

## Digital Banking Agreement – Personal & Business

Effective Date: October 18, 2024

### Overview, Scope

This Agreement is between each owner of an eligible account (an "Account"), a person applying for an Account, or authorized representative appointed or entitled to online access on another person's behalf ("you" or "your") and Metropolitan Commercial Bank. This Agreement governs your use of any Digital or Mobile Banking Services ("Digital Banking Services") or Platform ("Digital Banking Platform"), maintained by Metropolitan Commercial Bank and accessible through [MCBankNY.com](https://www.mcbankny.com) using a personal computer or a mobile device, including a smartphone, tablet, or any other eligible handheld or wearable communication device ("Mobile Device"). The entire applicable deposit account agreement ([Personal Deposit Account Agreement](#) or [Business Deposit Account Agreement](#)), or loan agreement, shall apply to each Account.

Under the terms of this Agreement, you may use the Digital Banking Platform to obtain financial products and Services, access and view Account information, and, for certain Accounts, move money electronically and perform authorized transactions, for eligible U.S. based Metropolitan Commercial Bank consumer and business Accounts. You understand that by using Digital Banking, information about your Account will be transmitted over the Internet. You agree that our transmission of information in this manner does not constitute a breach of any duty we have to keep information about your Accounts confidential. You agree that we will not be liable if an unauthorized third party obtains information about your Accounts despite reasonable precautions, we have taken to maintain the confidentiality of such information.

When you first set up your Username, we will link all of your Accounts, including joint Accounts. If you open an additional Account at a later date, we will link your new Account to the Digital Banking, unless you tell us not to do so. Unless indicated otherwise by the context, "Linked Metropolitan Commercial Bank Accounts" or "Linked Accounts" refers to all of your Accounts with Metropolitan Commercial Bank and its affiliates that are linked to your Digital Banking profile. With respect to Digital Banking linked to one or more joint Accounts, we may act on the verbal, written or electronic instructions of any authorized signer.

Please note that some of the Services may not be available when using certain electronic devices or applications. For example, some functions may be available online through a personal computer but not available through our mobile app. Similarly, some functions require a camera such as Mobile Deposit service, so they are available on a Mobile Device but are not available or are impractical through a personal computer.

Please read these terms carefully. By accepting this Digital Banking Agreement and proceeding with the enrollment in Digital Banking, you acknowledge that you have read and understand this Agreement, and you agree to be bound by its terms and conditions. If you do not accept these terms, do not indicate "I Agree" to this Agreement and cancel this process (by closing the applicable browser window). By subscribing to or using, Digital Banking, you agree to the terms and conditions in this Agreement and (after their effective date) any changes in such terms and conditions, as they apply to the use of Digital Banking. If you do not agree with this Agreement, you may not use Digital Banking. We offer various Services, the terms and conditions of which are set forth below (each "Services Terms and Conditions"). The Services Terms and Conditions are a part of this Agreement, if you do not accept the Services Terms and Conditions, you may not use the Service.

In this Agreement, "you" or "your" refers to the person(s) subscribing to or using Digital Banking; "MCB", "we", "us" or "our" refers to Metropolitan Commercial Bank and any agent, independent contractor, designee, or assignee Metropolitan Commercial Bank may, in its sole discretion, involve in the provision of Digital Banking. If you are using Digital Banking on behalf of (and/or in connection with an Account owned by or a loan to) a business, association or other entity, "you" or "your" will also refer to such business, association or other entity, unless context clearly dictates otherwise. Nevertheless, your acts as a user shall be deemed acts of the business, association or other entity you represent while using Digital Banking in connection with an Account owned by or a loan to a business, association or other entity. You agree that you are authorized to consent to these terms on behalf of such business, association or other entity, and MCB can rely on this.

When used in the Agreement, the term "business" includes sole proprietors, non-consumer business entities, and individual owners of the business, unless the context indicates otherwise. If you are a business customer, additional or different terms and conditions applicable to the Services may apply, as well as additional Services available exclusively to business customers.

This Agreement contains an arbitration provision. Please read the Arbitration Agreement section carefully.

### Identity Verification

We make every effort to ensure the security of transactions and information. We may utilize information or security measures we already have on file (such as a one-time passcode sent to your mobile phone number on file via SMS) to identify and enroll you.

