



# **IBC BANK**

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# **COMMERCE BANK**

EFFECTIVE DATE – January 19, 2015 – FOR ALL ACCOUNTS  
OPENED ON OR AFTER THIS DATE.  
EFFECTIVE DATE – March 16, 2015 – FOR ALL EXISTING  
ACCOUNTS AS OF January 18, 2015

## **DEPOSIT ACCOUNT AGREEMENT** **BOOKLET**

### **I. General Matters**

The Deposit Account Agreement governing this Account consists of this booklet, a Depositor's Agreement signature form or sample first check signature specimen (if missing executed Depositor's Agreement signature form), disclosures such as Truth in Savings and Electronic Funds Transfer Agreement, Schedule of Fees and any written agreement for banking services connected with this Account (the "Agreement"). As used in this Agreement, "Authorized Signatory" means each and every signatory on this Account, including Depositor, any person signing the initial Depositor's Agreement signature form or any person whose name is found either on the first deposit slip or on the sample first check signature specimen (if missing executed Depositor's Agreement signature form), and each and every Convenience Signer. Bank and each Authorized Signatory agree that to the extent that no other written agreement, by, between, and/or among Bank and one or more Authorized Signatory is applicable to a specific issue, this Agreement will govern their relationship. You understand that this Deposit Account Agreement Booklet plus the disclosures you receive and any agreements as to special services (like mobile banking) will control our relationship with You. You understand that you should read this Deposit Account Agreement carefully. Please review this Agreement and retain it in a safe place should you need to refer to it in the future.

**BANK:** "Bank", as used in this Deposit Account Agreement booklet, shall mean the bank and all of its branch locations designated by name and address in the Logo section on the front side of your Depositor's Agreement signature form(s).

**THIS AGREEMENT CONTAINS PROVISIONS FOR BINDING  
ARBITRATION (SEE SECTION VI, "MISCELLANEOUS", PG.25) AND  
WAIVER OF JURY TRIAL (SEE SECTION III, "RIGHTS AND  
DUTIES OF DEPOSITOR AND IBC.", PG.13)**

**VERIFICATION OF IDENTITY:** IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

The protection of our customer's identity and confidentiality is of utmost importance to Bank. We proudly support all efforts to protect and maintain the security of our customers and our country.

Bank may require any person seeking to conduct a banking transaction to present identification and/or information acceptable to Bank. Before we allow a person to cash an item, we can require identification, such as a driver's license or passport. We can secure further identification by methods such as photography, fingerprinting, and other biometric in accordance with applicable law or technological means. If the person does not provide or permit such identification, we can decline to cash the item and you will not claim that we wrongfully dishonored it.

**RULES GOVERNING THE ACCOUNT:** This Agreement shall be governed and interpreted in accordance with all applicable federal laws and the laws of the State of Texas, except to the extent federal law requires the application of other law. In addition, it is subject to applicable clearinghouse rules and regulations. If from a construction of any document related to any transaction between Bank, Depositor and/or any Authorized Signatory, any term(s) or provision(s) of the document is in conflict with applicable laws, then such document shall be automatically reformed and modified as to comply with applicable law, without the necessity of execution of any amendment or new document. Bank is under no duty to act on instructions or requests, which Bank reasonably believes may cause Bank to be exposed to any civil or criminal liability.

To the extent that any terms or conditions set forth in the most current Depositor's Agreement signature form(s) executed by one or more Authorized Signatory and in this Deposit Account Agreement booklet are in conflict, the terms and conditions set forth in this booklet (and any amendment hereof) control and govern to the extent of such conflict(s).

If a conflict exists between any provision of this Agreement, and/or any statements, oral or written, made by any employee, officer or director of Bank or any member bank or branch bank of International BancShares Corporation, this Agreement will control. However, in the event of any inconsistency between this Agreement and federal disclosures on the same subject, the federal disclosures will control. In addition, in the event of any inconsistency between this Agreement and a separate agreement on a specific subject matter, such as treasury management agreements, the specific agreement shall control over this Agreement.

**FEES AND SERVICE CHARGES:** Depositor agrees to pay and this Account is subject to various published fees and service charges, including without limitation, monthly service charges; a fee for each debit, check, withdrawal or transfer document, and/or other items presented against, and/or for each other transaction, electronic or otherwise, involving this Account; research fees and copying charges; document maintenance and retention service charges, service charges for return mail processing fee overdrafts, overdraft transfers, N.S.F. items (overdrafts created by checks, in person withdrawals, ATM withdrawals, or by other electronic means, as applicable), provided that you have Opted In to overdraft coverage of such usage, dishonor or payment devices, presentation of items against uncollected funds, reversal of any account entries, automatic debits, stop payment requests; service charges for inactive accounts, except as limited by law, and for recertification of an account, including fees for each required notice or reminder, and such other service charges and/or fees as are listed in the Account Services And Fees Schedule (and any amendment thereof). If you receive an Account Analysis Statement, you hereby agree to be subject to the fees set forth in such Account Analysis Statement. Upon proper and timely notice of amendment, the account fees and service charges may be modified by altering existing fees and/or service charges and/or by adding new fees and/or service charges, including without limitation, adding fees and/or service charges for existing services for which there is currently no fee and/or service charge. Any amendment to this Agreement shall be made in accordance with Modification of Terms herein.

If an item drawn against your Account is presented over the counter for payment by a person who is a noncustomer of Bank, Bank may charge a fee to the person presenting the item as a condition for payment of the item. You agree that Bank may dishonor any item if the person refuses to pay the fee or to provide the identification requested by Bank. Depositor agrees that all ATM, Debit Card and/or other electronic transactions are subject to all published fees, service charges and/or interest charges including those that result from insufficient funds transactions, overdrafts and/or advances against uncollected funds. However, overdraft fees shall not be assessed unless Depositor has opted in to overdraft coverage of ATM, Debit Card and other electronic transactions.

If there is a garnishment, attachment, levy, administrative order, subpoena, summons, or other legal or administrative process, relating in any way to this Account, Bank has the right to charge this Account, and Depositor agrees to pay, an additional service charge, a review and inspection fee, an investigation and analysis fee, and all copying or electronic reproduction charges necessary to respond to such legal and/or administrative

process, in addition to any attorney's fees and costs which may be allowed by law. Unless prohibited by law, all expenses incurred by Bank as a result of any legal, regulatory or administrative proceeding in any way affecting this Account, including but not limited to court costs, arbitration costs and fees, and reasonable attorney's fees, may be charged to this Account or billed directly to Depositor.

All of the fees and service charges described herein may be deducted from and/or charged to this Account and Bank shall not be liable for dishonoring checks, drafts, notes, acceptances, withdrawal and/or transfer documents, and/or other instruments or items, or for the failure to make automatic debits to this Account because of insufficient available funds in this Account resulting from (i) the charging of any service charges, fees and/or interest, (ii) any administrative hold due to a direct debit, withdrawal, and/or authorization, and/or (iii) any withdrawal or administrative hold due to any electronic or wire transfer, the receipt of any notice of return, or for any other reasonable cause.

Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us.

**MODIFICATION OF TERMS:** Bank may amend the terms of this Agreement, including the deletion of terms and conditions and/or special features and/or limitations on accounts, the addition of new and additional terms, conditions, duties, obligations, and/or rights, and the modifications of the fees and/or service charges, including specifically the addition of new and additional fees, and/or service charges for existing services for which there is currently no charge. Bank may notify Depositor of any amendment in any manner allowed by this Agreement and applicable State and Federal laws. By failing to close this Account prior to the effective date of any noticed amendment, each Authorized Signatory agrees to be bound by, and subject to, all terms and conditions contained in the amended Deposit Account Agreement from its effective date, including the deletion of any terms and conditions and/or special features and/or limitations on accounts, and any modifications to existing, or additions of new, account fees and/or service charges. Any amendment to the Arbitration Provisions and/or termination of the Arbitration Provisions shall never apply retroactively to any pending Disputes in arbitration or any pending Disputes between the Parties for which Notice of Dispute has been provided, unless the Parties otherwise expressly agree in writing, and any such amendment or termination shall not be effective until at least 30 days after notice has been provided and Depositor fails to close the account prior to the effective date.

If Depositor or any agent of Depositor requests that Bank hold Depositor's mail, Depositor and each Authorized Signatory agree that any and all notices of amendment and the text of any amendment to this Agreement and/or amendment to the fees and/or service charges, are made available to Depositor and are deemed to have been mailed to Depositor as of the date when notice of amendment and the text of such amendment would have otherwise been mailed. Mailing and/or deemed mailing of the notice of amendment and of the text of such amendment to only one Depositor is legal notice to, and delivery to, each and every Authorized Signatory.

**CONVERSION OF ACCOUNT:** Bank reserves the right to convert the Account to another type of account offered by Bank without the necessity of obtaining new/additional Depositor's Agreement Signature form(s).

**BANK MAY TRANSFER THIS ACCOUNT TO ANOTHER BANK OR BRANCH BANK OF INTERNATIONAL BANCSHARES CORPORATION WITHOUT NECESSITATING THE EXECUTION OF NEW ACCOUNT DOCUMENTS:** If for any reason Depositor desires that this Account be moved to a different bank/branch bank of International Bancshares Corporation, Depositor agrees that Bank may transfer this Account to said different bank/branch bank without the necessity of Depositor executing new account agreement and/or other documents. Bank and Depositor further agree that Depositor and the bank or branch bank to which this Account is transferred shall continue to be governed by the terms and conditions of this Agreement regardless of whether the bank routing number and/or account number on the new account is modified.

**CLASSIFICATION OF CHECKING ACCOUNTS:** For regulatory accounting purposes, Bank may classify checking accounts as two subaccounts: a transaction subaccount and a nontransaction subaccount. This classification will have no effect on the balance, the ability to use such account, the amount and rate of interest you receive (if applicable), the service charges (if any), or the account statement. Bank may transfer funds between these subaccounts. Bank will record the sub-accounts and transfer between them on Bank's internal accounting records only. All other terms, definitions and rules governing this Account remain in effect.

**RATE INFORMATION:** All interest bearing accounts at Bank, other than time deposits accrue interest at a variable rate of interest. Interest rates are established from time to time by Bank in its sole and absolute discretion and are subject to change without notice to Depositor.

**CERTIFICATE OF DEPOSIT:** A certificate of deposit account is not payable, in whole or in part, before maturity date and no interest accrues after date of maturity. There are additional terms and conditions that apply to certificates of deposit accounts and to other segregated interest bearing accounts which are set forth in Bank disclosure documents and/or in certificate of deposit receipts. To the extent that any conflict exists between the additional terms set forth in Bank's disclosures and/or receipts and this Agreement, the terms of this Agreement (together with its Addendums and Amendments) will control. A certificate of deposit is a segregated account and is represented only by bookkeeping entry on Bank's records, but distinguished from other types of deposits by a single global account number. A single Deposit Account Agreement (booklet)/Depositor's Agreement (signature card), together with a single global account number, may control all certificate of deposit accounts of the same Depositor(s) and no additional agreements will be required to establish such additional certificate of deposit accounts. Any certificate of deposit that is automatically renewable will receive the then prevailing rate of interest paid by Bank on certificates of deposit of similar amounts and term for an additional term equal to or substantially similar to the previous term of the certificate of deposit, unless otherwise agreed in writing by the Bank and Depositor, notwithstanding anything contained herein or in Bank's disclosures and/or certificate of deposit receipt to the contrary.

Depositor has no right to make additional deposits to an existing certificate of deposit account. Bank may, in its sole and absolute discretion, allow additional deposits to existing certificate of deposit accounts. Depositor has the right to terminate the certificate of deposit or withdraw the funds there from within ten (10) days after the date of maturity of the deposit. An interest rate applicable to a certificate of deposit account is subject to modification by Bank at each maturity date and/or on the date of any withdrawal of funds from the certificate of deposit account. If Depositor requests withdrawal of a certificate of deposit or any part thereof prior to the agreed maturity date, and Bank, in its sole and absolute discretion, consents to Depositor's withdrawal request, Bank may charge a penalty as provided in the Certificate of Deposit disclosure documents. Nothing herein implies that Bank will consent to a request to allow additional documents and/or for an early withdrawal and may decline any such request, even if prior requests have been approved.

**CLOSING THE ACCOUNT:** Except as expressly limited in this Agreement, either Depositor or Bank may close this Account at any time, with or without reason or cause of any type or manner, except that we may require you to give us seven (7) days advance notice when you intend to close your savings or interest bearing checking account by withdrawing your funds. If Bank closes this Account, Bank may notify Depositor of the effective date on which this Account will be, or was, closed. Bank agrees to remit to Depositor any positive collected balance remaining in this Account within a reasonable time of the effective date of the closing of this Account, after deduction therefrom (i) any fees, service charges and/or accrued interest due and owing, and/or (ii) any amounts subject to Bank's exercise of its right of setoff, and/or any foreclosure of Bank's security interest in this Account or in any of the funds deposited therein. After the effective date of the closing of this Account, Bank has no obligation to accept deposits or to pay or process any checks, drafts, withdrawal or transfer documents, or other items.

