



## CONSUMER ONLINE BANKING AGREEMENT

In this Agreement, “Bank”, “we”, “us” and “our” means Flatirons Bank and “you” and “your” means to each person or business entity who is authorized on this agreement (the “Agreement”). This Agreement states the terms and conditions that apply when you use the Bank’s Online Banking services. These terms and conditions are in addition to those that apply to any accounts you have with us or any other services you obtain from us. You must also follow all of our instructions and procedures applicable to the services covered by this Agreement. The Bank may contract with third party service providers or other parties (“Service Providers”) with respect to one or more of the Online Banking services or the provision of an Online Banking service or parts thereof.

### 1. YOUR USE OF ONLINE BANKING SERVICES – GENERALLY

**A. Login Credentials.** To access our Online Banking services, you must use the username you select and other means of access we establish or provide from time to time (which may include but is not limited to touch authentication, single use authentication codes or devices) for your Online Banking Customer Account, together with your own unique password. Your username, any other means of access we provide, and your password are sometimes referred to as your “login credentials.” Your login credentials are confidential and may not be shared with any other party. Release of this information will permit full access to your accounts, including but not limited to account numbers, account activity, check images on your accounts, any personal information retained by the Bank, and the ability to transfer or wire funds to and from your account(s).

Online Banking allows you or someone you have authorized by giving them your login credentials (even if that person exceeds your authority) to use the following services listed below.

**B. Online Banking Security Procedures.** Security of your transactions is important to us. If you lose or forget your login credentials, or become aware that they have been compromised, please call 303.530.4999 between 8:30 a.m. and 5:30 p.m. Mountain Time, Monday through Friday. We may accept as authentic any instructions given to us through the use of your login credentials. You agree to keep your login credentials secret and to notify us immediately if your login credentials are lost or stolen or if you believe someone else has discovered your login credentials. **You agree that if you give your login credentials to someone else, you are authorizing them to act on your behalf, and we may accept any instructions they give us to make transfers or otherwise use the Online Banking services.** Online Banking services enables you to change your password; we require that you do so regularly. We may be liable for certain security breaches to the extent required by applicable law and regulation. We do not assume any other liability or otherwise guarantee the security of information in transit to or from our facilities. Please note that we reserve the right to (1) monitor or record all communications and activity related to the Online Banking services; and (2) require verification of all requested transfers in the manner we deem appropriate before making the transfer (which may include written verification by you). You agree that our records will be final and conclusive as to all questions concerning whether or not your login credentials were used in connection with a particular transaction. If any unauthorized use of your login credentials occurs you agree to (a) cooperate with us and appropriate law enforcement authorities in identifying and prosecuting the perpetrator; and (b) provide reasonable assistance requested by us in recovering any unauthorized transfer of funds.

Tell us AT ONCE if you believe your login credentials have been lost or stolen. Telephoning is the best way of keeping your possible losses down. If you believe your login credentials have been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call 303.530.4999 between 8:30 a.m. and 5:30 p.m. Mountain Time, Monday through Friday. **WE CANNOT ACCEPT NOTIFICATION OF LOST OR STOLEN LOGIN CREDENTIALS OR UNAUTHORIZED TRANSFERS VIA E-MAIL OR VOICEMAIL.** Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions.

For your protection, sign off after every Online Banking session and close your browser to ensure confidentiality.

- C. Limits on Online Banking Transactions.** You must have sufficient available funds or credit in any account from which you instruct us to make a payment or transfer. You also agree to the “Deposit Account Agreement and Disclosure” that you received when you opened your deposit account, as the same may be amended or replaced from time to time. In addition, we reserve the right, at our discretion, to suspend or deny use of any online banking service and to impose transactional or other limits on the use thereof.
- D. Qualifying Accounts.** A Qualifying Account is an account of which you are an authorized signer. The Bank undertakes no obligation to monitor transactions to determine that they are executed on the owner’s behalf.
- E. Joint Accounts.** When your Online Banking Customer Account is linked to one or more joint Qualifying Accounts, the Bank may act on the verbal, written, or electronic instructions of any authorized signer. Joint Qualifying Accounts using the same Online Banking username will be identified as one service for the purpose of determining the fees to be charged for the service.

## **2. ONLINE BANKING SERVICES AND TRANSACTIONS**

You, or someone you have authorized by giving them your login credentials (even if that person exceeds your authority), can instruct us to perform the following transactions:

- Make transfers between your Qualifying Accounts;
  - Make electronic transfers via Automated Clearing House (ACH) transactions between your Qualifying Account(s) at this institution and your Qualifying Account(s) at other financial institutions;
  - Transfer funds by wire;
  - Review check images on accounts;
  - Access your Qualifying Accounts through the Bank’s Mobile Banking Service;
  - Enable use of Mobile Remote Deposit Capture Service on the Bank’s Mobile Application to deposit checks from your mobile device into Qualifying Account(s) with the Bank;
  - Enable use of the online bill payment system to make payments out of your accounts;
  - Request a stop payment;
  - Make loan payments and advances from revolving lines of credit;
  - Request an address change;
  - Obtain account information that we make available about your Qualifying Account(s);
  - View account activity and Electronic Statements (if enrolled) on your accessible accounts; and
  - Other services as we may offer from time to time.
- A. Transfers to a Qualifying Account at Another Institution.** Any account information regarding Qualifying Accounts at other financial institutions cannot be accessed through the Online Banking service. To use this service, you must be at least eighteen (18) years old. You agree not to use the ability to transfer funds to another financial institution in violation of applicable laws, including, but not limited to, laws and regulations designed to prevent “money laundering” or the transfer of funds to accounts that are blocked under regulations of the Office of Foreign Assets Control (OFAC) of the United States Treasury Department. We may request additional information we deem reasonably necessary to ensure that you are not using this service in violation of applicable laws.