### Digital Records, Computer Requirements

By enrolling in and using Digital Banking, you consent to the electronic transmission of all information and records, including your periodic statements, tax forms, changes in terms, privacy notices, sufficient funds notices and other financial information that may otherwise have been given in writing. When you consent by indicating "I Agree" to this disclosure, we will keep a record of your consent including its date. You may revoke your consent by notifying us as set forth in the Termination section of this agreement. If you revoke your consent, your right to use Digital Banking will be terminated. Your consent to electronic transmission of your information will endure for as long as you are enrolled in Digital Banking. If you change your email address, you must update your online profile within Digital

Banking, either in person at a [Banking Center](#), by submitting an update through the Digital Banking Platform, or by telephoning us at 1-800-852-7632.

The computer requirements to use Digital Banking are as follows: your personal computer, laptop, portable computer, mobile handset, Internet Service Provider web browser, any software, any telecommunications, and any related equipment referred to collectively as your "computer". You are responsible for the installation, maintenance, operation and costs of your computer, including your utilization of up-to-date web-browsers, and commercially available encryption, antivirus, anti-spyware, and Internet security software. By enrolling in Digital Banking, you represent that your computer has the capability to receive electronic messages at the email address provided by you, that you can access and retrieve messages, records and information in electronic form, and that you can either print or store those messages, records and information. You agree to inform us if your email address changes and provide us with your new email address. We take commercially reasonable steps to prevent the introduction of harmful code, however, we are not responsible for any computer virus, worm, trojan horse, ransomware, bot, tracker, logger or other similar harmful component that may enter your computer in connection with the use of Digital Banking or otherwise. You acknowledge said risks associated with the use of the open networks such as the internet, and hereby expressly assume such risks.

Although we may provide a link to a third-party site where you may download software, we make no endorsement of any specific software, hardware or Internet Service Provider and your use of any such software, hardware or service may also be subject to the End User License Agreement or other agreements of that provider, in addition to the terms and conditions of this Agreement. You will not use Digital Banking in any manner that interferes with the operation of the Digital Banking Platform or the Services.

### **Electronic Signatures**

By enrolling in and using Digital Banking, you also agree that any agreements, notices, disclosures, or other communications that we provide to you electronically will have the same legal effect as if they were provided in paper form. You acknowledge and agree that your electronic signature, whether in the form of a scanned signature, typed name, or any other method of verification, constitutes your acceptance of the terms and conditions outlined herein.

You further consent to receive communications from us electronically, and you understand that your consent will remain in effect until you revoke it in writing. If you do not agree to these terms, please do not enroll in, or use Digital Banking.

### **Updates, Right to Refuse Access.**

From time to time, we may condition your continued use of Digital Banking on upgrading or installing more current versions of software on your computer. Your failure to perform such upgrades may result in your inability to access the Digital Banking Platform, your experience may also be severely impaired. In order to ensure proper operation of Digital Banking, you must also have an Internet Service Provider (ISP) and a web browser that supports the level of encryption that we use. We may change these encryption requirements from time to time. If you cannot or do not want to upgrade, we may block you from accessing Digital Banking. We reserve the right to perform maintenance on our equipment or system on a regular basis which may result in interrupted service or errors in the use of Digital Banking. It may be necessary for us to change the scope of Digital Banking from time to time. Furthermore, we reserve the right to block access to Digital Banking to maintain or restore security to our website and systems if we reasonably believe that your Username and password have been or may be obtained, or are being used or may be used by an unauthorized person(s). We will attempt to provide prior notice of such interruptions, changes or denials of access, but cannot guarantee that such notice will be provided. Digital Banking uses our proprietary software or the proprietary software of our licensors. If we have provided you with software to use with Digital Banking, you are being granted a non-exclusive, non-transferable license to use this software and only for your personal or internal business (non-commercial) use, as provided in this Agreement. You may not disassemble, de-compile, copy, modify, reverse engineer, sell, rent, sublicense, time-share or distribute any of the Digital Banking's software or information or allow anyone else to do so. Digital Banking provides you access to services and information from MCB or its affiliates, which may be presented with a distinctive "look and feel." These services, information and "look and feel" are the sole property of MCB or its licensors.

### **Digital Delivery of Banking Notices and Statements**

After this Agreement becomes effective, we will provide you with eStatements, available within Digital Banking. You will need to affirmatively opt out of paper copies by enrolling in Digital Delivery of eStatements; you will continue to be sent paper copies of the statements and our standard paper statement fee may apply (please refer to our current, applicable Terms and Charges). Once you have affirmatively opted out of paper copies, you will get an email notification of the availability of the statement. We reserve the right to send any or all of these communications by traditional paper methods, with or without notice, for any reason, including technological problems, address verification, security concerns, to comply with state or federal law, or any other reason.

