment Authorization and Payment Remittance.* By providing the Bill Pay Service with names and account information of Billers to whom you wish to direct payments, you authorize us and our provider to follow the payment instructions that is received through the payment system.

When the Bill Pay Service receives a payment instruction, you authorize us to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize us to credit your Payment Account for payments returned.

*Payment Methods.* The Service reserves the right to select the method in which to remit funds on your behalf to your Biller. These payment methods may include, but may not be limited to, an electronic payment, an electronic to check payment, or a draft payment. Funds remitted to the Biller are deducted from your Payment Account when the draft is presented to Fremont Bank for payment.

*Payment Cancellation Requests.* You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment. Once the Bill Pay Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted.

*Bill Pay Stop Payment Requests.* Our ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. We may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment on a Bill

Payment that has already been processed, you must contact the Online Banking Department at (866) 222-6304 or (510) 723-5780 to determine if it's possible. Although we will make every effort to accommodate your request, we will have no liability for failing to do so once the payment has been processed. We may also require you to present your request in writing within fourteen (14) days.

*Prohibited Payments.* Payments to Billers outside of the United States or its territories are prohibited through the Service.

*Exception Payments.* Tax payments and court ordered payments may be scheduled through the Bill Pay Service; however such payments are discouraged and must be scheduled at your own risk. In no event shall we be liable for any claims or damages resulting from your scheduling of these types of payments.

*Biller Limitation.* We reserve the right to refuse to pay any Biller to whom you may direct a payment. The Service will notify you if we decide to refuse to pay a Biller designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

*Returned Payments.* In using the Bill Pay Service, you understand that Billers and/or the United States Postal Service may return payments to us for various reasons such as, but not limited to, Biller's forwarding address expired; Biller account number is not valid; Biller is unable to locate account; or Biller account is paid in full. We will use our best efforts to research and correct the returned payment and return it to your Biller, or void the payment and credit your Payment Account. You may receive notification from us.

*Bill Payment Cut-Off Time.* Our current cut-off time for Bill Payment instructions is 8:00 pm Pacific Time.

*Bill Payment Delivery and Presentment.* This feature is for the presentment of electronic bills (E-bills) only and it is your sole responsibility to contact your Billers directly if you do not receive your statements. In addition, if you elect to activate one of the Bill Pay Service's electronic bill options, you also agree to the following:

- Information provided to the Biller - The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers and e-mail addresses, with the electronic Biller. Any changes will need to be made by contacting the Biller directly. Additionally it is your responsibility to maintain all usernames and passwords for all electronic Biller sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. The Service may, at the request of the Biller, provide to the Biller your e-mail address, service address, or other data specifically requested by the Biller at the time of activating the electronic bill for that Biller, for purposes of the Biller informing you about Service and/or bill information.
- Activation - Upon activation of the E-bills feature the Bill Pay Service may notify the Biller of your request to receive electronic billing information. The date of presentment of your first electronic bill may vary from Biller to Biller and may take up to sixty (60) days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Biller. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Biller may reserve the right to accept or deny your request to receive electronic bills.
- Authorization to obtain bill data - Your activation of the E-bills feature for a Biller shall be deemed by us to be your authorization for us to obtain bill data from the Biller on your behalf. For some Billers, you will be asked to provide us with your user name and password for that Biller. By providing us with such information, you authorize us to use the information to obtain your bill data.
- Notification - The Bill Pay Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Bill Pay Service, the Bill Pay Service may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new electronic bills.

The time for notification may vary from Biller to Biller. You are responsible for ensuring timely payment of all bills.

- Cancellation of electronic bill notification - we reserve the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) days, depending on the billing cycle of each Biller. The Bill Pay Service will notify your electronic Biller(s) as to the change in status of your account, but it is your sole responsibility to make arrangements for an alternative form of bill delivery. We will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.
- Non-Delivery of electronic bill(s) - You agree to hold us harmless should the Biller fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.
- Accuracy and dispute of electronic bill – We are not responsible for the accuracy of your electronic bill(s). We are only responsible for presenting the information we receive from the Biller. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Biller directly.

This Agreement does not alter your liability or obligations that currently exist between you and your Billers.