Subject to our privacy policy, you agree that we may use, copy, modify, display and distribute any information (including, without limitation, personal information), data, materials or other content (“Information”) you provide to us for the purpose of providing this service, and you hereby give us a license to do so. By submitting Information, you represent that you have the right to license such Information to us for the purposes set forth in this Agreement. You represent and warrant to us that you have the right to authorize and permit us to access the Qualifying Accounts to effect such transfers or for any other purpose authorized by this Agreement, and you assure us that by disclosing and authorizing us to use such information you are not violating any third party rights. You warrant and represent that the information you are providing us with is true, current, correct and complete. You hereby authorize and permit Bank and its Service Provider to use information submitted by you to accomplish these purposes.

You understand and agree that at all times your relationship with each other financial institution is independent of us and of your use of this transfer service. We are not responsible for any acts or omissions by any other financial institution or other provider of any Qualifying Account, including without limitation any modification, interruption or discontinuance of any Qualifying Account by such provider.

You acknowledge and agree that when we effect a transfer from or to any of your Qualifying Account, we are acting as your agent, and not as the agent or on behalf of any third party, and you hereby appoint us and our Service Provider as your attorney in fact and agent for such purpose. You agree that we and our Service Providers shall be entitled to rely on the foregoing authorization, agency and power of attorney granted by you.

You agree that we may place a hold on the funds in your account pending completion of a transfer from such account to any Qualifying Account at another financial institution. You agree that we shall not be liable for any costs, fees, losses or damages of any kind incurred as a result of (1) our access to the Qualifying Accounts; (2) our debit or credit or inability to debit or credit the Qualifying Accounts in accordance with your transfer instructions; (3) any inaccuracy, incompleteness or misinformation contained in the information retrieved from the Qualifying Accounts; (4) any charges imposed by any provider of Qualifying Accounts and (5) any funds transfer limitations set by the other financial institutions or other providers of the Qualifying Accounts.

We reserve the right to decline to effect any transfer, to submit transfer instructions or orders or to carry out change or cancellation requests in our sole discretion. We reserve the right to suspend your right to use this transfer service immediately and without prior notice to you. We may modify or discontinue this transfer service or your use of some or all accounts within this transfer service, with or without notice, and will not be liable to you, any other user, or any third party for such modification or discontinuation. You understand that the financial institution at which a Qualifying Account is maintained may contact us to verify the content and authority of your transfer instructions and any changes to those instructions. You understand that, as your agent, we may provide to such financial institution such information as may be required to verify the instructions and may constitute a valid security procedure under the rules governing such Qualifying Accounts. You agree to allow us to authorize any financial institution at which you have a Qualifying Account to accept funds and transfer instructions in accordance with any authorization procedures as may be agreed from time to time between you and such financial institution, or between us, on your behalf, and such financial institution, without verifying the instructions under the established security procedures, regardless of whether such security procedures were agreed by you directly or by us on your behalf. In addition you agree that we may authorize such financial institutions to charge and debit your accounts based solely on these communications. You authorize us to select any means we deem suitable to provide your transfer instructions to the applicable financial institution. These choices include banking channels, electronic networks, and funds transfer systems. You agree to be bound by the rules and regulations that govern the applicable funds transfer systems, such as Automated Clearing House (ACH) as published by the National Automated Clearing House Association (NACHA).

If any of your Qualifying Accounts are money market savings accounts or savings accounts, certain types of withdrawals from those accounts, including payments and transfers (by phone or computer), are limited to a total of no more than six (6) in any monthly statement period. The types of withdrawals covered by this limitation are those made by means of pre-authorized or automatic transfers and payments, telephone transfers or internet transfers. The limitation also includes withdrawals made by check, draft, debit card purchases, or similar order payable to third parties.

Transfers between Qualifying Accounts between the Bank and other financial institutions are limited to \$25,000 per day. This amount is subject to change at any time, and exceptions may be made at the sole discretion of the Bank, provided, however, that an exception in one instance shall not be construed as a modification of a limit or as obligating the Bank to make any future or other exception. If desired, a different limit amount may be requested but is not guaranteed and is subject to approval by the Bank in its sole discretion.

As a condition to using the External Transfer Service, you agree that you are solely responsible for the use of such service and that you will use the service in accordance with this Agreement. You agree it is your responsibility to ensure you enter valid and correct external account information. External account transfers sent to invalid or incorrect account numbers may not be recoverable and the Bank is not responsible for returning funds due to an unrecoverable external account transfer error.