If we close your Account, we may mail a check to you at the address we currently show in our records. We may either return deposits, checks and other items that we may receive after your Account is closed or in the case of deposits reopen the account and accept the deposit, without our being liable to you. This provision will survive the termination of this Agreement.

## **II. COMMUNICATION – BETWEEN DEPOSITOR & BANK; THIRD PARTIES & BANK**

**INFORMATION:** Each Authorized Signatory authorizes Bank to obtain references and/or to verify any information on Depositor and/or any other Authorized Signatory, and further represents and warrants that the information provided herein and all other information provided Bank is true and correct.

Bank may share information as more particularly described in the Bank's privacy policy, which has been separately provided to you.

Bank may disclose information about Uniform Transfer To Minors Act Accounts to the minor or the minor's representative(s). The custodian agrees to keep Bank informed of the location of the minor(s).

**CREDIT REPORTS:** You authorize us to obtain reports about you periodically from organizations such as credit reporting agencies, check reporting services, and other consumer reporting entities, and to provide them information.

**RECORDING:** You give us permission to record your communications with us. If you authorize someone such as an attorney to do business with us on your behalf, you will be responsible for obtaining their permission to allow us to record their communications with us.

**ELECTRONIC COMMUNICATIONS:** Unless specifically agreed upon prior to transaction, any notice or other communication to Bank required or permitted by this Agreement and/or by law shall not be valid and/or effective and have no legal force and/or effect if received by Bank via the internet, facsimile transmission or other electronic communication system or device. All electronic communications to Bank are the sole responsibility of the sender. Bank may, in its sole and absolute discretion but without any obligation or duty, act upon or recognize such electronic communications.

**NOTICE OF DISPUTED DEBTS:** If any Authorized Signatory believes a bona fide dispute has arisen with Bank regarding any right, indebtedness or obligation under this Agreement, or any addendum and/or amendment hereto, or any other account document, at any time, such Authorized Signatory will notify Bank in writing that he/she believes a bona fide dispute has arisen by delivering the written notice of bona fide dispute, all other notices, demands, or documents, and all future payments or credits on any indebtedness to Bank to the attention of the President of the International BancShares Corporation at the following mailing address:

Dennis E. Nixon, President  
International BancShares Corporation  
P.O. Drawer 1359  
Laredo, Texas 78042-1359

All limitations or restrictions on payment, and/or other legal notices or demands forwarded after the forwarding of the notice of bona fide dispute are agreed to have no legal force and/or effect until received by Bank at the above address.

**CHANGE OF ADDRESS:** Depositor agrees to notify Bank promptly in writing of any change of address. Bank may, in its sole and absolute discretion, recognize any communication, oral, written, or electronic, regarding notice of a change of address of Depositor from any person whom Bank in good faith believes has authority to provide such notice.

**STOP PAYMENTS:** If Bank is requested to stop payment on an item or items, whether in writing or through the IBC Online and/or IBC Link, each Authorized Signatory agrees to hold Bank harmless from, and indemnifies Bank for, any and all claims by third parties, and all expenses and costs incurred by Bank (including its reasonable attorney's fees and costs) as a result of refusing payment of said item or items. Each Authorized Signatory further agrees that Bank will not be liable for payment of an item subject to a stop payment request if such payment occurs through inadvertence, accident, or oversight, or is credited to, or against, any claimed indebtedness of any Authorized Signatory, or if by reason of such payment other items drawn on this Account are returned due to insufficient or uncollected available funds.

Bank's liability, if any, for paying an item subject to a proper, timely and effective stop payment order is limited to Depositor's actual economic loss sustained, or to the face amount of the item, whichever is less.

A request for stop payment is effective for six (6) months but renewals may be made from time to time if properly and timely requested by Depositor. No stop payment request, or renewal or revocation thereof, shall be valid and/or effective until after a reasonable period of time after the stop payment request is received during normal business hours at Bank on a Bank's approved form (whether received through the IBC Online and/or IBC Link Stop Payment Request screen, or in writing), and (i) such receipt is evidenced by a Bank officer's written acknowledgement and/or (ii) Bank successfully receives an electronic stop

payment request of an item through IBC Online and/or IBC Link that is properly described by at least, the date of the item, the exact amount of the item, the item number, and the precise account number. A reasonable period of time after receipt would necessarily include sufficient time for the stop payment request to be processed by Bank and to be noted on Bank's records which are accessible by the branch Bank where such check is presented. A written request for stop payment must describe the item with reasonable certainty, including providing at least the following information, the date of the item, the exact amount of the item, the item number, the precise account number, the name of payee, and the reason for the stop payment request.

If Depositor chooses to submit a request for stop payment through IBC Online and/or IBC Link and such request is successfully received and processed by Bank, record of the stop payment request will be available through IBC Online and/or IBC Link, and customer will be able to download or print a copy at that time. Depositor acknowledges that this information is sufficient to demonstrate whether the request for stop payment was received electronically and processed by Bank, and Depositor hereby agrees that Depositor, following submission of a stop payment request through IBC Online and/or IBC Link has a duty to review the information provided through IBC Online and/or IBC Link to ensure that the request was processed. If Depositor discovers that any request for stop payment transmitted through IBC Online and/or IBC Link does not, after a reasonable time, appear on the IBC Online and/or IBC Link record of stop payments, Depositor is obligated to notify Bank in writing of such immediately upon access of the information through IBC Online and/or IBC Link. Depositor and Bank further agree that should Depositor at any time fail to notify Bank of such, Depositor shall be expressly deemed to have failed to exercise ordinary care in the transmission of the stop payment request.

If the item has not been negotiated for cash, cash equivalents, subject to an executed payment order, and/or certified, and Bank has had a reasonable period of time after receipt of the request to act upon a proper and effective stop payment of such request, the deadline for receipt of a stop payment request is one (1) hour after the opening of the next banking day after the banking day on which Bank received the item. For purposes of this paragraph "banking day" is defined as Monday through Friday, from 8:30 am to 5:00 pm, excluding federal and state holidays or other posted Bank closings.

Stop payment orders for automated clearing house (ACH) items shall be subject to National Automated Clearing House Association rules as they may change from time to time. To the extent such rules vary from the provisions herein, the rules shall control.

Bank will not be held liable if an item is presented for payment and paid after a stop payment request has expired. In addition, Depositor assumes all liability if he or she elects not to use a stop payment request when available and attempts to avoid payment by means of any other method.

**CONSUMER ACCOUNTS ONLY:** For stop payment orders for recurring electronic transactions, please refer to the Electronic Funds Transfers/Automated Teller Cards and Checkcard Agreement and Disclosure.

**BUSINESS AND OTHER NONPERSONAL ACCOUNTS:** If Depositor is an entity, including corporation, professional corporation, limited liability company and/or partnership, unincorporated association, trust, partnership, limited partnership, sole proprietorship and/or other legal entity, however organized, Depositor, each Authorized Signatory, and each person signing this Agreement and/or any other account document, represents and warrants that (i) such person(s) is fully authorized to execute all documents executed, including the Deposit Account Agreement, and addendums, thereto, and any and all checks, drafts, withdrawal or transfer documents, payment orders or amendments or cancellations thereof, or any other items presented, in the capacity stated therein; (ii) Depositor has delivered to Bank all documents necessary to evidence such authority, and (iii) Depositor will furnish any additional documents which may be requested by Bank in such form as Bank may request. Bank is not required to recognize any resolution of any entity affecting this Account that is not in a form approved by Bank and its legal counsel. Endorsements of an entity for deposit may be written, stamped or affixed by non-manual means without designation of the person making the endorsement. Depositor guarantees and warrants all prior endorsements on all checks, drafts, other items, and/or withdrawal or transfer documents, and/or other instruments that previously have been delivered to Bank. Bank is authorized to honor any and all checks, drafts, other items, withdrawal or transfer documents payable to any officers, employees, directors, principals or agents of Depositor whether the presenter is signing or countersigning same, whether presented for cash or for credit to any other account, including the personal account of such officer, employee, director, principal or agent,

and Bank is not required to make any inquiry concerning such items or the person's actual authority to act on behalf of Depositor.

The authority herein conferred upon each Authorized Signatory shall not be revoked, altered or changed in so far as Bank is concerned and Bank shall not be affected or bound by any revocation, alteration or change of any authority until written notice of such revocation, signed by the President, Managing Partner, Trustee(s), Managing Member and/or chief principal of Depositor, shall have been delivered to Depositor's Account Officer at his/her banking offices and Bank has sufficient time to act upon such revocation. Depositor agrees that it has the sole responsibility to provide a current and proper Corporate/Entity Resolution on Bank's approved form regarding authority of its agents/representatives/officers/members/employees to conduct Depositor's banking business. Depositor acknowledges and agrees that Bank may rely on the terms and conditions of this Deposit Account Agreement (and any and all amendments and/or addendums hereto) to determine who is properly authorized by Depositor to conduct Depositor's banking business regarding this Account, and further agrees that Depositor is stopped to assert any claim against Bank which may accrue and/or arise due to any conflict, if any, which may exist now or at any time in the future, between any Corporate/Entity Resolution delivered to Bank and this Deposit Account Agreement if Bank acts in compliance with any of the then current Corporation/Entity Resolutions or this Deposit Account Agreement.

**UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT (UIGEA) OF 2006:** The UIGEA, signed into law in 2006, prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. The Dept of Treasury and the Federal Reserve Board have issued a joint final rule, Regulation GG, to implement this Act.

As defined in Regulation GG, Unlawful Internet Gambling means to "place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made".

As a commercial customer of IBC/Commerce Bank, these restricted transactions are prohibited from being processed through your account or banking relationship with us. If you do engage in an Internet gambling business and open a new account with us, we will ask that you provide evidence of your legal capacity to do so.

**SUPPORTING DOCUMENTATION:** Bank is hereby authorized to accept as being valid and correct and to rely on any and all documents and records presented in connection with the opening and closing of, or conducting any transaction(s) on this Account and is not obligated to determine if actual authority exists for any person to act on behalf of Depositor.

#### **SPECIAL REPORTING OBLIGATION FOR TEXAS BUSINESS DEPOSIT CUSTOMERS:**

**Background:** Texas Finance Code Chapter 277 provides that Texas business deposit customers must provide certain information to the Bank when opening their account. For purposes of this Agreement, you are a "Texas business deposit customer" if you maintain a business deposit account with the Bank and you are a "business" as defined in Texas Finance Code Chapter 277.001(1), which includes a sole proprietorship, partnership, corporation, or any other legal entity formed for the purpose of making a profit. This law also provides that the Bank must request that the Texas business deposit customers provide Bank with updated information at least annually.

**Agreement of all Texas Business Deposit Customers:** By opening and maintaining a business account with the Bank, you agree to provide any updated information as required by Texas Finance Code Chapter 277 (described below) no later than December 31st of each year during which you maintain your account at the Bank. You do not need to make any annual report if the information you previously provided has not changed during the preceding year. You only need to make any changes in the information described below during the preceding year.

**Required Information:** If your business is a *sole proprietorship*, Bank is required by Chapter 277 to request that you provide updated information for the following:

- Business owner's name
- Physical address of the business
- Business owner's home address
- Business owner's Texas driver's license number or Texas DPS ID card number

If your business is a *corporation, partnership, limited partnership or limited liability company*, Bank is required by Chapter 277 to request that you provide updated copies of the business's certificate of incorporation, partnership agreement, and certificate of limited partnership or articles of organization, as appropriate. If such business has adopted an assumed name, Bank is required by Chapter 277 to request that you provide a copy of the assumed name certificate.

Please include the title of the account and the account number with any information updates.

Please send information updates to:  
Dennis E. Nixon, President  
International BancShares Corporation  
P.O. Drawer 1359  
Laredo, Texas 78042-1359

**UTMA ACCOUNTS:** If it is noted on the signature card that the account was established under the Uniform Transfers to Minors Act (UTMA), you understand that there can be only one custodian and one minor per account. No other parties are permitted. Your responsibility to us under this agreement will not be limited to the amount in the account.

### **III. RIGHTS AND DUTIES OF DEPOSITOR AND BANK**

**ACCOUNTHOLDER RESPONSIBILITIES:** Depositor acknowledges that they have a duty to manage their checking account in a responsible manner. Good account management means understanding options and making an informed choice about how to conduct transactions. This includes balancing your checkbook by recording all transactions, reviewing your monthly account statement, and tracking your account balance by using one of our FREE services such as IBC Voice, IBC Bank Online and/or IBC Mobile Banking. Keeping a balanced checkbook is the best way to avoid unnecessary fees.

**CONVENIENCE SIGNERS:** Any Authorized Signatory named in this Agreement, other than Depositor(s), is a Convenience Signer only, acts only as Depositor's agent with respect to transactions involving this Account, and has no ownership rights in and/or to the account funds unless otherwise expressly set forth in this Agreement. **Authorized Signatories who are not Depositor, however, do have certain liabilities, obligations and duties pursuant to this Agreement.**

**MULTIPLE SIGNATURES:** If this Account purports to require two or more signatures on any item, each Authorized Signatory acknowledges that such provision is solely for Depositor's personal or internal control purposes and is not binding on Bank. Bank will not be liable for paying any item lacking the required number of signatures, if such item bears at least one authorized signature.