We reserve the right to communicate with you about your Account(s) via email. Once enrollment is completed, you will receive emails notifying you when your statement is ready as well as notices. **We will never ask for your PIN or account information in any email** or expose any sensitive information in any email communications, such as: full account numbers, passwords and social security numbers.

You also agree that the information or other communication delivered to us digitally is in writing and we may treat it, as appropriate, as containing your signature.

Banking Notices. By agreeing to this Agreement your banking notices preference will be set to Digital Delivery. In order to withdraw your consent to Digital Delivery of periodic privacy notices, and changes to terms and conditions, and other banking notices you must withdraw from Digital Banking.

Digital Delivery of Tax Forms. Tax forms are available online for certain Accounts in addition to the paper tax notices that we mail to you. You can view, print or download a PDF of your tax forms using a PDF reader software.

Withdrawing your consent for Digital Delivery of Periodic Statement. To avoid a paper statement fee, you will need to instruct us to suppress periodic paper statements online. You have the right to resume periodic paper statements being sent to you at any time within Digital Banking, in person at a banking center, by telephoning us at 1-800-852-7632 or mailing a request to: Metropolitan Commercial Bank Digital Banking, 99 Park Ave., 12<sup>th</sup> Floor, New York, NY 10016. The paper statement fee may apply. Please allow a complete statement period for any method of statement delivery change to take effect. If you request an additional paper copy of your periodic statement, a fee may be charged to your Account (please refer to our current, applicable Terms and Charges for more information).

By selecting the corresponding record type in your Delivery Preferences, you consent to Digital Delivery of such record to your Digital Banking profile and a notification that the applicable record is available to an email address that you provided. You also acknowledge that you have the necessary software and are able to view and retain the records. You are responsible for ensuring that the email address provided in your Digital Banking profile is a current address that is periodically accessed. You are responsible for notifying us of any email address changes. You can change the email address at any time by [visiting a Banking Center in person](#), by submitting a request through the Digital Banking Platform, or by telephoning us at 1-800-852-7632. If a notification email is returned as undeliverable, we may send you notice by other methods, such as a message on the Digital Banking Platform, or by contacting the mobile phone number on file via SMS.

The provisions in this Agreement are part of (and in supplement to) your applicable Deposit Account Agreements (the "Account Agreement") and are subject to all the provisions in the Account Agreement. Your consent to the Digital Delivery service does not affect any of the terms and conditions otherwise applicable to an Account as separately disclosed to you, either in this Agreement, the Account Agreement, applications and enrollment forms, the applicable consumer or business Terms and Charges, Credit or Deposit Agreements, our Privacy Policy or other written disclosures.

### **Your Privacy Notice**

Please see our [Privacy Notice](#) for details regarding the manner in which we collect and use information about you and maintain the confidentiality of your personally identifiable information. Your access or use of the Digital Banking Platform constitutes your agreement to the terms and conditions of our Privacy Notice, and our use of information gathered about you in accordance with that Notice. Our Privacy Notice may be revised from time to time. We may notify you of the changes by mail, email, or by posting a modified Privacy Notice that you can view through Digital Banking. Your continued use of Digital Banking following such notification or posting will constitute your acceptance of the revised Privacy Notice. Accordingly, please check regularly for revisions to our Privacy Notice.

### **Cookies**

During your use of Digital Banking, we will pass an encrypted cookie to your computer to identify your computer during the session. This cookie enables us to process multiple transactions during the session without having to provide a login ID and password for each individual transaction. Users must accept this cookie to use Digital Banking Services. This cookie does not contain any personal information; it simply provides another level of security for our Digital Banking product. The cookie is stored on your computer's hard-drive, identifying your computer while you are logged in. When you log out, close your browser, or turn off your Device, the cookie will be destroyed. A new cookie is used for each session; thus, no one can use the prior cookie to access your Account. When you visit our website, we place additional cookies on your computer. These are files that enable our website to recognize return visitors. We do not store any of your personal information in our cookies.

### **Login**

We utilize Enhanced Login Security (ELS) to provide additional technical security that is designed to prevent unauthorized access to Accounts. ELS strengthens the safeguards in place at login by adding steps to verify your identity. Part of this identification process includes recognizing the computer you normally use to access Digital Banking. Computer verification coupled with your unique login information, is incorporated into your online identity profile. When logging in from a computer we do not recognize, you will be required to receive a one-time passcode to a phone number via SMS/Text or email associated with your Digital Banking Profile.