**B. Wire Transfers.** You may initiate domestic wire transfers through the Online Banking service. We may establish a maximum wire transfer limit for you, and no wire transfers are permitted through the Online Banking service in excess of \$25,000 per day. Our standard wire fees will be charged to your account. Wire transfer requests submitted through the Online Banking service require you have the ability to receive an SMS text and a multi-factor authentication method. YOU AND BANK AGREE THAT THESE SECURITY

**PROCEDURES CONSTITUTE A COMMERCIALY REASONABLE METHOD OF PROVIDING SECURITY AGAINST UNAUTHORIZED TRANSFERS.**

Tell us at once if the security procedure described above is compromised in any way.

We will process wire transfer requests solely based on information received from you. If you describe any beneficiary or institution inconsistently by name and number, we and other institutions may process the Order solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution.

You must bring a claim arising out of a wire transfer within one (1) year after the claim arises. We are liable to you for a loss you suffer only to the extent such loss is caused solely by our gross negligence or willful misconduct. Our liability will extend only to the resulting direct loss not to exceed the amount of the disputed wire transfer and any related fees. We shall not be liable to you for consequential, indirect, punitive or exemplary damages. We shall not be liable for acts or omissions by you or anyone acting with your authorization or any other person including, without limitation, any funds transfer system, any Federal Reserve Bank, any beneficiary bank, and any beneficiary, none of which shall be deemed our agent. In addition, we shall be excused from delaying or failing to execute a wire transfer for circumstances or disasters beyond our control.

In addition to any other indemnification provisions in this Agreement, you shall be liable to us and shall indemnify and hold us harmless from any and all claims, causes of action, damages, expenses (including reasonable attorney's fees, to the extent permitted by law, and other legal expenses), liabilities and other losses resulting from acts, omissions, or provision of invalid or inaccurate data by you or any person acting on your behalf or with your authorization.

- C. Mobile Banking Service.** The Mobile Banking Service allows you to enroll to use the optional mobile banking services, including Mobile Web, Mobile Applications, and Mobile Remote Deposit Capture ("MRDC"), if you have an approved Mobile Device (as defined below). These services allow you to conduct certain banking functions through the use of your approved Mobile Device. Mobile Banking is part of our Online Banking service and is available only to individuals that are already enrolled in our Online Banking service.

When used in this Agreement, the term "Mobile Banking" means a suite of services that we make available, enabling you to conduct banking transactions with us by using your Mobile Device. "Mobile Device" means a cellular telephone or similar wireless communications device (1) that is installed with Mobile Banking applications permitted by us ("Mobile Applications") that you have downloaded in order to conduct Mobile Banking transactions, or (2) that is capable of conducting Mobile Banking transactions by using other protocols we may choose to permit, such as the Wireless Application Protocol through the use of the web site ("Mobile Web"). We reserve the right to change the Mobile Banking Applications, Mobile Web, and other protocols that we allow for Mobile Banking at any time without prior notice.

- i. Mobile Banking Functions.** To access Mobile Banking services and functions, your Mobile Device must be Internet enabled and connected to the Internet; must be enabled to receive and transmit data; and must include mobile browser and texting functionality. To receive any Mobile Banking service, you must also be enrolled in the Online Banking service and in Mobile Banking. Enrollment requires identification of your banking relationship with the Bank to our third party Mobile Banking Service Provider(s). By enrolling in Mobile Banking, you agree to the terms and conditions contained in this Agreement with respect to Mobile Banking and you authorize the Bank or its third-party Service Providers to provide Mobile Banking to you on the terms and conditions set forth in this Agreement.

When you access Mobile Banking with your Mobile Device, you will see a menu of available Mobile Banking functions (e.g., access to account information; view balances; view or search for transactions; locate branches; execute specific types of internal or external funds transfers; etc.). You will have the ability to contact the Bank via the "Call Us" feature in the applicable Mobile Banking Application. From time to time we will add, and may modify or delete, particular Mobile Banking functions or geographic areas served by Mobile Banking. We may make such changes in functions or geographic service with or without prior notice. We reserve the right to refuse to make any transaction that you may request through Mobile Banking.

Not all functions that are described in this Agreement or available at the Online Banking service website are available with Mobile Banking. All terms and conditions in this Agreement or on the Online Banking service's website that limit or govern your use of Online Banking functions will also limit and govern your use of those functions through Mobile Banking. You accept full responsibility for ensuring that you

understand how to use the Mobile Banking service before you do so and that you always use the Mobile Banking service in accordance with the instructions that we post on the Bank website. You also accept full responsibility for understanding how to properly use your Mobile Device and the Mobile Application. We may change or upgrade components of Mobile Banking from time to time. You are responsible for making sure that you understand how to use Mobile Banking as modified. Bank is not liable to you for your failure to properly use Mobile Banking or your Mobile Devices or for any losses or damages caused by such failure.