**NONMANUAL FORM OF SIGNATURE:** If any items drawn on this Account are signed, countersigned and/or endorsed using any facsimile signature, stamp signature, mechanical signature, computer software generated signature or other non-manual form of signature (herein collectively referred to as "non-manual form of signature"), Depositor acknowledges that the use of such non-manual form of signature is solely for Depositor's benefit and convenience. Each Authorized Signatory accepts sole responsibility for maintaining security over any device utilized for affixing each authorized signature on this Account.

Any non-manual form of signature reasonably resembling any signature on file with Bank or affixed to any prior item which was accepted and paid and/or previously processed without objection will be effective as a genuine authorized signature of an Authorized Signatory and Bank is hereby authorized to debit this Account for payment of any item signed by such non-manual form of signature, regardless of whether the person affixing it was authorized to do so or not and regardless of when, or by whom or by what means the actual or purported non-manual form of signature may have been made or affixed thereto. Bank may also conclusively treat as authorized any signature that reasonably resembles the non-manual form of signature you have adopted as your own, whether such non-manual form of signature is affixed by the original or a duplicate of the signature device/stamp/program.

Any item presented for cash or other negotiation or deposited to this Account that bears a nonmanual form of signature endorsement reasonably resembling any signature on file with Bank or affixed to any item which was accepted and paid and/or previously processed without objection shall be deemed to bear a genuine authorized



endorsement of an Authorized Signatory regardless of whether the person affixing it was authorized to do so or not and regardless of when, or whom, or by what means the actual or purported non-manual form of signature may have been affixed thereto.

**DIGITAL SIGNATURE:** A Digital Signature is an electronic identifier, created by a computer, intended by Depositor to have the same force and effect as the use of Depositor's manual signature and satisfies the Statute of Frauds. A Digital Signature involves the use of both private and public key encryption (i.e., use of a combination of private and public passwords to ensure that communication is authentic). All written electronic communications (including transmission of electronic data over telephone lines or fiber optic cables or stored on a computer disk) sent to Bank in connection with a transaction is considered signed if a Digital Signature is transmitted with such communication. The use of Digital Signature is subject to criminal laws pertaining to fraud and computer crimes. Signed for the purpose of this Agreement includes any record, not a writing, including attachments to or logical association with electronic symbol, sound, or process with the present intent to accept the record.

**POWERS OF ATTORNEY:** If Depositor wishes to designate an attorney in fact, Depositor must utilize a form acceptable to Bank and its legal counsel. Bank reserves the right to refuse to recognize any power of attorney at any time, even if Bank previously has recognized such power of attorney. If Bank recognizes a power of attorney, Bank may continue to recognize such authority until Bank receives written notice of revocation, signed by Depositor, whether or not such power of attorney provides other methods of revocation, by actual delivery to the President of the International BancShares Corporation, Dennis E. Nixon, President, P.O. Drawer 1359, Laredo, Texas 78042-1359, Bank has acknowledged in writing the receipt of such notice of revocation signed by the President of International BancShares Corporation, and Bank has had a reasonable time after receipt and acknowledgment of such notice of revocation to act upon it.

**PROMPT REVIEW OF ACCOUNT STATEMENT/ACTIVITY:** Bank may mail or otherwise make account statements available to Depositor, including electronically. If Depositor or any agent of Depositor, requests that Bank hold its mail and/or retain the account statements and/or account items and/or images thereof, or to not forward or hold the account statements and/or items as the account statement and items are available electronically through IBC Online Banking or IBC Link, Depositor agrees that Bank has made the account statements, account items and/or all other mail which could have been forwarded to Depositor available to Depositor as of the date when they would have otherwise been mailed and/or electronically available. Depositor must promptly review each account statement, and all items (or images thereof) which are described with reasonable particularity in such account statement to the extent necessary to discover any irregularity, and promptly notify Bank in writing of any unauthorized signature, lack of signature, alteration, forgery or any other irregularity and/or mistake on any item and/or mistake in a deposit to or charge against Account. Depositor must provide Bank specific notice of any such irregularity or mistake promptly, and in no event later than sixty (60) days after the account statement describing the account items with reasonable particularity is mailed or otherwise made available to Depositor. Further, Depositor must report any alleged improper, forged, unauthorized and/or irregular endorsement within one hundred eighty (180) days after the account statement describing the account items with reasonable particularity is mailed or otherwise made available to Depositor. Further, Depositor cannot assert a claim after such time has expired. In addition to all other defenses allowed by law, Depositor agrees that Bank is relieved of any and all potential liability for any and all subsequent forgeries, unauthorized signatures or endorsements or alterations by the same wrongdoer if Depositor does not notify the Bank of the first such irregularity within fourteen (14) days after the account statement describing the first irregular item with reasonable particularity is mailed or otherwise made available to Depositor.

Depositor acknowledges that any and all information sufficient to demonstrate an irregularity with respect to an item and/or this Account, and/or mistake in a deposit to or charge against Account, as would be available from the account statements provided by Bank and described above, is also available through IBC Link and IBC Online Banking, or other electronic means. Depositor expressly agrees that if, based on the information available to it through IBC Link and/or IBC Online Banking, or other electronic means, it knew or should have known that an irregularity and/or mistake with respect to an item and/or this Account existed, and/or mistake in deposit to charge against Account, Depositor is obligated to notify Bank in writing of any such irregularity immediately upon access of such account information through IBC Link and/or IBC Online Banking. Depositor and Bank further agree that should Depositor at any time fail to immediately notify Bank of any such irregularity, Depositor shall be expressly deemed to have failed to exercise ordinary care in the handling and safekeeping of this Account.

If Depositor fails to provide Bank with any notices required herein within the time limits set forth herein for such notices, the account statement (for the purposes of Depositor asserting any claims for forgeries, alterations and/or unauthorized signatures or endorsements) is deemed correct and accurate and a final statement of such account as of the date of the statement.

If Depositor provides Bank all statutorily required notices of forgery, the item will be returned marked “forgery”.

**DEPOSITOR’S/AUTHORIZED SIGNATORY’S DUTIES TO SAFEGUARD:** Depositor and each Authorized Signatory has a nondelegable duty to safeguard (i) all checks and other encoded items from being stolen, or otherwise taken, or utilized without authority, (ii) all Personal Identification Numbers and/or information, (iii) all public and private key encryption information, and (iv) all other checking account related private information.

If any checks or other encoded items are stolen, or otherwise taken, or utilized without authority, and Bank has exercised ordinary care, each Authorized Signatory agrees that Bank is relieved of any and all liability for the negotiation, payment, certification or processing of any such checks and/or other encoded items.

Failure to safeguard the information described above constitutes a breach of ordinary care by Depositor.

If you voluntarily disclose your account information to another person orally, in writing, electronically, or by some other means, Bank may treat such disclosure as your authorization to that person to issue items drawn against your account. Until you notify the Bank that such items are not authorized, Bank shall not be liable to you for the payment of any such items, even though the items are not in accordance with the authorization you may have given to that person.

A withdrawal by a co-owner or other person with an interest in or authority to transact business on your account is an authorized withdrawal.

A withdrawal by a person you have authorized to use your ATM or Debit Card or Bank Account Card is not unauthorized even if that person has exceeded the authority you gave.

**If you voluntarily give information about your account (such as our routing number and your account number) to a party who is seeking to collect a debt and/or sell you goods or services, and you do not physically deliver a check to the party, any debit to your account initiated by the party to whom you gave the information is deemed authorized by you.**

**BANK’S DUTY OF CARE:** Due to the large volume of items Bank must process and the largely automated nature of such processing, Depositor agrees that Bank will not have failed to exercise ordinary care if Bank examines items pursuant to a manual or other written procedure that represents an examination of at least a sampling of items processed, or that meets certain minimum review and inspection criteria which Bank may establish from time to time. It is expressly agreed that Bank may utilize a bulk filing system in the processing of checks and other encoded items and that the use of a bulk filing system in the processing of checks and other encoded items will constitute the exercise of ordinary care by Bank under this Agreement.

Depositor agrees that counterfeit checks are the product of new technology that allows a wrongdoer to photocopy, scan and/or duplicate a valid check and thereafter reproduce copies of such valid check, including the signature of the drawer, that are essentially exact replicas of the valid check, and which cannot be detected by Bank’s use of ordinary care.

Bank’s policies and procedures are solely for its use and do not impose upon the Bank a higher standard of care than is otherwise established by applicable law or regulation.

Bank may process checks or other items drawn on this Account, or any electronic transfers and/or electronic

transactions in any order (largest to smallest, smallest to largest, numerically or otherwise). Our current method is described in "Order of payment" on page 17 of this agreement. We may change our processing order at any time, even though some processing orders may result in more insufficient funds fees to you than others.

**COMPARATIVE NEGLIGENCE:** If your failure to exercise ordinary care substantially contributes to the forgery or alteration of an item which is paid against this Account, contributes to a loss due to a mistake in a deposit or charge against the Account, you will be precluded from asserting such forgery or alteration and/or mistake against Bank. If Bank asserts such a preclusion, and you establish that Bank's failure to exercise ordinary care substantially contributed to the loss resulting from the payment of the forged or altered item(s), and/or other mistake, the loss shall be allocated between Depositor and Bank on a comparative basis. Specifically, your acts and omissions which substantially contribute to the presentation and payment of any forged or altered item(s) and/or in the failure to notify Bank of the mistake will be compared to the acts or omissions of Bank to determine who should bear the loss or whether the loss should be allocated between you and Bank. Notwithstanding this comparative negligence standard, Bank will not be liable if items are forged or altered such that the forgery or alteration could not have been detected by a bank exercising ordinary care.

Notwithstanding anything contained herein to the contrary, Bank will never be liable for, or responsible in any way for, any percentage of any alleged loss or damages purportedly resulting from an alteration, forgery, counterfeit items, unauthorized signature, and/or endorsement, or any other irregularity on any item, and/or in the Account, unauthorized Remotely Created Item, and/or electronic debit, which is greater than the percentage of any alleged loss or damages proximately caused by Bank's failure to exercise ordinary care, if any, regardless of the percentage of proximate causation, or even the complete absence thereof, of Depositor or any Authorized Signatory.

**RIGHT OF SETOFF AND SECURITY INTEREST:** In addition to all liens upon, and rights of setoff against, the monies, securities, or other property of any Authorized Signatory given Bank by operation of law, and/or in any other written agreement, each and every Authorized Signatory, jointly and severally, hereby grants to Bank a security interest in, and a right of setoff against, any and all moneys, securities or other property (except to the extent prohibited by applicable Federal and State laws) of each Authorized Signatory now, or hereafter, in the possession of, or on deposit with, Bank or any member bank or branch bank of International BancShares Corporation, whether held in a general or special account or deposit, or for safekeeping or otherwise. Bank will not be liable for dishonoring items where the exercise of its right to setoff or foreclosure of its security interest results in collected available insufficient funds in this Account. To the extent allowed by law, (i) the security interests and rights of setoff granted herein shall secure payment of any and all indebtedness to Bank of each and every of the Authorized Signatories, or of any one or more of them, individually or jointly with others, now owed or hereafter owing to Bank, (ii) any indebtedness now or hereafter owing to Bank by each and every of the Authorized Signatories or by any one or more of them, either individually or jointly with others, may be charged to, and/or setoff against, any account at Bank or member bank or branch bank of International BancShares Corporation, owned by, or in the name, of any Authorized Signatory or in the name of any Authorized Signatory and another or others (to the extent the joint account is an "or" account), and (iii) the security interests and rights of setoff granted herein may be exercised by Bank without any prior demand on, or notice to, any or all Authorized Signatories. No right of setoff shall be exercised as to loans secured by Depositor's homestead.

No security interest or right of setoff may be deemed to have been waived by any act or omission or other conduct of Bank, or by any failure to exercise any right of setoff or to enforce any security interest, or by any delay in so doing. Every right of setoff and security interest granted herein shall continue in full force and effect until such right of setoff or security interest is specifically waived or released in writing by Bank. Except as limited herein, Bank's security interest granted herein shall be collateral for any or all claims of, and/or debts due to, Bank by any Authorized Signatory. Notwithstanding anything contained herein to the contrary, the setoff rights, liens and/or security interests granted herein are not applicable to our collateral for any homestead equity loan. Each Authorized Signatory agrees that Bank's right of setoff applies to any item cashed or otherwise paid by Bank, if the item is returned unpaid for any reason and/or charged back against this Account and/or any other account of an Authorized Signatory who presented and/or participated in the presentment of the item and/or benefited in any way from the cashing and/or other payment of said item. The right of setoff includes creating or increasing a negative balance.

The funds held in joint accounts may be pledged by any Authorized Signatory as collateral for any debt of any Authorized Signatory to Bank and/or may be used to pay any indebtedness on which any Authorized

Signatory is liable, individually or jointly with others, whether as primary obligor, as guarantor, or otherwise, and such pledge shall remain valid and enforceable after the death of the Authorized Signatory executing such pledge. Bank's right of setoff and security interest granted herein do not apply if the debt is created under a consumer credit card plan or if the debt is of an Authorized Signatory who is not the Depositor and his/her right to withdraw funds from this Account arises only in a representative capacity for an entity.