### **Alert Service**

You may have the ability to set up the account notifications feature which is a convenience feature that permits you to request automated notification of specific situations. You are responsible to input accurate information to set up the account notifications. Alerts do not replace standard communications you receive from us concerning your accounts. Alerts may be sent via e-mail or in an online message box within the Service, or by text message. E-mail alerts will be sent to the e-mail address you provide in creating the alert. If you elect to receive Alerts by text messaging from us, you acknowledge that such messages will be automatically sent to your wireless access device. You assume all responsibility for the secure receipt of the text messages and acknowledge that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting your Internet service provider(s), phone operator(s), and other relevant entities. We neither guarantee the delivery or the accuracy of the contents of any Alert. We will not be liable for losses or damages arising from (a) non-delivery, delayed delivery, or wrong delivery of any Alert; (b) inaccurate content in an Alert; (c) your use or reliance on the contents of any Alert for any purposes. We reserve the right to terminate any request from you for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. You will manage the types and timing of your Alerts and the Alerts may be stopped or suspended by you at any time. You are responsible for any fees assessed by your Internet and mobile service provider of any kind.

### **Online Banking Access**

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any computers or software that you use in connection with the Services, even if we have previously approved their use. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. You agree to notify us promptly if any software or equipment we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to repair or replace the defective software or equipment.

To use the Services, you must have a sufficiently powerful computer hardware and appropriate software. At this time, this includes an internet browser that supports 128-bit encryption. Some Services may require you to download software from our website; in some cases, we may place software on your computer as part of our security and/or verification tools. You agree to maintain the confidentiality of the Security Codes at all times and not to provide access to them to anyone that you do not authorize to access your Accounts through the Services. You expressly acknowledge that any wireless access to the Services initiated by you may not be secure and, in such cases, you assume the risk associated with unauthorized access to the Service and any information contained therein, resulting from such wireless connectivity. You shall be responsible for installing and implementing any changes and upgrades to the Services as required by us and in no event later than within 5 days or sooner if required by us, to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Services. You acknowledge that changes and upgrades may also be automatically launched by the Service.

Eligible accounts accessible through the Services include checking, savings, money market, Certificate of Deposit (CDs) accounts, loans and lines of credit. You may access all of your eligible linked Accounts online; one of these accounts must be a checking account in order to have our Bill Pay Services.

### **Use of Vendors; Access and Use of Information**

We may use one or more providers to deliver the Services, and you understand that various financial intermediaries and their servicers may be involved in processing any one of your transactions, including Bill Payments and Payment Instructions. These intermediaries may benefit from interest that accrues on your transactions between the time your Account is debited and the time the recipient is paid. Any information you provide may be used by us or any of these other parties to complete or otherwise deal with your transaction or comply with any laws, rules or regulations. If there is a dispute between you and us, or either of us and any other person (including any merchant, payee, financial institution or other intended or actual recipient of any transaction), you authorize us to obtain information regarding you, your Account and your payment obligations (or the absence of them) from any party that was involved in the transaction or that might otherwise assist in the resolution of the dispute or problem. This may include financial and other information.

### **Availability**

You will generally be able to use Services seven days a week, 24 hours a day within the United States. Service may not be available due to system maintenance or circumstances beyond our control. Services may be added, cancelled or limited at any time or from time to time, with or without cause or notice (except as required by applicable law).

### **Business Days**

Our business days are Monday through Friday, excluding federal holidays.

### **Electronic Mail**

You can send us electronic mail ("e-mail"). Since we may not receive it immediately, you should not rely on e-mail if you need to communicate with us right away (e.g., to report an unauthorized transaction). If you need to contact us immediately, you should contact us at the telephone number listed in this Agreement. We will have a reasonable time to act upon any e-mail request, and reserve the right to reject any instruction or request received by e-mail (e.g., a request to wire funds).

For your protection please use this e-mail only for general inquires. E-mail communications are not secure and should not be used to communicate confidential information. To contact us regarding your account(s) or services, call us at Calling (866) 222-6304 or (510) 723-5780. Or, if your Agreement(s) with the Bank



require that you contact us via a different means (such as a specific phone number or address), please contact us in the manner specified.

E-mail or messages sent by us to you will be deemed received by you when sent by us to you at your e-mail address as shown on our records. You agree to notify us (using the Service or otherwise in form acceptable to us) whenever your e-mail address changes. You agree that information or messages made available to you via the Services will be deemed received by you when first posted on our website or made available to you. You agree to access the Service from time to time, in no event less than monthly, to access this information or the messages.