- ii. **Mobile Banking Service Availability.** We will use reasonable efforts to make Mobile Banking available for your use on a continuous basis. We do not guarantee functionality of Mobile Banking (or any Mobile Banking Applications) on all Mobile Devices, on all communications networks, in all geographic regions, or at all times. You understand and agree that Mobile Banking may not be accessible or may have limited utility over some mobile networks, such as while roaming. Mobile Banking is not certified to operate for end users trying to access it while outside the United States. Mobile Banking may be temporarily unavailable for regular or emergency system maintenance. We will endeavor to have our scheduled maintenance occur during non-peak hours, but we may conduct maintenance at any time. In addition, your accessibility to Mobile Banking may be interrupted because of conditions beyond our control, including because of outages in Internet availability. We will use commercially reasonable efforts to re-establish Mobile Banking in those instances, but we do not promise the Mobile Banking will always be available for your use. We may elect to discontinue Mobile Banking (or any of the services that we provide, from time to time, through Mobile Banking) at any time. If we choose to discontinue Mobile Banking, we will endeavor to provide you with reasonable notice but will not be required to do so. In the case of a disaster, your Mobile Banking may be suspended in order to allow emergency and responding personnel to use the cellular networks. In no event, regardless of cause, shall we be liable to you for unavailability of Mobile Banking, or your inability to access Mobile Banking or to execute Mobile Banking functions.
- iii. **Fees Charged by the Bank.** Currently, we charge no fees to enroll in or use any Mobile Banking Service. However, we may assess fees (a) set forth in the other agreements, disclosures or fee schedules for particular banking products or accounts (such as overdraft or funds transfer fees), or (b) for products and services that you may purchase through Mobile Banking. We reserve the right to institute or change fees for all or any individual Mobile Banking Service after sending you prior notice.
- iv. **Mobile Device and Mobile Communications.** You are responsible for providing your own Mobile Device that supports the Mobile Applications. Mobile Banking users may be required to download, install and use certain applications, software systems and programs developed by us, our licensors or other third-parties. We are not responsible for any damage to your Mobile Device resulting from those activities, and you will be engaging in those activities at your own risk. To download Mobile Applications, please follow the instructions found in the Mobile Banking page of the Online Banking site. Depending on its make and model, your Mobile Device may need to be capable of receiving an SMS text message to initiate the download.

You are responsible for obtaining your own mobile communications Service Provider. Your mobile communications Service Provider may charge you for Internet-related use, including, without limitation, downloading Mobile Banking Applications and sending or receiving text (SMS) messages, so please see your mobile carrier for further details about its charges. You are responsible for all fees and charges that you may incur to any mobile communications Service Provider or any other third parties while using Mobile Banking.

We are not a party to, and we have no duty, liability or responsibility with respect to or in connection with (i) your mobile communications Service Provider agreement, or (ii) any Mobile Device, hardware, software or other any product or service you may purchase from others relating to your use of Mobile Banking. This Agreement does not amend or supersede any agreements that you have with third parties (such as your Mobile Device supplier and your mobile communications Service Provider), and you remain subject to all terms, fees, costs, other charges, limitations and restrictions in those agreements with third parties. Your Mobile Device supplier and your mobile communications Service Provider are responsible for their products and services. You agree that any problems you may have concerning those companies' products, services or agreements shall be resolved by you directly with them, and without involving us.

- v. **Mobile Applications License.** In connection with your use of Mobile Applications, we and our licensors (or other third-parties who have directly or indirectly granted rights in those software systems and programs with respect to Mobile Banking) require your agreement to certain license rights arrangements

and end-user agreements set forth in this Agreement. By enrolling in portions of Mobile Banking relating to those software systems and programs, and by downloading and installing Mobile Applications, you will evidence your acceptance of the terms and conditions of such license. We may also condition your use of Mobile Applications upon you affirming such license by the use of "I Accept" dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

You are hereby granted a personal, limited, non-transferrable, non-exclusive, non-sublicenseable, revocable and non-assignable license ("License") to download, install and use the Mobile Application on your Mobile Device within the United States and its territories. In the event that you obtain a new Mobile Device, you will be required to download the Mobile Application software and the act of downloading will constitute your entering into of a new License agreement for that Mobile Device. This License is at all times subject to your compliance with the terms and conditions of this Agreement and the other agreements between you and the Bank.

You may cancel the Mobile Application service by either deleting the Mobile Application from all Mobile Devices in which the Mobile Application has been installed or un-enrolling within Online Banking. To re-enroll, you will have to start the enrollment process from the beginning of the process.

We shall revoke this License immediately upon (i) your termination of the Mobile Banking services in accordance with this Agreement; (ii) your deletion of the Mobile Application from your Mobile Device; (iii) your noncompliance with this Agreement or relevant terms of any of the other agreements between you and the Bank; or (iv) at any time, with or without notice, with or without cause. Upon revocation or other termination of this License, you agree to immediately delete the Mobile Application from your Mobile Devices if you have not already done so. Bank and any or all of its licensors, as applicable, reserve and retain all right, title, and interest in the Mobile Applications not granted to you in this Agreement, including, without limitation, all patent rights, copyrights, trademarks and trade secrets. This License entitles you to use the Mobile Applications solely in conjunction with Mobile Banking services and your Mobile Device and for no other reason. You may not sublicense the Mobile Applications to anyone. You agree that you will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Mobile Applications or any part of the Mobile Banking services; (ii) copy or reproduce all or any part of the Mobile Applications or the Mobile Banking services; or (iii) interfere or attempt to interfere with the operation of the Mobile Banking services or the Mobile Applications. The Mobile Applications do not include all operating systems or other software or applications that may be required to operate the Mobile Applications. You are solely responsible for licensing such third-party software, at your own cost and expense. You understand and agree that the Mobile Applications contain trade secrets and other proprietary and confidential information and that you will make commercially reasonable efforts to protect and maintain the confidentiality of such information. You agree that you will not (i) print, copy or duplicate any portion of the Mobile Applications; (ii) alter, remove or conceal any copyright notices on the Mobile Applications; or (iii) make the Mobile Applications available to anyone except your agents for purposes specifically related to your authorized use (and in that case, subject to such agents' agreement to comply with the restrictions herein). You may not use the Mobile Applications for any purpose other than your personal use. You agree to comply with all procedures and requirements of the Bank in connection with your use of the Mobile Applications.