Bank's liability and/or responsibilities, if any, for exercising any right of setoff and/or for any foreclosure of any security interest is expressly limited to reimbursement of the amount of net funds setoff and/or actually received by Bank.

To the extent allowed by law, in the event that any Authorized Signatory files or is subject to any bankruptcy proceeding or other liquidation proceeding, whether voluntary or involuntary, each Authorized Signatory agrees that Bank may place an administrative hold on this Account and/or on any and all other accounts of the Authorized Signatory who is the subject of the bankruptcy or other liquidation proceeding to the extent of the aggregate of all indebtedness, however created or incurred, of such Authorized Signatory, individually or jointly with others, whether or not any or all of such indebtedness is matured, past due or subject to acceleration or demand due to an existing default or an event of default which may mature into a default, in order to preserve and protect Bank's rights in and/or to the funds in such accounts, until Bank is paid in full and/or a court of competent jurisdiction enters a final order/judgment adjudicating Bank's rights and/or claims and/or to such account funds, or any portion thereof.

**CLAIMS AND DISPUTES CONCERNING THE ACCOUNT:** If any person or entity makes a claim against any funds in this Account, or if Bank has reason to believe that there is or may be a dispute over matters such as the ownership of this Account or any and/or all funds on deposit therein, or regarding the authority to transact any banking business regarding this Account, Bank may, in its sole and absolute discretion, (i) continue to rely on and recognize any authority provided in any of the Deposit Account Agreements and/or Entity/Corporate Resolutions and/or other account documents; (ii) freeze all or part of the funds in this Account until the dispute is resolved to Bank's satisfaction and any and all documents deemed necessary by Bank to resolve the dispute and/or protect Bank are executed and delivered to Bank, and/or (iii) interplead the account funds or any portion thereof into an appropriate court of law or arbitration proceeding for resolution of such claims and/or distribution of the funds, after deduction of Bank's reasonable attorney's fees and costs, and/or the exercise of its right of setoff and/or foreclosure of its security interest.

**LIMITATIONS OF LIABILITY:**

- (a) Bank shall not be responsible for Depositor's or any other person's acts or omissions, including acts or omissions of any Authorized Signatory and/or of any clearing house, financial institution, correspondent, vendor, supplier, or other entity or person.
- (b) Bank shall not be liable for any consequential, special, punitive, statutory multiple, incidental, noneconomic or indirect loss or damage that Depositor may suffer or sustain in connection with business or commercial accounts governed by this Agreement.

**GUARANTY AGREEMENT:** Each Authorized Signatory does hereby, jointly and severally, if more than one, unconditionally guarantee and promise to pay Bank, in United States currency, any and all indebtedness of each other Authorized Signatory to Bank to the extent such indebtedness in any way or manner grows out of relates to, and/or arises from, this Agreement and/or this Account, whether such indebtedness is now existing or hereafter created or arising, absolute or contingent, whether joint, several, or joint and several, including all costs of collection (including its reasonable attorney's fees, costs and expenses). This is an absolute and continuing unconditional guaranty of payment and not of collectability. Each Authorized Signatory agrees that Bank may release, or waive its rights to, any collateral, if any, and/or renew rearrange or extend from time to time, the time, manner, place or terms of payment of such indebtedness or any renewals or extensions thereof without notice to any Authorized Signatory and each Authorized Signatory hereby consents to such action, and/or agrees that any such action or omission by Bank will not release or discharge any Authorized Signatory from liability and/or obligation hereunder pursuant to this guaranty of payment.

**INDEMNITY:** Depositor and each Authorized Signatory agree to indemnify Bank against any loss, liability, or expense, including its attorney's fees, costs and expenses, resulting from or arising out of any acts

and/or omission of Bank authorized by this Agreement, any breach of any of Depositor's/Authorized Signatory's representations and warranties set forth herein, and or any breach of any other obligation of any Depository/Authorized Signatory. Depositor and each Authorized Signatory further agree to indemnify the Bank against any loss, liability, and expense, including attorney's fees, costs, and expenses, resulting from or arising out of any claim of any person that Bank is responsible to, or for any act or omission of Depositor.

**NO WAIVER:** If Bank fails to exercise any right of Bank under this Agreement and/or has failed to require strict compliance with this Agreement or any part thereof, or has failed to declare to breach of this Agreement, Bank's prior failures to act are not a waiver of Bank's rights and/or privileges under this Agreement, and Bank may exercise such right and may insist on strict compliance and full enforcement in the future.

**LEGAL ACTION RELATING TO BUSINESS/COMMERCIAL ACCOUNTS:** In the event any legal action in a court of competent jurisdiction or an arbitration proceeding is commenced in connection with the enforcement of, or any declaration of, a right, duty or obligation under this Agreement, and/or the assertion of any controversy or claim involving in any way, relating to, or arising out of a business or commercial account, whether sounding in contract, tort, or statute, at law or in equity, the prevailing party may be entitled to recover all reasonable and necessary attorney's fees, paralegal costs (including allocated costs for in-house services), arbitration costs, fees/or expenses, costs of court, expert witness fees and costs, discovery costs, travel expenses, and any and all other necessary costs or expenses incurred in connection with any such action or proceeding, in an amount determined by the trier of fact.

**JURY WAIVER: IF A DISPUTE BETWEEN YOU AND THE BANK PROCEEDS IN COURT RATHER THAN THROUGH MANDATORY BINDING ARBITRATION, THEN YOU AND BANK BOTH WAIVE THE RIGHT TO A JURY TRIAL, AND SUCH DISPUTE WILL BE TRIED BEFORE A JUDGE ONLY.**

**NO ORAL REPRESENTATIONS/ENTIRE AGREEMENT:**

(a) Depositor hereby expressly represents and warrants that Depositor did not rely on any representation, promise or other statement of Bank/and or its agents and employees relating to this Agreement or the subject matter thereof, except as expressly set forth herein, and it is Depositor's express intent to fully disclaim and disavow reliance on any such representation, promise or other statement.

(b) This Agreement contains the entire, complete and final agreement between the parties with respect to the subject matter hereof and supersedes all prior written or oral discussions, negotiations, representations, warranties and agreements, if any, between them with respect to the subject matter hereof, except as may be expressly stated herein.

**IV. TRANSACTION PROCESSING OF CHECKS**

**TRANSACTION PROCESSING PROCEDURES:** Bank may refuse to perform any requested act, transaction, and/or process, which it is not expressly obligated to perform under the terms of this Agreement. The only notice of Bank's refusal to perform any requested act, transaction and/or process will be provided in Depositor's periodic account statement.

Bank may modify its internal procedures, at any time, without notice, for any type of transaction that Bank deems necessary, in order to protect Bank and/or Depositor.

**CHECK AND ITEM FORM SPECIFICATIONS:** Depositor agrees that Bank may refuse to accept for deposit or to process any check, draft, payment order, withdrawal or transfer document, or other item that is presented in a form that cannot be processed and/or photographed using equipment that Bank regularly uses in its normal operations. If Bank, in its sole and absolute discretion and without any obligation or duty, accepts or pays any item that is not within Bank's form specifications, each such transaction is subject to additional fees and/or service charges as set forth in the Account Services And Fees Schedule.

Bank is expressly authorized to construe as “or” any symbol, mark or word (other than the word “and”) or may imply “or” in the absence of any connective on the payee line of any check or other item containing multiple payees.

**CHECK STOCK:** Depositor agrees and stipulates that the check stock offered for purchase from and/or through Bank is printed on special paper which contains multiple features and watermarks to prevent/detect check fraud/duplication/counterfeiting and that the use of nonbank check stock increases significantly the risk of loss that may result from check fraud/duplication. **Depositor further agrees that the risk of loss resulting from check fraud/duplication on check stock not purchased from or through Bank, to the extent such loss is not attributable to Bank’s failure to exercise ordinary care, is shifted from Bank to Depositor.**

**DEPOSITOR ENCODED ITEMS:** Items not encoded by Bank are nonconforming items, and are the sole responsibility of Depositor. Any item presented for payment, whether check, draft, withdrawal or transfer document, and/or other item or instrument of payment, must conform in all respects, including its encoded message, to Bank’s automated bulk filing processing system. Failure of any item to conform to Bank’s automated bulk filing processing system is agreed to be sole cause of Bank’s payment of, or failure to pay, each nonconforming item.

If our equipment is unable to read what we consider to be significant number of your items, and they are rejected, we may charge you additional fees. If we do charge you more, we may send you a notice. If there is an encoding error that results in costs or losses to us, you agree to reimburse us (and we charge your Account) for our claims, costs, losses and damages, including attorney’s fees.

**CREDITS FOR DEPOSITS:** With regard to items received for deposit or collection, Bank acts only as Depositor’s collecting agent and assumes no responsibility beyond its exercise of ordinary care. All credits to this Account are only provisional and are subject to final payment and to receipt by Bank at its own offices of proceeds of final payment in cash (in United States currency) or solvent credits, free from any claims, rights of setoff, and/or other charge back rights. Bank may forward items to correspondents for handling and shall not be liable for any default or negligence of any correspondent. Items and their proceeds may be handled by any Federal Reserve Bank in accordance with applicable Federal Reserve Rules and by Bank or any correspondent in accordance (i) with any general banking usage, (ii) with any accepted industry standard or practice, (iii) with any practice or procedure that a Federal Reserve Bank may use or permit any other bank to use, or (iv) with any other lawful means or practice.

Bank may charge back against this Account or any other account of Depositor at Bank, at any time allowed by law, any item drawn on this Bank which is returned unpaid or otherwise not good or payable.

If a deposited item, check, draft and/or automated clearing house entry is returned to Bank by the bank on which it is drawn, Bank may accept that return and charge the item back against this Account or any other account of Depositor at Bank, without regard to whether payor bank returned the item before its return deadline. Unless prohibited by applicable law or regulation, Bank may charge back to this Account, or to any other account of Depositor at Bank, the amount of any item deposited to this Account or negotiated for cash or cash equivalents, or certified, which item initially was paid by the payor bank and which is later returned due to an alleged forgery, unauthorized or missing endorsement, claim of alteration, encoding error or any other alleged problem or irregularity. Bank may process a copy or other evidence of a returned item in lieu of the original.

An item received after the time specified in the applicable availability funds notice for such banking location shall be deemed received the next business day. Bank reserves the right to post all deposits, including deposits of cash and of items drawn on it, not later than midnight of its next business day after their actual receipt by a Bank teller during regular banking hours for such banking location, or at any later time allowed by law, and Bank shall not be liable for damages, claims and/or expenses due to any item presented during any time period allowed herein.

When Bank accepts deposits and issues receipts, such deposits and receipts are subject to subsequent verification and correction, if necessary. If Bank discovers that, or receives satisfactory documentation that, an account entry was made in error or for an erroneous amount or is otherwise incorrect, Bank may debit this Account for the amount erroneously credited and/or take such other action as may be required to correct the error, and each Authorized Signatory agrees to reimburse Bank to the extent that the collected available funds in this

Account at such time are insufficient to fully correct the error. In the event that any payment does not become final, and/or is corrected, the originator of the payment will not be deemed to have paid Depositor the amount of the erroneous credit. Each Authorized Signatory will be solely responsible for any loss, damage and/or expense caused by any failure to identify properly the account to which a deposit is made or intended to be made.

**DEMAND DRAFTS:** If you deposit a demand draft (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that the draft is valid as drawn and authorized.

**RETURN OF DEPOSITS:** Bank, may, in its sole and absolute discretion and without reason or cause, return or refuse to accept any deposit in, transfer to or other credit to, in whole or in part, this Account at any time and will not be liable for doing so.

**DELAY IN RETURN OF ITEMS:** Depositor agrees that Bank will not be liable to you because an item you deposit in this Account is returned after the time set by applicable law if the delay in returning the item is caused by markings on the item in the space reserved for the depository bank's endorsement that were made by you or a prior endorser. Depositor will also be liable to Bank for any loss or expense, including without limitation, reasonable attorney fees, we incur because we are unable to properly return an item drawn on this Account within the time set by applicable law where the delay in properly returning the item is caused by markings on the item in the space reserved for the depository institution's endorsement that existed at the time you issued the item.

**INCOMPLETE OR CONDITIONAL ITEMS:** If any Authorized Signatory issues an item which is incomplete or conditional (such as "Void After 90 Days" or "Not Valid Over \$500.00"), each Authorized Signatory acknowledges such provision or condition is solely for Depositor's convenience or internal control purposes, and agrees that Bank may pay such item, in its sole and absolute discretion, even if it is incomplete and/or the condition has not been fulfilled.

**COLLECTION OF FOREIGN ITEMS AND EXCHANGES:** Notwithstanding anything contained herein to the contrary, deposit of foreign funds, whether represented by currency, checks, drafts, other items, letters of credit, electronic transfers or any other form, are accepted for collection only and the amount of final credit to this Account shall be the amount in U.S. dollars actually received by Bank in exchange for the deposit of the foreign funds. Depositor bears all exchange rate risk. Bank is entitled to recover costs of collection, including reimbursement costs charged by foreign banks.