### **Privacy and Confidentiality**

All information gathered from you in connection with using the Service will be governed by the provisions of our privacy policy (applicable to consumer accounts only), as well as our online privacy policy, which you agree to review by accessing on our homepage.

In addition, we will disclose information to third parties about your account or the transfers you:

- Where it is necessary for completing transfers, or
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- In order to comply with government agency or court orders, or
- If you give us your permission.

### **Security Code Credentials**

During your enrollment for the Services, you are required to select or will be assigned certain numbers, codes, marks, signs, public keys or other means of authenticating your identity and electronic communications in your name. These may include a customer number, logon name/access ID, and password. These credentials, with the other components of your Security Codes, will give access to your Accounts through the Service.

You agree to change all passwords with sufficient frequency so as to protect confidentiality, and in any event no less frequently than every 90 days.

You agree to keep all Security Codes confidential; you agree not to write them down. Passwords should not be easy to guess: for example, your children's or pet's names, birth dates, addresses or other easily recognized identification related to you. It is also recommended you do not have your browser automatically remember your password. We may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not to implement supplemental authentication tools, your access to some or all Services may be limited. The term "Security Codes" will include any supplemental authentication tools that are used by you.

### **Contact in Event of Unauthorized Transfer**

If you believe any part of your Security Code, including your password, has been lost or stolen call: 866-222-6034 or 510-723-5780 or write: Fremont Bank, PO Box 5101, Fremont, CA 94537-5101

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

### **Data Recording**

You agree that we may record the information you enter in the online system.

## **Processing Cut-off Time**

Communication received by us after the cut-off time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At our option, however, we may treat it as received the same day as the day of receipt. There can be a delay between the time when you send a Communication to us and the time we receive it. Our current cut-off time for transfers between linked Accounts is 7:00 p.m. Pacific Time. Popmoney® Personal Payments, Bill Payments and check stop payment orders may have separate cut-off times, identified below.

## **Documentation**

A monthly account statement will be sent or made available unless there are no electronic fund transactions in a particular month. In any case, you will get a statement at least quarterly (not applicable for Certificates of Deposit accounts).

## **Customer Service**

If you need assistance, send an e-mail to our Customer Service Department at [onlinebanking@fremontbank.com](mailto:onlinebanking@fremontbank.com) or call (866) 222-6304 or 510-723-5780 from 8:00 a.m. to 7:00 pm Pacific Time on any business day and 9:00 am to 2:00 pm Pacific Time on Saturday, or write to us at: Fremont Bank, PO Box 5101, Fremont, CA 94537-5101 Attn: Online Banking. Our hours of operation are subject to change without prior notice.

## **Errors and Questions**

In case of errors or questions about your electronic transfers, telephone us at, 866-222-6034 or 510-723-5780 or write us at: Fremont Bank, PO Box 5101, Fremont, CA 94537-5101 as soon as you can, if you think your statement is wrong or if you need more information about a transfer listed on the statement. We must hear from you no later than sixty (60) days after the FIRST statement was made available to you on which the problem or error appeared. You must:

- Tell us your name and account number (if any).
- Describe of 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.
- The dollar amount of the suspected error.

If you tell us orally, we may require you send us the complaint or question in writing within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If more time is needed, however, we may take up to forty-five (45) days to investigate a complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (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 the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may request copies of the documents that were used in the investigation.

## **Consumer Liability**

Tell us AT ONCE if you believe part of your Security Code, including your password, has been lost or stolen or if you believe that an electronic fund transfer has been made without your permission using information from your check. 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, as applicable).

If you tell us within 2 business days after you learn of the loss or theft of any part of your Security Code, including your password, you can lose no more than \$50.00 if someone used your Security Code without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of any part of your Security Code, including your password, and we can prove that we could have stopped someone from using the Security Code without your permission if had you told us, you could lose as much as \$500.00.

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 said funds if you informed 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.