We and our Service Providers (including without limitation third-party providers of Mobile Applications) reserve all rights in and to the Mobile Applications not expressly granted to you in this Agreement. If you obtain a different Mobile Device, you will be required to download and install Mobile Banking Applications to that different Mobile Device under the same terms set forth in this Agreement. You agree to delete all such software from your Mobile Device promptly if the License or this Agreement terminates for any reason. We reserve the right to change, add to or terminate services with our third-party Mobile Banking application providers, to substitute different Mobile Banking application providers, and to enter into or arrange for the provision of Mobile Banking applications by other licensors and third-parties.

- D. Mobile Remote Deposit Capture Service (MRDC).** Our Mobile Remote Deposit Capture Service ("MRDC") is designed to allow you to make deposits of checks ("original checks") to Qualifying Accounts from home or other remote locations by taking a photo of the original checks and transmitting the digital images and associated deposit information ("images") to the Bank with a mobile device. (In this Section, the term "Check" shall refer to the original paper check, or the image of such paper item that you transmit to us, as the context requires.) MRDC will be available through the Mobile Application after the Online Banking service is established.

- i. **Limits.** The standard mobile deposit is limited in amount to \$50,000 per check. This amount is subject to change at any time, and exceptions may be made at the sole discretion of the Bank; provided, however, that an exception in one instance shall not be construed as a modification of a limit or as obligating the Bank to make any future or other exception. If desired, a different limit amount may be requested but is not guaranteed and is subject to approval by the Bank in its sole discretion.
- ii. **Fees.** MRDC is free to all customers with checking, savings, and money market accounts. MRDC is not available for Certificates of Deposits or Individual Retirement Accounts.
- iii. **Eligible Items.** You agree to only deposit “checks” as that term is defined in Federal Reserve Regulation CC (“Reg CC”). You agree that the image of the check transmitted to the Bank shall be deemed an “item” within the meaning of Article 4 of the Uniform Commercial Code as adopted in Colorado. You agree not to use MRDC to deposit any of the following, which shall be considered “ineligible items”:
  - Checks payable to any person or entity other than the person or entity that owns the account into which the check is being deposited.
  - Checks containing an alteration, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
  - Checks payable jointly, unless deposited into an account in the name of all payees.
  - Checks previously converted to a substitute check, as defined in Reg CC.
  - Checks drawn on a financial institution located outside the United States.
  - Checks that are remotely created checks, as defined in Reg CC.
  - Checks not payable in United States currency.
  - Checks dated more than 6 months prior to the date of deposit.
  - Checks prohibited by the Bank’s current procedures relating to the Online Banking services or which are otherwise not acceptable under the terms of your Bank account.
  - Checks payable on sight or payable through Drafts, as defined in Reg CC.
  - Checks with any endorsement on the back other than that specified in this Agreement.
  - Checks that have previously been submitted through MRDC or through a remote deposit capture service offered at any other financial institution.

Our processing of any of the Checks described above shall not obligate us to continue the MRDC service, and we reserve the right, at our discretion, to suspend or deny the use of MRDC with or without cause or prior notice. If you process a previously truncated and reconverted substitute check through MRDC, you will ensure that the identification of previous truncating and reconvert banks are preserved and that the substitute check meets the requirement for legal equivalency under Reg. CC. We reserve the right to refuse any Check for deposit, with or without cause.

- iv. **Using the MRDC Service.** By enrolling in or using MRDC, you agree to: (a) follow our service instructions expressed within the Mobile Application for capturing and transmitting check images to us, as required by the image quality standards determined by us in our sole discretion, including, without limitation, image quality standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house, or association; (b) deposit only eligible items described in subsection (C) of this Section; (c) properly endorse and additionally print “FOR MOBILE DEPOSIT ONLY TO FLATIRONS BANK” on all deposited Checks; (d) view each Check as it is imaged to ensure that the check images (front and back) have been captured properly; and (e) follow any and all other procedures and instructions for use of MRDC as the Bank may establish from time to time. Each image must provide all information on the front and back of the Check at the time presented to you by the drawer, including, but not limited to, information about the drawer, MICR information, signature(s), any required identification, and any endorsements applied to the back of the original Check. You will be liable for any loss that the Bank incurs from a delay or processing error resulting from an irregular endorsement or other markings by you. You agree to retain all information about your imaging of Checks and transmittal of check images for no less than seven (7) days. In the event of lost, mistaken, incomplete or unusable Checks or images, or in the event of claims of fraud, alteration, counterfeit, or otherwise, you agree to cooperate fully with us in providing relevant information, including access to such records and, without cost, any originals or copies of items deposited through MRDC in your possession.