Depositor and Bank acknowledge that foreign money exchange transactions are contemplated under this Agreement. Depositor and Bank also contemplate and acknowledge that due to the urgency of time and the sensitivity of monetary markets, such transactions may be completed using only oral orders/instruction agreements. Depositor and Bank agree that in the event of a foreign money exchange transaction where the orders/agreements/instructions are only oral, the transaction form prepared and maintained by Bank regarding the foreign money exchange transaction and the terms of the oral orders/instructions/ agreements received by Bank shall be the only official record of such oral orders/instructions/agreements and that the information and terms set forth in such transaction form (including, but not limited to, the amount of currency to be bought or sold, the exchange rate, and the time that the orders/instructions/agreements were received, and were to be executed) shall conclusively control and govern regarding the parties' duties and rights in such transaction.

Collection of foreign items is subject to the Uniform Rules for Collection of Commercial Paper, International Chamber of Commerce.

**ENDORSEMENTS:** If any endorsement is placed on an item for deposit which is outside of the area extending 1 1/2 inches from the trailing edge of the check, draft or other item, or otherwise causes the endorsement of the first bank of deposit to be obscured in any way, and this causes a delay in the collection or return of the item, each Authorized Signatory will be responsible, jointly and severally, for any loss or expense Bank may incur as a result thereof. The trailing edge is defined as the left side of the item as viewed from the front.

**GOOD FAITH DISBURSEMENT:** Depositor agrees Bank shall not be liable for any good faith disbursement of funds from this Account, if Bank is relying on or acting on documentation presented and/or other information received which purports to provide any individual or entity a right to receive such disbursements.

**DELAY IN AVAILABILITY OF FUNDS:** If an item or other right to funds is deposited in, or credited to, this Account where the availability of such funds may be delayed pursuant to applicable state or federal law, then whether or not Bank has received final settlement, such funds are deemed unavailable to Depositor for the time period prescribed by law and/or set forth in the notification delivered to Depositor.

**HOLDS ON ACCOUNT FUNDS:** If Bank cashes or provides cash equivalents for a check or other item presented by any Authorized Signatory or his/her agent or representative, drawn on another bank, Bank is authorized to and may reduce the available funds of this Account by an equal amount. The funds subject to the administrative hold will be again available in this Account after receipt by Bank of final settlement for such check or other item.

**DETERMINING YOUR ACCOUNT'S AVAILABLE BALANCE:** Your available balance is the most recent record we have of the funds available for withdrawal from your account. In determining whether you have sufficient funds to cover a transaction, the available balance is your current balance plus any pending deposits minus any holds on deposits you have made, and pending transactions (such as pending debit card purchases or ATM withdrawals) that the Bank has authorized but that have not yet posted to your account. It is possible for you to overdraw your account even though the available balance appears to show there are sufficient funds to cover a transaction that you want to make. This happens because the available balance does not reflect all your outstanding checks, automatic bill payments (such as ACH and recurring debit card transactions) that you have authorized or other transactions that have not been paid from your account. For example it may not include a check you have written but we have not received. Also, your available balance may not reflect the most recent deposits to your account – see the section titled “Delay in Availability of Funds” in this document. Your available balance may also not reflect all of your card transactions. For example, if a merchant does not submit a one-time debit card transaction for payment within three (3) business days of authorization (or other time period as specified in the payment network rules governing your card), we must release the authorization hold on the transactions. The available balance will not reflect this transaction until it has been received by us and paid from your account. We encourage you to record all of your transactions in a check register. This will help you keep track of your account balance.

**OVERDRAFTS AND ADVANCES AGAINST UNCOLLECTED FUNDS:** Bank will not be liable for failure to pay or honor any item or withdrawal request unless it is drawn or requested against available funds credited to this Account at the opening of business of the day the item is presented for payment or the request is received. The processing and handling charge for N.S.F. items or items presented against uncollected funds is not a charge for the use, forbearance, or detention of money as such charge would be made whether or not Bank pays the item and thereby (i) allows an overdraft or (ii) makes an advance against uncollected funds. These service charges and fees are more fully described herein in the section entitled Fees And Service Charges and in Bank's Account Services And Fees Schedule.

If this Account is overdrawn and/or Bank has advanced funds against uncollected funds (based on Bank's Funds Availability Policy), to the extent allowed by law, this Account is subject to, in addition to the processing and handling charge, an interest charge at 17.75% per annum, on the overdraft balance including unpaid fees and/or on the amount advanced against uncollected funds from the date of the overdraft and/or advance to the date of receipt by Bank of repayment of such overdraft and/or amount advanced. Any and all overdraft, advance against uncollected funds, or service charges and fees are due and payable immediately upon payment by Bank of the item. Interest charged on any overdraft/amount advanced is due and payable on the earlier of the date it is debited to this Account or the written demand for such interest charges is mailed to any Authorized Signatory.

Each Authorized Signatory shall be jointly and severally liable for any and all overdrafts on this Account, including all service charges and fees and interest charged due to such overdrafts, and for any attorney's fees and related collection costs incurred by Bank regarding any and all efforts made to collect such overdraft, whether or not the overdraft was incurred by one or more of the Authorized Signatories, without the knowledge of, agreement from and/or any benefits resulting to, any other Authorized Signatory.

The decision of whether to pay any item which will create an overdraft or which will be an advance against uncollected funds shall be in the sole and absolute discretion of Bank and any payment of such item on one or more occasion does not obligate Bank to allow or pay any additional or future overdraft or advance against uncollected funds. Nothing contained herein shall imply Bank's allowance, or payment, of one or more overdrafts



or advances against uncollected funds, will create a revolving line of credit, a continuing obligation on the part of Bank to overdraw or advance against uncollected funds or any other financing arrangement between Depositor, any Authorized Signatory and/or Bank.

**OVERDRAFT COURTESY:** The discretionary service is offered to our customers who are United States residents or Resident Aliens.

Discretionary service. Bank is not obligated to pay any item presented for payment if your account does not contain sufficient available funds, and any discretionary courtesy payment (or other negotiation or processing) by Bank of any non-sufficient fund check or other item as identified below does not obligate Bank to pay any additional non-sufficient fund check or item or to provide prior notice of its decision to refuse to pay any additional non-sufficient fund check or item. Approval of payment of reasonable overdrafts by Bank on consumer accounts in good standing (as described below) is only a courtesy, and not a right or an obligation, is within Bank's sole and absolute discretion, and can cease at any time without prior notice or reason or cause.

"Good standing" requirement. Pursuant to Bank's commitment to always "Do More," now and in the future, if your consumer account (primarily used for personal and household purposes) or your sole proprietor account has been opened for at least 30 days and is maintained in good standing, which includes at least: A) Making regular deposits consistent with your past practices; B) Depositing \$300.00 or more in your account within each thirty (30) day period and bringing your account balance to a positive balance within every thirty-five (35) day period; C) You are not in default on any loan or other obligation to Bank; and D) You are not subject to any legal or administrative order or levy, Bank will consider, as a discretionary courtesy and not a right or obligation, approving your reasonable overdrafts.

Debit Card Suspension. If your account incurs an unauthorized overdraft, we will suspend the debit card(s) associated with your account. An unauthorized overdraft occurs 1) when we pay a transaction or charge a fee or service charge on your account creating an overdraft that exceeds your available funds, including any Overdraft Courtesy, or 2) when Overdraft Courtesy is suspended while your account is overdrawn.

Limits. This courtesy will generally be limited to a maximum of (i) a \$300.00 overdraft (negative) balance for "Free Checking Accounts," (ii) a \$500.00 overdraft (negative) balance for "Free Checking Accounts" that have been open and in good standing for at least one year, OR which have direct deposit, where there have been two or more direct deposits totaling at least \$600.00 within the past sixty (60) day period, (iii) a \$700.00 overdraft (negative) balance for "Free Checking Accounts" that have been open and in good standing for at least one year, AND which have direct deposit, where there have been two or more direct deposits totaling at least \$600.00 within the past sixty (60) day period, (iv) a \$500.00 overdraft (negative) balance for "Other Personal Checking Accounts / Biz Rite Accounts," (v) a \$700.00 overdraft (negative) balance for "Other Personal Checking Accounts / Biz Rite Accounts" that have been open and in good standing for at least one year, OR which have direct deposit, where there have been two or more direct deposits totaling at least \$600.00 within the past sixty (60) day period, and (vi) a \$900.00 overdraft (negative) balance for "Other Personal Checking Accounts / Biz Rite Accounts" that have been open and in good standing for at least one year, AND which have direct deposit, where there have been two or more direct deposits totaling at least \$600.00 within the past sixty (60) day period. Customers are highly encouraged to balance their checkbook and use their overdraft courtesy in a responsible manner that avoids excessive fees.

Covered Transactions. Overdraft Courtesy Program covers checks, in person withdrawals, ATM withdrawals, and electronic transactions. "Electronic transactions" includes automatic payments, online bill pay, and debit cards used at point of sale. Authorization and payment of overdrafts for ATM and everyday debit card transactions by Bank are subject to your "opt-in" decision to such coverage. You may choose to opt out of overdraft coverage for your checks.

Order of payment. It is the bank's policy to clear items in the following order: (1) any wire transfers from lowest to highest dollar amount; (2) items we have already paid out or committed to pay from lowest to highest dollar amount such as ATM withdrawals, teller cash withdrawals, transfers, and debit card or point of sale withdrawals (3) checks and ACH withdrawals from lowest to highest dollar amount. Transactions may not be processed in the order in which they occur. The order in which transactions are processed can affect the total amount of overdraft/non-sufficient funds fees incurred. Bank reserves the right to clear in any order, as permitted by state law.

Repayment of overdrafts. The total of the courtesy overdraft (negative) balance, including any and

all bank fees and charges, including all non-sufficient fund/overdraft fees and OD interest charges is due and payable upon demand, and Depositor and each Authorized Signatory will continue to be liable, jointly and severally, for all such amounts, as described in the Deposit Account Agreement. The amount you are overdrawn plus your bank's fees will be deducted immediately, in full, from your next deposit(s) -- including from payroll deposits made by your employer, government benefit deposits, and other direct deposits on which you may depend.

**Closing of account.** If your account is not returned to a positive balance within 45 days of the date it first became overdrawn, your account may be closed at that time, but no later than 60 days from that date at the bank's discretion. However, you will remain liable for outstanding balances, including accrued fees. Failure to maintain your account in good standing can result in an adverse report to consumer reporting agencies.

**Fees.** The Bank will charge an overdraft fee of \$35.00 for each time the bank pays an overdraft. Your account may be assessed multiple overdraft charges up to a maximum of six (6) overdraft fees per day or \$210.00 total per day. If your account is a consumer account, you will not be charged an overdraft fee if your ending account balance is overdrawn by \$3.00 or less. Fees are subject to change. You will receive advance notice of any fee increase in accordance with state and federal law. In addition, overdraft amounts will accrue an OD interest charge at the rate of 17.75% per annum from the date of the overdraft until the date of receipt by Bank of repayment of such overdraft including unpaid fees. The amount of your overdraft courtesy will be reduced by the imposition of the fee(s).

**WAIVER OF PROTEST, DISHONOR, NONPAYMENT:** Each Authorized Signatory agrees to waive demand, protest and notice of dishonor or nonpayment regarding any items deposited to this Account or presented for cash or other negotiation. Any warranty and/or other liability of any Authorized Signatory as an endorser will not be released by Bank by obtaining verification regarding any presented or deposited item.

#### **CASH WITHDRAWALS:**

- (i) With regard to Main Bank locations, Bank may, in its sole and absolute discretion, for security reasons, limit cash withdrawals, whether one or more, from this Account (a) to no more than \$75,000.00 (in the aggregate) on any one banking day, (b) and to no more than \$150,000.00 (in the aggregate) during any seven (7) consecutive calendar day period. Any and all additional available collected funds (as determined by Bank's Availability Policy) in this Account may be withdrawn or transferred by any noncash means or method including by cashier's check, bank teller's check, or wire or other electronic transfer, in accordance with the terms and conditions of this Agreement and all other applicable policies and procedures of Bank. Any request that Bank considers, in its sole and absolute discretion, to constitute a cash withdrawal in excess of the specific limitations set forth herein must be in writing, signed by Depositor, and delivered to the Account Officer for this Account at least five (5) calendar days prior to the requested withdrawal date.
- (ii) With regard to non main Bank locations, Bank may, in its sole and absolute discretion, for security reasons, limit cash withdrawals from any branch (not including the Main Branch), motor banks, and/or instore banking locations, to \$1,000.00 per transaction.
- (iii) Depositor agrees that any noncustomer who attempts to present an item for payment at any Bank branch and/or location may be required to present that item in the lobby area of such location and may be restricted from presenting the item for payment through the motor bank. Depositor further agrees that should a noncustomer refuse to present any item for payment inside the lobby of any Bank branch and/or location, if required to do so, Bank may decline to pay the item regardless of the availability of funds in this Account.

**ELECTRONIC PRESENTMENT:** This Account may be debited on the day an item or requested authorization is presented by electronic or other means, or at an earlier time based on notification received by Bank that an item drawn on this account has been deposited for collection in another financial institution, or that an item deposited into this Account, is being returned. A determination of the account balance for purposes of making a decision to dishonor an item for insufficiency of collected available funds may be made at any time between the receipt of such presentment or notice and the time of return of the item, and no more than one such determination need be made.