### **Navigation**

When you use Digital Banking, your browsing sessions and transactions may be recorded. We may collect information about your visits to personalize your browsing experience, including your preferences, pages visited, and technical and navigational information regarding your computer and operating systems; such as your Internet Protocol (IP) address, domain name, system configuration and settings. This information is used by us for our business purposes, which may include offering relevant products or services, research, analyzing market trends, improving the design and functionality of Digital Banking, aiding in dispute resolution and fraud investigation, and other purposes consistent with applicable laws. We will not share this information with third parties, except as permitted by our Privacy Notice or applicable law. If you do not consent to our collection of this information, you may not use Digital Banking.

### **Electronic Messaging**

Digital Banking provides you with the ability to send and receive electronic messages (email and live chat) to and from us. In general, electronic messages, outside of those you create using Digital Banking, may not be secure. We therefore request that you do not send to us or request any sensitive information from us (such as Account Numbers, Usernames, passwords, financial information, etc.) via any general or public email system. Please remember that we may not immediately receive an electronic message sent by you. No action will take place based on any electronic message you send us until we actually receive your message and have a reasonable

opportunity to act on it. You cannot use an electronic message to originate a bill payment, Account inquiry or funds transfer. You cannot send an electronic message through Digital Banking to any other person who also uses Digital Banking.

## **Security**

Digital Banking is designed to safeguard your Digital Banking Profile from unauthorized access. We use multiple levels of protection: A Username and password, a process to ensure we are connected to your computer, and encryption of your information. Additional protection is provided by "firewalls" at our Web server location, and by policies that restrict access to your Account information to only those who need to support you as a customer.

Identity Protection. No one can access your Account information without supplying the correct Username and password information, so you should be sure to select a Username and password that cannot be easily guessed or figured out by others. To help safeguard your password, you should keep it confidential. You agree not to give your password, or make it available, to any other person. You should not use the same password for the Digital Banking Platform that you use for any other website. You should change your password periodically. We are entitled to act on transaction instructions received using your Username and password, and you agree that the use of your Username and password will have the same legal effect as your signature authorizing the transaction.

Encryption. Encryption is a method of scrambling your information, including your Username and password, so that it cannot be read by others who do not have authorization to unscramble that information. The information you enter is encrypted by our Web-application, and is only decrypted (unscrambled) when it reaches our Web server.

What You Can Do To Protect Your Accounts and Information. You agree to adopt and implement all reasonable security measures to protect your Accounts and information including, but not limited to, observing the following guidelines:

- Do not share your password with anyone.
- Do not use shared electronic devices, email addresses and telephone numbers for multifactor authentication.
- Do not use shared or other unsecured networks for logging into the Digital Banking Platform.
- Do not store your password in a conspicuous place.
- Do not seek to circumvent, disable or defeat any security mechanism or process.
- Log off of Digital Banking when you are finished using it.
- Do not walk away from your Device while logged on to Digital Banking.
- Use anti-virus software to keep your devices free of viruses.
- Review and reconcile your Account activity on a regular, timely basis.
- Clear your browser's cache on a regular basis in order to remove copies of Web pages that may be stored temporarily on your system. (See your browser "Help" area for information on how to clear your cache.)
- Use the latest version of your browser and operating system.
- Make sure you access the site directly at [www.MCBankNY.com](http://www.MCBankNY.com) instead of clicking on links in email that may be disguised as Metropolitan Commercial.

Multi-Factor Authentication. You need to establish multiple ways that we can authenticate your user session (i.e. email and mobile number). We reserve the right (but we are not obligated) to require multiple authentication factors in order to initiate a session or transaction when we determine there may be an elevated risk, such as but not limited to a high-risk transaction, or login activity from an unrecognized device or location.