## **Liability**

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 losses or damages. However, there are some exceptions. We will not be liable, for example, if: (a) we process your payment in a timely manner, but the payee rejects your payment or fails to process it in a timely manner; (b) through no fault of ours, your account does not contain sufficient available funds to make the transfer or payment, or the transfer or payment would exceed the credit limit on any overdraft line you have with us; (c) the money in your account is subject to an uncollected funds hold, legal process or any other encumbrance or claim restricting the transfer or payment; (d) the payee or transaction information you supply to us is incorrect, incomplete or untimely; (e) the computer or related system was not working properly and you knew about the problem when you requested the transfer or payment; (f) circumstances beyond our control (such as fire, flood, power outage, equipment or technical failure or breakdown) prevent the transaction, despite reasonable precautions that we have taken; (g) if you do not authorize a bill payment early enough for your payment to be made and properly credited by the payee by the time it is due; or (h) if a transfer or payment could not be completed due to the system's unavailability. There may be other exceptions stated in this Agreement and other agreements with you.

## **Termination**

We reserve the right to terminate your use of the Services in whole or in part at any time without cause and without prior notice.

You may terminate this Agreement by notifying us and providing your name, address, and identifying the Service(s) you are discontinuing, and the desired termination date of the Service(s). When Bill Payment is terminated, any prescheduled and not yet processed bill payments made through Service will also be terminated. Any applicable charges for the Services will be assessed. Previously paid fees are non-refundable. You may terminate a service by one of the following methods:

- Calling (866) 222-6304 or (510) 723-5780
- E-mailing us at [onlinebanking@fremontbank.com](mailto:onlinebanking@fremontbank.com)

- Visiting any one of our offices.

We reserve the right to require 30 days advance notice from you before you may terminate any part of the Service. Your Services may become inactive if you do not sign on or have any transaction scheduled through the Services during any consecutive 270-day period. If your account is considered inactive, you may be required to contact us to have the Services activated before you will be able to schedule any transaction through the Services.

### **Arbitration and Other Terms**

This agreement supplements the terms of your Deposit Account Agreement with us. Please see that agreement for other terms relating to this Service (for example, waivers, governing law, and overdrafts). You agree that disputes arising in connection with these Services will be subject to the arbitration provisions set forth in your account agreement. This agreement and your account agreement contain all of the terms of our agreement with you with respect to the Services. The terms of this Agreement will supersede any conflicting terms in your Deposit Account Agreement with respect to the Services.

### **ACH Entries**

Electronic transfers that are made through the Automated Clearing House ("ACH") are subject to the rules of the ACH, and you agree to be bound by the Operating Rules of the ACH, including the rule making payment to the payee provisional until receipt by the payee's bank of final settlement of the credit transaction. If final settlement is not received, you will not be deemed to have paid the payee the amount of the electronic bill payment. Furthermore, you agree that any payment by us to you for any returned credit entry or credit reversal is provisional until receipt by us of final settlement for such entry. If final settlement is not received, we are entitled to a refund from you of the amount credited and we may charge your account for the amount credited. We may refuse to permit the use of any amount credited for a credit reversal if we believe that there may not be sufficient funds in your account to cover charge back or return of such reversal.

### **Account Authorization**

When we receive a Bill Payment or Payment Instruction from you, you authorize us to debit your Eligible Transaction Account or Payment Account for the amount of any such Bill Payment or Payment Instruction plus any related fees in effect (and as disclosed in the Service) at the time you initiate the Bill Payment or Payment Instruction, and to remit funds on your behalf. You acknowledge and agree that any applicable fees will be charged when we receive a Bill Payment or Payment Instruction from you, regardless of whether the Bill Payment or Payment Instruction is ultimately completed. You also authorize us to credit your Payment Account or Eligible Transaction Account for the receipt of payments, including but not limited to those payments returned to us from Billers or Payees to whom you sent payment(s) and those payments that were cancelled and returned to you because the processing of the Bill Payment or Payment Instruction could not be completed.

### **Inconsistencies**

If a beneficiary of a transfer request (including a Bill Payment, and "Popmoney® Service) is identified by both name and account number, payment may be made by us, our provider(s), and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a transfer request by both name and identifying number, we, our providers, and other financial institutions may rely on the identifying number even if the name and the identifying number are not consistent or identify different parties.

## **Service Fees and Additional Charges**

We may impose new fees and charges, or increase or change existing fees and charges. We will provide advance notice of these changes to you if required by law. Other fees may be assessed and billed separately by your internet and/or telephone service provider. You agree to pay all fees and charges we impose. You authorize us to charge the designated Account and/or any other account you hold with us to cover your fees and charges. You also authorize us to charge you according to our then-current fee schedule.