**LOST CHECKS:** When we cash a check for you or accept a check for deposit to your Account, we are acting as your agent in collecting the check. We are not responsible if the check is lost or delayed in the collection process. If the check is lost during the collection process, we may charge your account for the amount of the check. If the financial institution on which the check is drawn gives us a photocopy or electronic image of the check or debit slip representing the check, we may charge your account for the amount of the check. You agree to recreate the transaction and/or provide Bank all information requested regarding such lost item.

A lost check may not be returned to us for some time. Despite any delay, we may charge your Account when we receive either the returned check, a copy of the check, or a notice of return.

**STALEDATED ITEMS:** Bank is not required to pay any item presented more than six months after its date. However, Bank may in its sole discretion pay such item in good faith, and Depositor agrees that Bank is acting in good faith as long as there is not a stop payment order in effect when it pays the item.

**POSTDATED ITEMS:** Each Authorized Signatory agrees not to issue postdated checks or other items. If postdated checks or other items are issued by any Authorized Signatory, Bank may return them unpaid, or if paid by Bank, prior to date of check or item, in its sole and absolute discretion, Bank is released from and indemnified for, and held harmless from, any and all claims, damages and/or costs, including its reasonable attorney's fees and costs, related to paying, accepting or certifying such postdated checks and/or other items prior to the date set forth on said check(s) and/or other item(s) unless Authorized Signatory has given notice to the Bank of the postdated item by describing the check with reasonable certainty.

**DIRECT DEPOSIT OF GOVERNMENTAL ITEMS:** If, in connection with a direct deposit plan, Bank deposits any amount in this Account which should have been returned to the Federal Government for any reason, each Authorized Signatory authorizes Bank to deduct the amount of any liability to the Federal Government from this Account or from any other account at Bank without prior notice and at any time, except as prohibited by law. Bank may also use any other remedy to recover the amount of Bank's liability.

**SOCIAL SECURITY DIRECT DEPOSIT ACCOUNT:** Depositor and each Authorized Signatory hereby acknowledge that Social Security Benefits directly deposited into this Account have special protections and exemptions, yet knowingly hereby expressly agree that any amount of Social Security Benefits directly deposited into this Account are subject to overdraft charges, fees and interest and may be applied to the payment thereof.

**THE FOLLOWING NOTICE AND DISCLOSURE IS  
APPLICABLE IF THIS ACCOUNT IS SUBJECT TO "FREE  
CHECKING" FOR CONSUMER AND/OR SOLE PROPRIETORSHIP ACCOUNTS**

Account inquiries are provided through IBC's automated voice response system, IBC Voice and through IBC Online Banking. These inquiries include, but are not limited to balance inquiries, checks paid, and deposit information. The services included within IBC Voice and IBC Online Banking may change from time to time. Account inquiries outside of IBC Voice and IBC Online Banking will be subject to an inquiry service charge.

Error resolution and/or error disputes may be referred to any IBC customer service representative at any time.

**CHECK 21 – SUBSTITUTE CHECKS AND YOUR RIGHTS:** To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks described in your account statement may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

Details on your rights and how to submit a claim are set forth in the Check 21 Disclosure provided to you when you opened your account.

If you deposit a substitute check into your Account, you give us the same warranties and indemnities that we, as reconverting bank, would give under Check 21 regulations.

**IMAGE CHECK SAFEKEEPING:** In lieu of returning each of your paid checks and other items, Bank may provide the check number, amount and date of payment in your account statement, electronically or otherwise, together with images of the front of all of your canceled checks and other items displayed in check number order on a Bank Image page. As soon as an item is copied it may be destroyed. Within a reasonable time after the Bank received your request, it will furnish a copy of both front and back of such item within the required retention period. Depositor continues to be responsible for notifying Bank in writing of any unauthorized signature, lack of signature, alteration or other irregularity within the time periods described herein.

**TRUNCATED ACCOUNT SAFEKEEPING:** Depositor agrees and stipulates that if he or she selects a truncated account, in lieu of providing an image of each paid check or other item, Bank will provide to Depositor only a periodic account statement containing a check number, amount and date of payment and will not provide to Depositor the original checks or other items or images of such original checks or other items. As soon as an item is copied it may be destroyed. Subject to Bank's fees and charges, within a reasonable time after Bank received a request for a copy of an item within the statutory required retention period, it will furnish a copy of both front and back of such item. Depositor's duties of review and notice regarding any improper account activity, including maker or endorser forgery, alteration, and/or any and all others set forth in this Agreement remain in full force and effect.

## **V. TRANSACTION PROCESSING ELECTRONICALLY**

**REMOTELY CREATED ITEMS:** If you deposit a remotely created item (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that (i) the draft is valid as drawn and is authorized, (ii) the Check Image accurately represents all of the information on the front and back of the original check, and that all such information is legible on the Check Image; and (iii) no person will receive presentment of the original check, a substitute check based on the original check, or a paper or electronic representation of the original check or a substitute check, such that the person will be asked to make a payment based on a check that it has already paid.

**CONVERTING CHECKS TO ELECTRONIC DEBITS:** Some businesses use a procedure to convert checks that are drawn on your Account with us into electronic debits. To use this procedure, you sign an authorization slip (similar to a credit or debit card slip) that permits the business to convert the check to an electronic debit. The business passes your check through a machine that captures the account routing number, check amount, and other relevant information. An electronic debit for the transaction amount is then sent to us. When we receive the electronic debit, we may charge it to your account at any time, regardless of the balance of your Account. We may receive the electronic debit to your account immediately after the business enters the transaction, so to avoid an overdraft you must have sufficient funds in your account to cover the amount of the check at the time you authorize the transaction. Since the check is not sent to us for processing, we do not have a copy of your check. You should retain a copy of the check for your records. Electronic debits are listed on your account statement.

## **AUTOMATED CLEARING HOUSE (“ACH”) PROVISIONS:**

**NOTICE OF RECEIPT OF ACH ITEMS:** Under the operating rules of the National Automated Clearing House Association which are applicable to ACH transactions involving this Account, Bank is not required to give next day notice to you of receipt of an ACH item, and Bank will not do so. However, Bank will continue to notify you of the receipt of payments in the periodic statements Bank provides to you.

**PROVISIONAL PAYMENT:** Credit given by Bank to you with respect to an automated clearing house credit entry is provisional until Bank receives final settlement. If Bank does not receive final settlement, you are hereby notified and agree that Bank is entitled to a refund of any and/or all of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not have been deemed to have paid you the amount of such entry.

**CHOICE OF LAW FOR ACH TRANSACTIONS:** Bank may accept, on your behalf, payments in your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act. Your rights and obligations with respect to such payment shall be construed in accordance with and governed by the operating rules of the National Automated Clearing House Association.

**FUNDS TRANSFER AUTHORIZATION AND AGREEMENT:** To the extent Depositor utilizes Bank’s funds transfer services, Depositor hereby directs and authorizes Bank to transfer funds from this Account to specifically designated accounts, whether such accounts are with Bank or with another financial institution, and to further execute funds transfer instructions and/or payment orders and to receive funds to be deposited in this Account, pursuant to the following terms and conditions:

**(a) PAYMENTS ORDERS AND FUNDS TRANSFERS:**

- (1) Bank is authorized to act on any oral or written directions whether delivered or communicated to Bank in person, by messenger, by telephone, telegraph, facsimile transmission, telex, U.S. mail, approved automated or electronic transmission or in other manner mutually agreed upon in writing by Bank and Depositor, and Bank shall be entitled to rely on any writing, letter, telex, teletype message, cablegram, statement, order, instruction, or other written communication, or any telephone or personal conversation believed by Bank in good faith to have been signed, forwarded, delivered and/or communicated by any Authorized Signatory and/or any other authorized representative or agent of Depositor.
- (2) Bank shall be under no obligation to comply with any payment order or to make any funds transfer which would exceed the available collected balance of funds in this Account.
- (3) Depositor shall have no right to cancel or amend any payment order after it is accepted by Bank, unless Bank otherwise agrees in writing.
- (4) In the event of an erroneous or otherwise irregular funds transfer, Bank may, but shall not be obligated to, on its own initiative or pursuant to Depositor’s request, ask the receiving bank, the beneficiary’s bank or the beneficiary of the funds transfer, to return the funds previously transferred in error on behalf of Depositor.
- (5) A payment order issued by Depositor is paid at the time the payment order is executed, at the time the transfer is credited to the beneficiary’s account on the books of Bank, or at the time the advice of credit of such funds transfer is forwarded or otherwise communicated to the beneficiary by Bank, whichever occurs first.
- (6) Bank is authorized to record any telephonic or other oral instructions received by Bank from Depositor regarding funds transfers or receipts; however, Bank has no duty to record and/or maintain any record of Depositor’s oral instructions by audio tape or handwritten notes.
- (7) Bank, may handle and/or execute payment orders received from Depositor and/or from other Bank customers in any order selected by Bank, in its sole and absolute discretion, regardless of time and/or order of sequence of receipt by Bank, and Bank may use any means, methods, or routes which it, in its sole and absolute discretion, may consider suitable for executing each separate payment order.
- (8) Bank may establish, designate and provide notice of a cutoff time or opening and closing times for each Bank or branch location as a “funds transfer business day” for the receipt and processing of payment orders and communications canceling or amending payment orders. Any payment order or communication received after the designated and noticed closing times or on a Saturday, Sunday, or any bank holiday observed by the Bank location where the payment order or other

communication is delivered, shall be deemed received by Bank on the next “funds transfer business day”.

- (9) Bank and any subsequent receiving bank may execute payment orders for the transfer of funds to a beneficiary in the name of the beneficiary and/or solely by an account number of the beneficiary furnished to Bank by Depositor or other sender. In the event there is any discrepancy between the name of the designated beneficiary and account number, the payment order may be executed by reference to the account number only.
  
- (b) **SECURITY PROCEDURES:** Depositor will be subject to the following security procedures:
  - (1) Bank, at its option, may verify that a payment order or communication amending or canceling a payment order is that of Depositor by calling Depositor at a telephone number specified by Depositor. This telephone number may be changed by written notice of Depositor or by phone via the call center.
  - (2) Bank may require that Depositor identify itself in connection with each payment order by use of a security code furnished by Bank. Bank shall not be obligated to execute any transfer to which the security code is applicable unless the authorized Depositor representative who places the payment order uses the proper security code. Bank may change such security codes at any time upon notice to any authorized Depositor representative. Depositor agrees to keep each such security code confidential and Bank shall have no liability for losses occasioned by unauthorized access to, and/or use of, security codes.
  - (3) Bank may in its sole discretion, elect not to act upon a payment order if the payment order is not initiated in accordance with agreed security procedures, if Bank is unable to obtain proper verification of such payment order to Bank, or is otherwise suspicious regarding the payment order, if there is any inconsistency between a payment order and information previously supplied to Bank. If Bank acts on a payment order it believes in good faith is authorized by Depositor, it will have no liability for executing a payment order.
  - (4) You agree to these security procedures and agree that they are reasonable.
  
- (c) **REVIEW OF STATEMENTS AND ADVICES:** In addition to Depositor’s other review obligations set forth herein and under law, Depositor agrees to review promptly and reconcile Depositor’s statements of account made available by Bank and shall report to Bank’s Funds Transfer Department any discrepancies, errors, inaccuracies, unauthorized requests, or objections of any other type or nature between Bank’s records and Depositor’s records within a reasonable time, not to exceed fourteen (14) calendar days from the earlier of the date of advice or the date the statement of account. The failure of Depositor to notify Bank of any discrepancies, errors, or other objections within such specified time period will relieve Bank of any liability to Depositor.
  
- (d) **COMPENSATION:** Subject to the Review of Statements And Advices provision above, compensation, if any, for the loss of interest or use of funds due Depositor caused solely by a Bank’s error or Bank’s failure to execute a transfer request no later than one banking day after the date received (if such request was received prior to Bank’s funds transfer deadline) and when such execution or error was within Bank’s sole control, will be for a period not exceeding the lesser of sixty (60) days or the period between the date of the request and the date of actual transfer or error correction, and will be in either of the following forms at the option of Bank: (i) adjusting Depositor’s account balance at Bank to reflect the average balances that would have resulted had no error occurred; or (ii) reimbursing Depositor an amount equal to accrued interest at the average Federal Funds rate of the Dallas Federal Reserve Bank computed on a daily basis for the period and on the amount in question. In any event, Bank shall not be liable for any claimed damages arising out of or in connection with a payment order or funds transfer after one year from the date of such payment order or funds transfer.
  
- (e) **RESPONSIBILITY OF BANK:**
  - (1) Bank shall have no responsibility or liability for any inaccuracy, interruption or delay in transmission and/or for claims occasioned by any circumstances, including any act or failure to act by a third person or entity, beyond Bank’s reasonable control unless caused by Bank’s gross negligence or willful misconduct.
  - (2) Depositor will hold Bank harmless and indemnify Bank for any claims, demands, expenses (including but not limited to attorney’s fees and costs), loss or damage of any nature whatsoever

arising directly or indirectly from any payment order issued by Depositor pursuant to the terms and conditions of this Agreement, any Amendment to this Agreement, or other matters related to this Agreement, except for liability of Depositor caused by the gross negligence or willful misconduct of Bank. In no event shall Bank be liable for, and Depositor hereby releases Bank and its correspondents and agents from liability for, any punitive, multiple, statutory, special, consequential or incidental damages, even if Bank has been informed of the possibility of such damages.