Biometric Login. We may make biometric identification available as access credentials for the Digital Banking mobile application, and Digital Banking through certain web browsers, for Mobile Devices that support such technology. Biometric identification technology measures a person's unique physical characteristics (e.g., fingerprint, facial characteristics, etc.) to authenticate and confirm the identity of the person. You acknowledge and agree that by enabling biometric identification to access Digital Banking, you authorize anyone who has biometric information stored on your device to access your Account information within your Digital Banking Profile. You will be responsible for any transaction performed using the biometric information that has been used to access your Mobile Device. If anyone other than you has a biometric profile saved on your Mobile Device and you do not want that person to have access and use Digital Banking on your Mobile Device, you should not enable biometric identification as access credentials for Digital Banking. We reserve the right to suspend or disable biometric identification as access credentials at any time. Biometric identification can only be associated with one Digital Banking username at a time on a Mobile Device. To use Biometric Login for Digital Banking on multiple devices, you will need to set it up for each device. If your Mobile Device does not recognize your biometric information, you can access Digital Banking on your Mobile Device by using your password. You can enable or disable Biometric Login anytime on your Mobile Device settings. Biometrics are stored on your Mobile Device only and we do not see or store the biometric profiles saved on your Mobile Device. We are not responsible for the performance and functionality of biometric identification technology on your Mobile Device, and we may require you to login to Digital Banking using other access credentials if biometric identification is not working properly.

## **Warranties Disclaimer**

Digital Banking is provided "as is" "as available". To the maximum extent permitted by law, we expressly disclaim and you hereby waive all warranties of any kind, either express or implied without limitation, implied warranties or merchantability, fitness for a particular purpose or non-infringement of third party rights. Digital Banking is not error free, and is not continuously available. From time to time, we may provide links to or from other Internet Websites. If you are leaving our site, we will generally inform you. You should read the other site's terms of use, Privacy Notice and other agreements.

## **Damages**

In no event shall we or our officers, directors, employees or agents be liable to you for any loss including, without limitation loss of data, injury or damages, whether direct, indirect, special, incidental, exemplary or consequential, including lost profits arising out of or related

to this Agreement or the subject matter herein even if we have been advised of the possibility of such loss, injury or damages. Some jurisdictions do not allow the exclusion or limitation of implied warranties or liability for incidental or consequential damages, so the above exclusions or limitations may not apply to you.

### **Digital Banking**

As used in this Agreement, "Digital Banking" refers to the online banking activities such as opening an Account, checking Account balances, transferring money between Accounts, Digital Bill Payment services and any additional services we may provide in the future. "Account" means any consumer or business deposit Account or loan that is included in your Digital Banking profile. "Default Digital Bill Payment Account" means the checking Account at MCB from which you have requested we make payments on your behalf pursuant to this Agreement.

### **Balance Inquiries**

You may use Digital Banking to check the balance of your Account(s), and to transfer money among your Accounts. The balance shown online may differ from your records because it may not include deposits in progress, outstanding checks, or other withdrawals, payments, purchases or charges that you have made but are not reflected in your current balance.

### **Transfers**

Failed Transfers: Transfers that have failed for any reason, including but not limited to system failures and insufficient balances will not be reprocessed. It is your responsibility to reschedule the failed transfer. For recurring transfers, the next transfer in the series will attempt to process as normal.

Internal Transfers: Transfers may be immediate, scheduled or recurring. Transfers between your MCB Bank Account and your External Bank Accounts are processed on a separate schedule. Please see External Transfer section below.

- Immediate: Same day transfers initiated between MCB Accounts will be processed immediately.
- Scheduled: Future dated transfers initiated between MCB Accounts will be processed on the morning of the day for which the transfer is scheduled.

We reserve the right to limit the frequency and dollar amount of transactions from your Accounts for such reasons as provided in your Deposit Account Agreement.

External Transfers: It is your responsibility to ensure that External Accounts that are added to your Digital Banking profile are only accounts that you own, are an authorized signer, or are otherwise authorized to transact on. For transfers to External Accounts, the funds will be withdrawn from your MCB Account on the transfer date. The credit to your External Account will be delivered the next business day. Debits from an External Account and credits to your MCB Account are processed within three business days.

Insufficient Funds: Transfers occurring only on MCB's systems (Accounts owned by you or third-parties at MCB) that would otherwise create an overdraft will be rejected.

### **Digital Bill Payment Service Terms and Conditions**

Bill Payments. You may make payments through the Digital Banking Platform to any Business Payee, or professional that generates a bill or invoice for products or services provided to you or on your behalf and that has an address we can verify ("Business Payee").

These Terms and Conditions constitute a contract between you, and us or our designated third-party service providers, in connection with Digital Bill Payment Services (the "Bill Payment Service") offered through our Digital Banking Platform. These terms and conditions apply to your use of the Service and any portion of the Digital Banking Platform through which the Service is offered.

The Terms and Conditions set forth herein are supplemented by the current [Bill Payment Service Additional Terms and Conditions](#). By entering into this Agreement, you acknowledge that you have read, understood, and agree to be bound by these additional terms and conditions, which are incorporated by reference as if fully set forth herein.