It is your responsibility to exercise the highest possible degree of care and security for any original Checks in your possession. You agree that you will not attempt, directly or indirectly, to negotiate, deliver,

transfer, or deposit any original Check (or copies of such Check, whether in paper or electronic form) more than once, whether with us or with any other financial institutions.

- v. **Your Representations and Warranties.** You represent and warrant to the Bank that you will comply with the terms and conditions of this Agreement and with all applicable laws, regulations and rules, and that with respect to each Check: (a) you have the legal right to accept the Check for deposit and negotiation; (b) the Check images that you transmit meet the image quality standards of the Bank and accurately represent all of the information on the front and back of the original Check, including but not limited to all endorsements, at the time of transmission; (c) you have not taken any action that would obscure, alter, or impair the capture or transmission of information on the front or back of the Check or that otherwise may prevent us or another institution from capturing or processing such information appropriately; (d) the image of the Check as transmitted contains all endorsements applied by parties that previously handled the Check in any form or forward collection or return; (e) you will only transmit eligible items as described in subsection (C) of this Section; (f) you will not transmit duplicate items; (g) you will not deposit or re-present the original item; (h) all information that you provide to the Bank is accurate and true; (i) the Check is not a counterfeit item; (j) all files and images transmitted to the Bank will contain no viruses or other disabling features that may have an adverse impact on the Bank's network, data, or related systems; (k) you make all warranties that would otherwise apply to the Check if it had been a paper item deposited with us; and (l) you make all encoding, transfer, presentment, and other representations and warranties that the Bank (or any correspondent bank that the Bank uses) provides, or is deemed to provide, to others (i.e., as a reconverting bank) pursuant to applicable law, regulation or clearinghouse rule.
- vi. **Hours of Operation.** The MRDC Service may be used to transmit Check information twenty-four (24) hours a day, seven (7) days a week, except when MRDC is unavailable due to necessary maintenance, system outages, or other causes. Deposit information received on or after the 4:00 p.m. Mountain Time cutoff time or on other than a business day may be deemed received by us as of the next business day. We are not responsible for the unavailability of the service or any damages that may result from its unavailability. If the MRDC service is not available for any reason or a Check cannot be processed by means of the MRDC service, you may deposit your Checks directly at any of our branches during normal operation hours or through our night depository services or by mailing the original check to: Flatirons Bank, 1095 Canyon Blvd., Suite 100, Boulder, CO 80302.
- vii. **Rejected Checks.** If your Check information is incomplete or cannot be processed by us for any reason, we may reject the Check for deposit, notwithstanding any transmission confirmation that you receive, and may charge the amount back against any provisional credit to your account. We may notify you by email if we are unable to process a deposit made through MRDC.
- viii. **Returned Checks and Claims.** If a Check or substitute Check is returned unpaid to us for any reason, we may return it to you in the form of a substitute check. If you decide to redeposit the returned item, you may only redeposit the substitute Check; you may not deposit the original Check. If the drawee of a Check or another third party makes a claim against us or seeks a re-credit with respect to any Check processed through MRDC, we may provisionally freeze or hold aside a like amount in your account pending our investigation and resolution of the claim.
- ix. **Indemnification.** In addition to the other indemnification requirements set forth in this Agreement, you agree to indemnify, defend, and hold us and our affiliated companies harmless from and against any and all actions, proceedings, liabilities, losses, costs, attorney fees, and claims (including but not limited to warranty claims) that result from or arise in connection with: (a) any misuse of the MRDC service by you, your employees, or agents; (b) your breach of this Agreement (including but not limited to any covenant, representation, or warranty); (c) actions by third parties (such as the introduction of a virus) that delay, alter, or corrupt the transmission of Check images to us; or (d) any claim by a recipient of a substitute Check (or a Check in an electronic form) upon which the recipient incurred a loss due to: (i) the receipt of the substitute Check (or a Check in an electronic form) instead of the original Check, or (ii) multiple payments with respect to the same original Check, based on any combination of the original Check, the substitute Check, or a paper or electronic copy of either. This subsection shall survive the termination of this Agreement.
- x. **Safekeeping and Destruction of Checks.** It is your responsibility to adopt and maintain commercially reasonable security procedures in connection with the storage and destruction of original Checks and any copies of such Checks. You should retain the original paper checks for only that amount of time (but no fewer than seven (7) days) that you deem necessary, based on: (a) the risk of fraudulent duplicate



presentments of the original Check or any paper or electronic copy thereof; (b) your personal needs; and (c) potential claims by recipients of substitute Checks (or Checks in an electronic form) that they incurred a loss due to the receipt of a substitute Check (or Check in an electronic form) instead of the original paper Check. After the end of your retention period, you agree to destroy (by shredding) the original Checks.