- (3) Depositor will assume full responsibility for all transfers executed by Bank in good faith, and in accordance with these procedures, agrees that Bank shall be conclusively deemed to have discharged its duty to act in good faith if it has followed the transfer procedures set forth in this Agreement, and agrees that Bank assumes no responsibility beyond its duty to exercise ordinary care.
  - (4) Bank's liability, if any exists, is discharged to the extent of any payment remitted to beneficiary from any source, including Depositor.
- (f) **FEES:** Depositor will pay Bank for services under this Agreement in accordance with Bank's Account Services And Fees Schedule, as amended from time to time. Bank may deduct any fees or other charges due under this Agreement from this Account or any other account of Depositor and may deduct its fees for an incoming funds transfer from the funds received. Depositor agrees to pay Bank for all fees and charges upon demand. Bank may require advance payment of fees and charges and a deposit be made to cover such charges.
- (g) **NOTICES:**
- (1) Any notice required to be given under this Agreement by Depositor shall be in writing and signed by Depositor, and shall be considered to be provided when received and accepted by an officer in Bank's Funds Transfer Department and after Bank has had a reasonable opportunity to act on it. In the case of any notice required to be given under this Agreement by Bank, except to amend its terms and conditions and/or the fees and charges, such notice may be given in writing and shall be effective when placed in a U.S. Mail receptacle or forwarded by facsimile transmission to Depositor.
  - (2) Bank may, in its sole discretion, act upon any form of notice which it in good faith believes to be genuine.
  - (3) Bank may reject any payment order which fails to comply with this Agreement or, unless communicated by IBC Link, that sets forth a payment date more than one banking day after date of receipt by Bank of the payment order. Bank shall notify Depositor of its rejection of the payment order and shall have no liability as result of such rejection.
- (h) **REPRESENTATIONS OF DEPOSITOR:**  
Depositor represents that:
- (1) Each beneficiary or other receiver named in a payment order has authorized the initiation of the payment order and the crediting of its account in the amount of the payment order on or after the payment date shown on the payment order, and that such authority effective from the time of the payment date or transmittal date shown on the payment order.
  - (2) Depositor will perform its obligations under this Agreement in accordance with all applicable laws and regulations.

**POSITIVE PAY:** If Depositor and Bank have entered into any agreement relating in any way to positive pay services, the agreements, terms and conditions and disclosures are incorporated herein for all purposes.

**BANK ACCOUNT CARD:** Bank Account Cards include ATM cards, and any and all Visa and/or other Debit Cards. Subject to the Order of Payment provision above, each Authorized Signatory agrees and acknowledges that any use of a Bank Account Card will immediately reduce the available funds in this Account by at least the amount communicated, electronically or otherwise, to Bank, whether communicated as a withdrawal, transfer to another account, completed vendor transaction, authorized administrative hold for payment of a pending or future vendor transaction, or any other transaction, however structured and/or designated. Bank has an absolute right to rely on the information electronically or otherwise communicated to Bank regarding any use or the attempted use

of a Bank Account Card, and Bank has no duty or obligation to make any inquiry regarding the authority of the user or the accuracy of any information communicated to Bank regarding any Bank Account Card transaction.

For Commercial Bank Account Cards, to the extent allowed by law, any transaction, including without limitation, transfers or withdrawals of cash from, and/or direct debits to or direct debits from, or administrative holds on, this Account, and/or any other use of any Bank Account Card, together with its designated P.I.N., is hereby agreed to be, and is deemed to be, an authorized transaction benefiting Depositor, and Bank is relieved of any liability for processing such transaction, regardless of whether it was properly payable from and/or debited to this Account and whether Depositor received any benefit. It is agreed and stipulated that Bank, by use of ordinary care at all times in Bank Account Card transactions cannot protect or maintain security of Bank Account Cards or their designated P.I.N.s, and or immediately detect the loss of possession of or control over, or any misuse or unauthorized use of, Bank Account Cards and their designated P.I.N.s.

When you use your Bank Check Card at a merchant that settles in currency other than U.S. Dollars, the charge will be converted into the U.S. Dollar amount. The currency conversion rate used to determine the transaction amount in U.S. Dollars is either a foreign government mandated rate or the wholesale market rate in effect the day before the processing date, increased by the margin set forth in the applicable Account Services and Fees Schedule.

**PREPAID BANK CARDS:** If Depositor and Bank have entered into any agreement relating in any way to Prepaid Bank Cards, the Agreements, terms and conditions and disclosures relating to any and all Prepaid Bank's and Payroll Cards issued by Bank are incorporated herein for all purposes.

## **VI. MISCELLANEOUS**

**TAXES CHARGED:** Depositor agrees to pay, and this Account is subject to, any tax charged by any governmental entity on any services rendered by Bank.

**SUCCESSORS AND ASSIGNMENTS:** This Agreement is binding on each of the Authorized Signatories and each's personal representatives, executors, administrators, and heirs, and on each's successors and assigns, if any. The benefits and responsibilities of Bank under this Agreement shall also transfer to and shall be binding upon Bank's successors and assigns.

Depositor may not transfer or assign this Account without the prior written consent of Bank and no assignment will be valid and/or enforceable against Bank, nor will Bank be deemed to have knowledge of or be bound by any attempted assignment of this Account, or any interest or privileges therein, unless and until Bank has agreed in writing to the assignment, has received a copy of the notice of assignment of account, has acknowledged in writing receipt of the notice of assignment and of the actual assignment document and has noted in the assignment in its records. However, by noting the assignment in its records, Bank does not attest to or have any responsibility to any person or entity regarding the validity of the assignment or have any duty to notify any person or entity regarding any/or all changes in authority to conduct banking business with Bank, or regarding any and/or all withdrawals or transfer of the funds in this Account.

**NO ILLEGAL TRANSACTIONS:** This Account and/or any ATM or Debit Card or Bank Account Card issued by Bank may be used for legal transactions only.

**IMPRACTICABILITY OF PERFORMANCE:** Bank shall be excused from failing to act or any delay in acting, provided that its failure or delay is caused by interruption of transmission or communication facilities, act of God, fire, terrorism, flood, equipment failure, war, emergency conditions, any act or failure to act by a third party or entity, or any other circumstances beyond its sole control

### **GENERAL PROVISIONS:**

- (1) If any section, provision, term or condition of this Agreement is deemed invalid or unenforceable, the enforceability of all remaining provisions shall not be affected.
- (2) English is the controlling language of the relationship between you and Bank. Bank may translate its forms, disclosures, and advertisements into another language for your convenience. However, if there is a discrepancy between Bank's English language materials and the materials provided in another language, the English language version is conclusively deemed to be controlling.



unless (i) the Bank otherwise agrees with you in writing, or (ii) there is a governing Texas or federal law, rule or regulation that specifically provides for a different result.

**SECTION TITLES:** Section titles are for convenience only and are not to be construed as part of this Agreement or as a limitation on a particular section to which they refer.

**BINDING ARBITRATION AGREEMENT PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

**THE BANK, DEPOSITOR AND EACH AUTHORIZED SIGNATORY AGREE TO ARBITRATION AS FOLLOWS (hereinafter referred to as the “Arbitration Provisions”)**

**I. Special Provisions and Definitions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:**

(a) **Informal Resolution of Customer Concerns.**

Most customer concerns can be resolved quickly and to the customer’s satisfaction by contacting your account officer, branch manager or by calling the Customer Service Department in your region. The region and numbers are:

- |                   |              |
|-------------------|--------------|
| 1. Laredo         | 956-722-7611 |
| 2. Austin         | 512-397-4506 |
| 3. Brownsville    | 956-547-1000 |
| 4. Commerce Bank  | 956-724-1616 |
| 5. Corpus Christi | 361-888-4000 |
| 6. Eagle Pass     | 830-773-2313 |
| 7. Houston        | 713-526-1211 |
| 8. McAllen        | 956-686-0263 |
| 9. Oklahoma       | 405-841-2100 |
| 10. Port Lavaca   | 361-552-9771 |
| 11. San Antonio   | 210-518-2500 |
| 12. Zapata        | 956-765-8361 |

In the unlikely event that your account officer, branch manager or the customer service department is unable to resolve a complaint to your satisfaction or if the Bank has not been able to resolve a dispute it has with you after attempting to do so informally, you and the Bank agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.

- (b) **Sending Notice of Dispute.** If either you or the Bank intend to seek arbitration, then you or the Bank must first send to the other by certified mail, return receipt requested, a written Notice of Dispute. The Notice of Dispute to the Bank should be addressed to: Dennis E. Nixon, President, at International Bancshares

Corporation, P.O. Drawer 1359, Laredo, Texas 78042-1359 or if by email, [ibcchairman@ibc.com](mailto:ibcchairman@ibc.com). The Notice of Dispute must (a) describe the nature and basis of the claim or dispute; and (b) explain specifically what relief is sought. You may download a copy of the Notice of Dispute at [www.ibc.com](http://www.ibc.com) or you may obtain a copy from your account officer or branch manager.

- (c) **If the Dispute is not Informally Resolved.** If you and the Bank do not reach an agreement to resolve the claim or dispute within thirty (30) days after the Notice of Dispute is received, you or the Bank may commence a binding arbitration proceeding. During the binding arbitration proceeding, any settlement offers made by you or the Bank shall not be disclosed to the Arbitrator.
- (d) **“DISPUTE(S)”**. As used herein, the word **“DISPUTE(S)”** includes any and all controversies or claims between the **PARTIES** of whatever type or manner, including without limitation, any and all claims arising out of or relating to this Agreement, compliance with applicable laws and/or regulations, any and all services or products provided by the Bank, any and all past, present and/or future loans, lines of credit, letters of credit, credit facilities or other form of indebtedness and/or agreements involving the **PARTIES**, any and all transactions between or involving the **PARTIES**, and/or any and all aspects of any past or present relationship of the **PARTIES**, whether banking or otherwise, specifically including but not limited to any claim founded in contract, tort, fraud, fraudulent inducement, misrepresentation or otherwise, whether based on statute, regulation, common law or equity.
- (e) **“CONSUMER DISPUTE”** and **“BUSINESS DISPUTE”**. As used herein, **“CONSUMER DISPUTE”** means a **DISPUTE** relating to an account (including a deposit account), agreement, extension of credit, loan, service or product provided by the Bank that is primarily for personal, family or household purposes. **“BUSINESS DISPUTE”** means any **DISPUTE** that is not a **CONSUMER DISPUTE**.
- (f) **“PARTIES”** or **“PARTY”**. As used in these Arbitration Provisions, the term **“PARTIES”** or **“PARTY”** means the Bank, Depositor and each Authorized Signatory, and each and all persons and entities signing this Agreement or any other agreements between or among any of the **PARTIES** as part of this transaction. **“PARTIES”** or **“PARTY”** shall be broadly construed and include individuals, beneficiaries, partners, limited partners, limited liability members, shareholders, subsidiaries, parent companies, affiliates, officers, directors, employees, heirs, agents and/or representatives of any party to such documents, any other person or entity claiming by or through one of the foregoing and/or any person or beneficiary who receives products or services from the Bank and shall include any other owner and holder of this Agreement. Throughout these Arbitration Provisions, the term **“you”** and **“your”** refer to Depositor and each Authorized Signatory, and the term **“Arbitrator”** refers to the individual arbitrator or panel of arbitrators, as the case may be, before which the **DISPUTE** is arbitrated.