If you do not use this Service for any three-month period, we reserve the right to discontinue your Service without notice to you. To the extent permitted by law, you give us the right to set off any of your money or property which may be in our possession against any amount owed to us under this Agreement. This right of set off does not extend to any Keogh, IRA account, or similar tax-qualified retirement account.

## **Amendment to this Agreement**

We may amend, add to or change this Agreement (including changes in its fees and charges hereunder). We will provide notice of amendments, additions or changes if required by law. Your continued use of the Services will constitute your consent to the amendments, additions or changes.

## **Address or Banking Changes**

It is your sole responsibility to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers and e-mail addresses. Changes can be made by contacting Online Banking Department at (866) 222-6304 or 510-723-5780. All changes made are effective when we have had a reasonable opportunity to respond to your change notice.

## **Information Authorization**

Your enrollment in the Service may not be fulfilled if we cannot verify your identity or other necessary information. Through your enrollment in the Service, you agree that we reserve the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that we reserve the right to obtain financial information regarding your account from a Biller, a Payee, or your financial institution (for example, to resolve payment posting problems or for verification).

## **Harm to Computer Systems/Data**

You agree that we will not be liable for viruses, worms, trojan horses, or other similar harmful components that may enter your computer system by downloading information, software, or other materials from our site. We will not be responsible or liable for any indirect, incidental or consequential damages that may result from such harmful components.

## **Preauthorized Payments**

*Right to Stop Electronic Payment and Procedure for Doing So.* If you have told us in advance to make regular electronic payments out of your Account, you can stop any of these payments. Here's how: You may follow the directions provided in the Services, to stop the payment through the Services, or Call us at (866) 222-6304 or 510-723-5780 or write to us at: Fremont Bank, PO Box 5101, Fremont, CA 94537-5101 in time for us to receive your request three (3) business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. We will charge you a fee for each stop payment order you give. A separate process will apply to the

extent you wish to initiate check stop payment requests through the Services. Refer to "Check Stop Payment Services," above, for further details.

*Notice of Varying Amounts.* If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set).

*Liability for Failure to Stop Payment of Preauthorized Electronic Transfer.* If you order us to stop one of these electronic payments three business days or more before the transfer is scheduled to be made, and we do not do so, we will be liable for your losses or damages.

### **Electronic Check Conversion**

You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases; and (ii) pay bills.

### **Preauthorized Credits**

If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at (800) 359-BANK(2265) to find out whether or not the deposit has been made.

### **Disclaimer of Warranty**

We make no warranty of any kind, express or implied, including any implied warranty or merchantability or fitness for a particular purpose, in connection with Services provided to you under this Agreement. We do not and cannot warrant that Services will operate without errors, or that any or all Services will be available and operational at all times. Due to the possibility of human and mechanical errors, as well as other factors, the system website is not error-free, and all information is provided "as-is," without warranty of any kind. We make no representation and specifically disclaim any express or implied warranties to users of any third parties, including but not limited to, warranties as to accuracy, timeliness, completeness, merchantability, or fitness for any particular purpose.

### **No Waiver**

The Provider shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by us. No delay or omission on the part of the Service in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

### **Captions**

The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

### **Notices**

Unless otherwise required by applicable law, any notice or written communication given pursuant to this Agreement may be provided electronically. You agree that we may provide notice to you by posting it on website, sending you an in-product message within the Service, e-mailing it to an e-mail address that you have provided us, mailing it to any postal address that you have provided us, or by sending it as a text message to any mobile phone number that you have provided us, including but not limited to the mobile

phone number that you have listed in your Service setup or customer profile. All notices by any of these methods shall be deemed received by you no later than twenty-four (24) hours after they are sent or posted, except for notice by postal mail, which shall be deemed received by you no later than three (3) business days after it is mailed.

By providing us with a telephone number (including a wireless/cellular, mobile telephone number and/or e-mail address), you consent to receiving calls from us at that number and/or e-mails from us for our everyday business purposes (including identity verification). You further consent to receiving text messages from us at that number, and/or e-mails from us for marketing purposes.