- E. Bill Pay Service.** This service provides you with the ability to make payments from a designated account to the payees you choose. This service may be subject to a separate agreement and disclosure, the provisions of which are in addition to those in this Agreement. You must have sufficient available funds or credit in the account from which you instruct us to make a payment. You are not limited in the number of payments made through this service, but there may be additional fees based on the number of payments made and per day aggregate dollar amount limits may apply. Payments may be established as single payments or recurring payments. Payments are processed on business days and must be submitted prior the daily cut-off time then in effect. Recurring payment dates which do not fall on a business day will be automatically adjusted, based on the payment options you select. You will be responsible for any bill payment request you make that contains an error or is a duplicate of another bill payment. Bank is not responsible for a bill payment that is not made if you did not properly follow the instructions for making a bill payment. Bank is not liable for any failure to make a bill payment if you fail to promptly notify Bank after you learn that you have not received credit from a payee for a bill payment. Bank is not responsible for your acts or omissions or those of any other person, including, without limitation, any transmission or communications facility, and no such party shall be deemed to be the Bank's agent. In any event, Bank will not be liable for any special, consequential, incidental, or punitive losses, damages, or expenses in connection with this service, even if Bank has knowledge of the possibility of them. Bank is not liable for any act, failure to act or delay in acting if it is caused, in whole or in part, by any cause beyond Bank's reasonable control. Bank has the right to change this service as set forth in this Agreement or by notice mailed to you at the last address shown for the account on the Bank's records, by posting notice in branches of the Bank, or as otherwise permitted by law. Bank has the right to terminate or modify this service at any time. You may terminate this service by written notice to the Bank. Bank is not responsible for any payment made before Bank has a reasonable opportunity to act on your termination notice. You remain obligated for any payments made by Bank on your behalf.
- F. Stop Payment Service.** The Stop Payment Service provides you the ability to initiate a stop payment order for a check drawn on a specified account with the Bank. Subject to certain limitations, you may order us to stop payment on an item payable from your account in the manner provided for in the Deposit Account Agreement Disclosure, the terms of which are incorporated herein by reference.
- G. Loan Payment and Advance Service.** This service provides you with the ability to make loan payments to loan accounts held at the Bank. Additionally, this service provides you with the ability to make advances from Overdraft Protection Lines of Credit, Home Equity Lines of Credit (HELOC) or other revolving loan accounts held at the Bank. You must have sufficient available funds or credit in any account from which you instruct us to make a payment or advance. You are not limited in the number of loan payments or advances made through this service.

### 3. EQUIPMENT

Bank may recommend or require specific hardware or software to be used in connection with one or more Online Banking services. Such recommendations or requirements may change from time to time. Unless Bank agrees otherwise in writing, Bank makes no representations or warranties in regard to nor will it provide technical support for such hardware or software. You shall be responsible for providing, maintaining, and bearing all costs of all equipment that is necessary for using the Online Banking services, including without limitation, telephones, terminals, modems, computers and computer software. Bank assumes no responsibility for defects or incompatibility of any computers or software that you use in connection with the Online Banking services.

### 4. SERVICE PROVIDERS

To the extent applicable to you or made known to you, you agree to comply with the requirements of the contracts between the Bank and any of its Service Providers relative to the Online Banking services. The Bank may, from time to time, refer you to Service Providers for the provision of products or services not offered by the Bank. You acknowledge and agree that such Service Providers are not affiliated with or endorsed by the Bank. You further agree that the Bank does not guarantee such products or services and is not liable for the actions or inactions of any such Service Providers.

## 5. PROPRIETARY RIGHTS

You acknowledge and agree that the Bank and the Bank's Service Providers own all rights in and to the Online Banking services. You are permitted to use the Online Banking service only as expressly authorized by this Agreement. You may not copy, reproduce, distribute, or create derivative works, reverse-engineer or reverse-compile the Online Banking services or any of the services or technologies of the Bank's or any the Bank's Service Providers.

## 6. OUR LIABILITY FOR FAILURE TO COMPLETE TRANSFERS

If we do not complete a payment or transfer on time or in the correct amount according to our agreement with you, we will be liable for your losses only to the extent of the amount of payment or transfer that should have occurred, if we are unable to resolve the problem. However, there are exceptions. **WE WILL NOT BE LIABLE:**

- If, through no fault of ours, you do not have enough available money in the account from which a payment or transfer is to be made, whether internal or external, or if the account has been closed or is not in good standing, or if we reverse a payment or transfer because of insufficient funds.
- If any payment or transfer would exceed the credit limit or available collected funds balance of any account, internal or external.
- If your equipment or ours was not working properly and the breakdown should have been apparent to you when you attempted to conduct the transaction.
- If you have not given us complete, correct, or current account numbers or other identifying information so that we can properly credit your account, another party's account, or otherwise complete the transaction.
- If you do not properly follow our instructions or if you provide us with wrong or inaccurate information or fail to correct or tell us about any inaccuracy of which you are aware.
- If you do not notify us within a reasonable period of time for your payment or transfer to be received, sent, debited or credited, as the case may be, by the time it is due.
- If the funds in the account from which a payment or transfer is to be made is subject to a legal process or any hold or block or other claim restricting the transaction or account.
- If circumstances, such as but not limited to, computer, telephone line, or electrical failure, of nature, civil disturbances, suspension of banking hours or other such circumstances, or persons beyond our control prevent, delay, intercept, or alter the transaction, despite reasonable precautions that we have taken.