- (g) **BINDING ARBITRATION.** The **PARTIES** agree that any **DISPUTE** between the **PARTIES** shall be resolved by mandatory binding arbitration pursuant to these Arbitration Provisions at the election of either **PARTY**. **BY AGREEING TO RESOLVE A DISPUTE IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO A JURY TRIAL OR TO LITIGATE IN COURT** (except for matters that may be taken to small claims court for a **CONSUMER DISPUTE** as provided below).
- (h) **CLASS ACTION WAIVER.** The **PARTIES** agree that (i) no arbitration proceeding hereunder whether a **CONSUMER DISPUTE** or a **BUSINESS DISPUTE** shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. **THE PARTIES AGREE TO ARBITRATE A CONSUMER DISPUTE OR BUSINESS DISPUTE ON AN INDIVIDUAL BASIS AND EACH WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION.**
- (i) **FEDERAL ARBITRATION ACT AND TEXAS LAW.** The **PARTIES** acknowledge that this Agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act shall govern (i) the interpretation and enforcement of these Arbitration Provisions, and (ii) all arbitration proceedings that take place pursuant to these Arbitration Provisions. **THE PARTIES AGREE THAT TEXAS SUBSTANTIVE LAW WILL APPLY IN ANY BINDING ARBITRATION PROCEEDING OR SMALL CLAIMS COURT ACTION REGARDLESS OF WHO INITIATES THE PROCEEDING, WHERE YOU RESIDE OR WHERE THE DISPUTE AROSE, UNLESS EXPRESSLY PROHIBITED BY LAW.**

## **II. Provisions applicable only to a CONSUMER DISPUTE:**

- (a) Any and all **CONSUMER DISPUTES** shall be resolved by arbitration administered by the American Arbitration Association (“AAA”) under the Commercial Arbitration Rules and the Supplemental Procedures for Resolution of Consumer Disputes and Consumer Due Process Protocol (which are incorporated herein for all purposes). It is intended by the **PARTIES** that these Arbitration Provisions meet and include all fairness standards and principles of the American Arbitration Association’s Consumer Due Process Protocol and due process in predispute arbitration. If a **CONSUMER DISPUTE** is for a claim of actual damages above \$250,000 it shall be administered by the AAA before three neutral arbitrators at the request of any **PARTY**.
- (b) Instead of proceeding in arbitration, any **PARTY** hereto may pursue its claim in your local small claims court, if the **CONSUMER DISPUTE** meets the small claims court’s jurisdictional limits. If the small claims court option is chosen, the **PARTY pursuing the claim** must contact the small claims court directly. **The PARTIES agree that the class action waiver provision also applies to any**

## **CONSUMER DISPUTE brought in small claims court.**

- (c) For any claim for actual damages that does not exceed \$2,500, the Bank will pay all arbitration fees and costs provided you submitted a Notice of Dispute with regard to the **CONSUMER DISPUTE** prior to initiation of arbitration. For any claim for actual damages that does not exceed \$5,000, the Bank also agrees to pay your reasonable attorney's fees and reasonable expenses your attorney charges you in connection with the arbitration (even if the Arbitrator does not award those to you) plus an additional \$2,500 if you obtain a favorable arbitration award for your actual damages which is greater than any written settlement offer for your actual damages made by the Bank to you prior to the selection of the Arbitrator.
- (d) Under the AAA's Supplemental Procedures for Consumer Disputes, if your claim for actual damages does not exceed \$10,000, you shall only be responsible for paying up to a maximum of \$125 in arbitration fees and costs. If your claim for actual damages exceeds \$10,000 but does not exceed \$75,000, you shall only be responsible for paying up to a maximum of \$375 in arbitration fees and costs. For any claim for actual damages that does not exceed \$75,000, the Bank will pay all other arbitrator's fees and costs imposed by the administrator of the arbitration. With regard to a **CONSUMER DISPUTE** for a claim of actual damages that exceeds \$75,000, or if the claim is a non-monetary claim, the Bank agrees to pay all arbitration fees and costs you would otherwise be responsible for that exceed \$1,000. The fees and costs stated above are subject to any amendments to the fee and cost schedules of the AAA. The fee and cost schedule in effect at the time you submit your claim shall apply. The AAA rules also permit you to request a waiver or deferral of the administrative fees and costs of arbitration if paying them would cause you financial hardship.
- (e) Although under some laws, the Bank may have a right to an award of attorney's fees and expenses if it prevails in arbitration, the Bank agrees that it will not seek such an award in a binding arbitration proceeding with regard to a **CONSUMER DISPUTE** for a claim of actual damages that does not exceed \$75,000.
- (f) To request information on how to submit an arbitration claim, or to request a copy of the AAA rules or fee schedule, you may contact the AAA at 1-800-778-7879 (toll free) or at [www.adr.org](http://www.adr.org).

## **III. Provisions applicable only to a BUSINESS DISPUTE:**

- (a) Any and all **BUSINESS DISPUTES** between the **PARTIES** shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the AAA in effect at the time of filing, as modified by, and subject to, these Arbitration Provisions. A **BUSINESS DISPUTE** for a claim of actual damages that exceeds \$250,000 shall be administered by AAA before at least three (3) neutral arbitrators at the request of any **PARTY**. In the event the aggregate of all affirmative claims asserted exceeds \$500,000, exclusive of interest and attorney's fees, or upon the written request of any **PARTY**, the arbitration shall be conducted under the AAA Procedures for Large, Complex Commercial Disputes. If the payment of

arbitration fees and costs will cause you extreme financial hardship you may request that AAA defer or reduce the administrative fees or request the Bank to cover some of the arbitration fees and costs that would be your responsibility.

- (b) The **PARTIES** shall have the right to (i) invoke self-help remedies (such as setoff, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration, and/or (ii) request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after the commencement of any arbitration proceeding (individually, and not on behalf of a class). The **PARTIES** need not await the outcome of the arbitration proceeding before using self-help remedies. Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either **PARTY**'s right to compel arbitration. Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator.
- (c) Except to the extent the recovery of any type or types of damages or penalties may not be waived under applicable law, the Arbitrator shall not have the authority to award either **PARTY** (i) punitive, exemplary, special or indirect damages, (ii) statutory multiple damages, or (iii) penalties, statutory or otherwise.
- (d) The Arbitrator may award attorney's fees and costs including the fees, costs and expenses of arbitration and of the Arbitrator as the Arbitrator deems appropriate to the prevailing **PARTY**. The Arbitrator shall retain jurisdiction over questions of attorney's fees for fourteen (14) days after entry of the decision.

#### **IV. General provisions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:**

- (a) The Arbitrator is bound by the terms of these Arbitration Provisions. The Arbitrator shall have exclusive authority to resolve any **DISPUTES** relating to the scope or enforceability of these Arbitration Provisions, including (i) all arbitrability questions, and (ii) any claim that all or a part of these Arbitration Provisions are void or voidable (including any claims that they are unconscionable in whole or in part).
- (b) **These Arbitration Provisions shall survive any termination, amendment, or expiration of this Agreement, unless all of the PARTIES otherwise expressly agree in writing.**
- (c) If a **PARTY** initiates legal proceedings, the failure of the initiating **PARTY** to request arbitration pursuant to these Arbitration Provisions within 180 days after the filing of the lawsuit shall be deemed a waiver of the initiating **PARTY'S** right to compel arbitration with respect to the claims asserted in the litigation. The failure of the defending **PARTY** in such litigation to request arbitration pursuant to these Arbitration Provisions within 180 days after the defending **PARTY'S** receipt of service of judicial process, shall be deemed a waiver of the right of the defending **PARTY** to compel arbitration with respect to the claims asserted in the

litigation. If a counterclaim, cross-claim or third party action is filed and properly served on a **PARTY** in connection with such litigation, the failure of such **PARTY** to request arbitration pursuant to these Arbitration Provisions within ninety (90) days after such **PARTY'S** receipt of service of the counterclaim, cross-claim or third party claim shall be deemed a waiver of such **PARTY'S** right to compel arbitration with respect to the claims asserted therein. The issue of waiver pursuant to these Arbitration Provisions is an arbitrable dispute. Active participation in any pending litigation described above by a **PARTY** shall not in any event be deemed a waiver of such **PARTY'S** right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.

- (d) Any **PARTY** seeking to arbitrate shall serve a written notice of intent to any and all opposing **PARTIES** after a **DISPUTE** has arisen. The **PARTIES** agree a timely written notice of intent to arbitrate by either **PARTY** pursuant to these Arbitration Provisions shall stay and/or abate any and all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the Arbitrator.
- (e) Any Arbitrator selected shall be knowledgeable in the subject matter of the **DISPUTE** and be licensed to practice law.
- (f) For a one (1) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrator from the AAA neutral list, such that at least one arbitrator remains after the **PARTIES** exercise all of their respective strikes. For a three (3) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrators from the AAA neutral list, such that at least three arbitrators remain after the **PARTIES** exercise all of their respective strikes. After exercising all of their allotted respective strikes, the **PARTIES** shall rank those potential arbitrators remaining numerically in order of preference (with "1" designating the most preferred). The AAA shall review the **PARTIES** rankings and assign a score to each potential arbitrator by adding together the ranking given to such potential arbitrator by each **PARTY**. The arbitrator(s) with the lowest score total(s) will be selected. In the event of a tie or ties for lowest score total and if the selection of both or all of such potential arbitrators is not possible due to the required panel size, the AAA shall select the arbitrator(s) it believes to be best qualified.
- (g) The **PARTIES** and the Arbitrator shall treat all aspects of the arbitration proceedings, including, without limitation, any documents exchanged, testimony and other evidence, briefs and the award, as strictly confidential; provided, however, that a written award or order from the Arbitrator may be filed with any court having jurisdiction to confirm and/or enforce such award or order.
- (h) The **PARTIES** agree that the Arbitrator shall be required to allow, consider and rule on a dispositive motion filed by any **PARTY**.

- (i) Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under these Arbitration Provisions, and the commencement of any arbitration proceeding tolls the running of any such statute of limitation.
- (j) If the AAA is unable for any reason to provide arbitration services, then the **PARTIES** agree to select another arbitration service provider that has the ability to arbitrate the **DISPUTE** pursuant to and consistent with these Arbitration Provisions. If the **PARTIES** are unable to agree on another arbitration service provider, any **PARTY** may petition a court of competent jurisdiction to appoint an Arbitrator to administer the arbitration proceeding pursuant to and consistent with these Arbitration Provisions.
- (k) The award of the Arbitrator shall be final and Judgment upon any such award may be entered in any court of competent jurisdiction. The arbitration award shall be in the form of a written reasoned decision and shall be based on and consistent with applicable law.
- (l) Unless the **PARTIES** mutually agree to hold the binding arbitration proceeding elsewhere, venue of any arbitration proceeding under these Arbitration Provisions shall be (i) for all Texas accounts, in the Texas county where the account was opened, and (ii) for all Oklahoma accounts, in the Oklahoma county where the account was opened.
- (m) If any of these Arbitration Provisions are held to be invalid or unenforceable, the remaining provisions shall be enforced without regard to the invalid or unenforceable term or provision.

#### **NO ORAL AGREEMENTS**

**THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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# IBC REGIONS

## **LAREDO**

16 Locations

Main Branch:

1200 San Bernardo, 956-722-7611

## **AUSTIN**

11 Locations

Main Branch:

500 W. 5th Street, STE. 100, 512-397-4506

## **BROWNSVILLE**

14 Locations

Main Branch:

1600 Ruben Torres, 956-547-1000

## **COMMERCE BANK**

4 Locations

Main Branch:

5800 San Dario, 956-724-1616

## **CORPUS CHRISTI**

9 Locations

Main Branch:

221 South Shoreline Blvd., 361-888-4000

## **EAGLE PASS**

11 Locations

Main Branch:

2395 East Main, 830-773-2313

## **HOUSTON**

20 Locations

Main Branch:

5615 Kirby Drive, 713-526-1211

## **McALLEN**

29 Locations

Main Branch:

One South Broadway, 956-686-0263

## **OKLAHOMA**

52 Locations in 32 communities

Main Branch:

3817 NW Expressway, Oklahoma City; 405-841-2100

## **PORT LAVACA**

3 Locations

Main Branch:

311 North Virginia, 361-552-9771

## **SAN ANTONIO**

30 Locations

Main Branch:

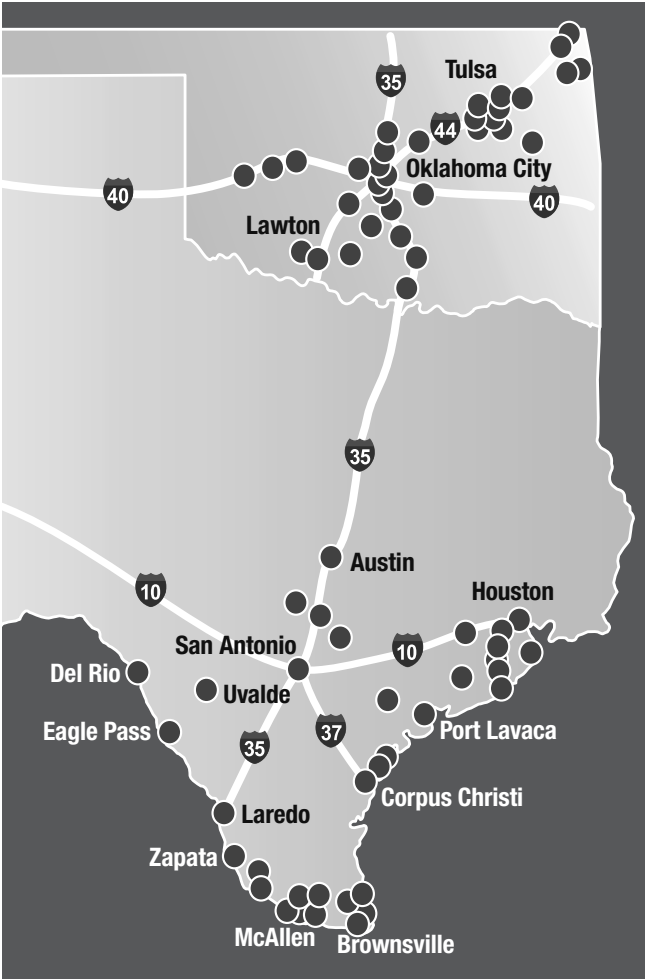
130 East Travis, 210-518-2500

## **ZAPATA**

12 Locations

Main Branch:

US Highway 83 @ 10th Ave, 956-765-8361



**For information about IBC Bank  
visit [www.ibt.com](http://www.ibt.com)**



**IBC BANK**  
**COMMERCE BANK**