### **Assignment**

We may assign the rights and delegate the duties under this Agreement to a company affiliated with us or any other party. You may not assign your rights or obligations under this Agreement, and any effort by you to do so is unreasonable at our election.

### **Applicable Law**

Except as otherwise provided in this Agreement, California law will govern the Services and the interpretation of this Agreement. Unless otherwise provided in this Agreement, your accounts and the Services will be subject to applicable clearinghouse, Federal Reserve Bank and correspondent bank rules. You agree that we do not have to notify you of a change in those rules, except to the extent required by law.

### **Uploaded Content, Linked Sites and Advertisements**

From our website, you may be able to access uploaded content provided or operated by third parties. Unless we tell you otherwise in writing, we do not operate or control any such content or any of the information, products or services on such linked websites. You acknowledge and agree that: (i) you access such content and linked sites at your own risk; (ii) we make no representation or warranty, and assume no responsibility for, content on our website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) we make no endorsement of, and assume no responsibility for, content uploaded to our website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and services, you may be exposed to content that is offensive, indecent or objectionable; and (v) although we may have a contractual or other relationship with the operators of a linked website or the providers of content, we will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. You agree to hold us harmless in connection with all of the foregoing.

We reserve the right, but shall have no obligation, to reject, move, or delete content that we, in our sole discretion, believe violates this Agreement, or contains content, including viruses, that may interfere with the operation of our website. We may, but have no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. We shall have the right, but not the obligation, to disclose content to any third party if required by law or if we believe reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any content violates rights of third parties; or (d) protect our rights, properly, or personal safety, or those third parties.

### **Third Party Content**

We may receive, process, and make available to you content that we receive from you and others. In this regard, we are merely a passive conduit for such content, although we reserve the right to block or remove any content that we believe violates this Agreement. We assume no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that you or others provide to us, nor for any mistakes, defamation, slander, libel, omissions, falsehoods,

obscenity, pornography or profanity on such sites. We will not have a duty to interpret or evaluate any content transmitted to us or through our website or Services, except to the limited extent, if any, set forth in this Agreement. We will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content we receive from you or third parties. We will not have a duty to notify you about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on our website, even if we have reason to know of its existence. Use of any content you obtain from our website is at your own risk.

### **User Communication and Personalization Settings**

Our website and Services may permit you to send or receive communications (such as e-mail, chat, newsgroups and the like) and to store content and personalized settings for various options. We are not responsible for any delay, deletion, alteration, mis-delivery or failure to deliver or store any such communications, content or settings.

### **Idea Submission**

If you submit any materials or other information to any public areas of our website (such as bulletin boards, guest books, forums, wish lists and chat rooms), you hereby grant us a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, sub-licensable, assignable, transferable, irrevocable license under copyright and patent, with the unrestricted right to use, self, reproduce, distribute, transmit, create derivative works of, publicly display, and publicly perform any such materials and other information (including, without limitation, ideas contained therein for new or improved products and services) by all means and in any media now known or hereafter developed or commercialized. In addition, you represent and warrant to us that you have the right to grant to us the foregoing license.

### **Our Intellectual Property**

You acknowledge and agree that the software and content used by us in the operation of our website and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by us our website and as part of the Services and our name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by us and our licensors. As such, you will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Agreement or otherwise.

You may not distribute, use, reproduce, duplicate, copy, publish, sell or otherwise transfer (i) any portion or element of the Services or the Intellectual Property (ii) use of our website, Services or Intellectual Property, or (iii) access to our website Services or Intellectual Property. Further, you may not (a) create derivative works of any portion or element of our website, Services or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology we incorporate in our website or the Services; (d) modify or erase any copyright or trademark notice we place at our website; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided at the site or a list of our content or site users, or use computer programs (sometimes known as "scraper," "spiders," "robots," or "bots") to systematically access and download data; (f) access the Services by any means other than via our website; (g) frame our website or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing our name, trademark, URL, product name or Intellectual Property. You agree to comply with the terms of any license agreement we make available to you with any software.

### **User Conduct**



You agree not to use the Service or the content or information in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to the Service; or (i) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others.

**No Commercial Use or Re-Sale**

You agree that the Service is only for the personal use of the individuals authorized to access your account information with us. You agree not to make any commercial use of the Service or resell, lease, rent or distribute access to the Service.