## 7. INDEMNIFICATION

To the fullest extent permitted by applicable law, and except as prohibited by applicable law, you hereby release and agree to hold harmless, defend, and indemnify us, our directors, officers, employees, agents, affiliates, controlling persons, agents and representatives and their successors and assigns from and against any and all liabilities, demands, claims, actions or causes of action, assessments, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) and all fines, penalties and interest thereon as a result or arising out of, directly or indirectly: (i) our actions or omissions in connection with providing the Online Banking services, if such actions or omissions are in accordance with your instructions or the terms of this Agreement; (ii) any breach of your representations or warranties, or other actions or omissions of you, including without limitation, your violation of applicable law; (iii) any actions of third parties (including, without limitation, other financial institutions, automated clearing houses, the Federal Reserve Bank or any third party with which we may contract in connection with the services to be provided); (iv) any transmission or instruction, whether or not authorized, acted upon by us in good faith; or (v) any act or omission by you (or any of your authorized agents) in connection with, or any intentional or unintentional failure by you (or any of your authorized agents) to comply with, utilize, or follow information security procedures and protections, including, without limitation, any act, omission or failure related to access number(s), password(s), log-in ID(s), security tokens, personal identification number(s), passcode(s) and account number(s) assigned to you. You agree that when applicable law requires us to exercise ordinary care, substantial compliance with the procedures established by us shall be deemed to constitute the exercise of ordinary care, and you agree that occasional, unintentional deviations by us from the procedures set forth herein shall not be deemed a failure to exercise ordinary care as to the transactions with respect to which any such deviations occur.

## 8. TERMINATION

Either party may terminate this Agreement as to some or all of the Service, with or without cause, by giving ten (10) days prior written notice to the other party. We may suspend or terminate any Service or this Agreement immediately and without prior notice if: (a) required by law; (b) you breach any agreement with us; (c) the

confidentiality of any access device or password is compromised or we have reason to believe that there has been any other breach in the security of any of the Service; (d) we have reason to believe that an unauthorized or fraudulent transaction has taken or may take place involving any of your accounts or any of the Service, including but not limited to fraud, misuse or kiting; (e) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; (f) we are uncertain as to any person's authority to give us instructions regarding your accounts or the Service; (g) if we identify possible fraudulent or inappropriate activity or use of any Service by you or any other person; or (h) Bank believes, in its sole and absolute discretion, that continued provision of any of the Service will cause or could cause a material risk to Bank, including, without limitation, regulatory compliance risk, financial loss, operational risk, fraudulent activity, reputational risk, or system disruption or failures. The termination of this Agreement will not affect the rights or obligations of the parties that arise prior to termination (e.g., the indemnification and record retention requirements). You remain liable for any fees or items paid thereafter. The provisions of Sections entitled "Our Liability for Failure to Complete Transfers" and "General Provisions", a party's indemnification obligations hereunder, and the other respective obligations of each party, which by their nature would continue beyond the termination of this Agreement, shall survive termination of this Agreement.

## 9. GENERAL PROVISIONS

- A. Amendment.** Bank may amend any of the terms or conditions of this Agreement by giving written notice to you. Your continued use any of the Services or your accounts after such notice is given constitutes your agreement to the amendments. Your rejection of any amendments to this Agreement is cause for Bank to suspend or terminate the depository relationship with or the Services provided to you.
- B. Conflicts.** In the event of a conflict between the terms and conditions of this Agreement and any amendment or addenda hereto, and any other Bank service agreements(s), the amendment, addenda, or other service agreements(s) shall control.
- C. Enforcement.** In the event that the Bank must enforce the provisions of this Agreement, the Bank may recover the costs of enforcement, including reasonable attorney fees. Bank must maintain the private nature of the financial information contained on the Service for the protection of its customers. In the event of any breach of security or unauthorized access to any part of the Service by you or your employees or anyone to whom you made its password available, the Bank may obtain an injunction from a Court of competent jurisdiction, restraining further misuse of the Service.
- D. Notices.** Except as otherwise provided for in this Agreement, all notices required or permitted under this Agreement shall be in writing. Notices to you may be mailed or delivered to your statement, email, or mailing address as reflected on Bank's system of record, or included on your statement as a statement message, and shall be deemed received on the earlier of receipt or three days after mailing. Notices to Bank must be mailed or delivered to Bank at 1095 Canyon Blvd., Suite 100, Boulder, Colorado 80302, and shall be deemed effective no earlier than the end of the business day following the business day after it is received. You further agree that except as may be otherwise required by applicable law: (i) any and all disclosures, notices, or other communications regarding this Agreement may be made by Bank electronically or by posting on Bank's website; and (ii) any electronic disclosure, notice, or other communication Bank makes by posting to Bank's website will be considered received by you when posted by Bank.
- E. Entire Agreement.** This Agreement, together with any attached amendments or addendums or any written agreements related to any of the Services, constitutes the entire agreement between the Parties with respect to the provisions of the Online Banking Service.
- F. Governing Law.** This Agreement shall be governed under the laws of the State of Colorado without regard to conflict of law principles.
- G. No Waiver.** The Bank shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.