Payments may only be made to Business Payees with a U.S. payment address. Making any payment for alimony, child support, or court-directed payments through Digital Banking is not advised. MCB is not responsible if payments are not received, are not received in a timely manner or not received with sufficient information to allow processing. You may not purchase securities or crypto-currency through the Bill Payment Service.

If you are a consumer, you represent and warrant to us that you will use your Account and MCB's Bill Payment Service solely for personal, family or household purposes and not for any business or commercial purpose. If you are a business, you represent and warrant to us that you will use your Account and MCB's Bill Payment Service solely for business or commercial purposes and not for any personal, family or household purpose. We reserve the right to limit the dollar amount of Bill Payment transactions.

Your Personal Business Payee List. You must provide sufficient information about each Business Payee ("Business Payee Details") to properly direct a payment to that Business Payee and permit the Business Payee to identify the correct account ("Payment Account") to credit with your payment. This information may include, among other things, the name and address of the Business Payee and your Payment Account Number. You will enter your Business Payee Information directly through your device.

It is your responsibility to set up a Delivery Date for your bill payments that allows sufficient time for your Business Payee to receive and process your payment before the actual payment due date, excluding any applicable grace periods. If you do not, you will be fully responsible for all late fees, finance charges or any other action taken by the Business Payee.

If there are insufficient funds in your Account at the time we attempt to debit your Account in order to process a payment to a Business Payee, the procedures set forth in your Account Agreement will apply.

Payment Alerts. We may create a method by which you can set up a payment alert for each of your payments. If created you will receive both an external email to the email address you have previously provided us and an internal (Digital Banking message) email regarding your payment.

No Signature Required. When any payment or other online transaction generates an item to be charged to your Account, you agree that we may debit your designated Account or the Account on which the item is drawn without requiring your signature on the item and without prior notice to you. We may print a notation on the item that states the issuance of the item was authorized by you.

Amendments. From time to time, we may amend these terms and conditions, and the [Bill Payment Service Additional Terms and Conditions](#) which are incorporated herein. Such amendments shall become effective at the time they are posted unless an alternative date of effect is stated. Any use of the Bill Payment Service after a notice of change or after the posting of revisions will constitute your agreement to such changes and revisions. In addition, the Bill Payment Service or its related applications may undergo revisions or enhancements, rendering all prior versions obsolete. Under these circumstances, we reserve the right to terminate these terms and conditions as they relate to all prior versions of the Bill Payment Service, limiting access to the most recent revisions.

### **Pay a Person Terms and Conditions**

These terms and conditions constitute a contract between you, the depositor, and us or our designated third-party service provider, in connection with the Pay a Person Payment Service (the "Pay a Person Service") offered through our Digital Banking Platform. These terms and conditions apply to your use of the Pay a Person Service and any portion of the Digital Banking Platform through which the Pay a Person Service is offered.

Description of Services. MCB has partnered with Zelle® and other Pay a Person Services (as defined below) to provide a secure and convenient way to initiate a transfer between you and others throughout the United States. The Pay a Person Service enables you to initiate a transfer from one of your eligible MCB Accounts to a recipient account at any U.S. Financial Institution, and/or receive money from another person into your MCB Account. Although the ACH Network is often used to execute Pay a Person Payments, other Payment Networks may be used to facilitate the execution and transmission of payment. The intended use of this Pay a Person Service is to send money to friends, family and others you trust. You should not use this Pay a Person Service to transact with those you are unfamiliar with or do not trust.

The Terms and Conditions set forth herein are supplemented by the current Zelle® And Other Pay a Person Services Additional Terms and Conditions. By entering into this Agreement, you acknowledge that you have read, understood, and agree to be bound by these additional terms and conditions, which are incorporated by reference as if fully set forth herein.

Eligibility and User Profile. The Pay a Person Service provided by us is only available to residents of the United States who are eligible to form legally binding contracts under applicable law or a joint owner with a person who is eligible to form legally binding contracts under applicable law. Without limitation to the generality of the forgoing sentence, to be eligible you must, (i) be a U.S. resident; (ii) be at least 13 years of age; (iii) have at least one active Account in good standing with us; (iv) have the authority to authorize debits from the enrolled Account; (v) have previously enrolled in the Digital Banking Platform; and (vi) use a verified email address in connection with the Pay a Person Service. By using the Pay a Person Service you represent that you meet all of the aforementioned requirements, and you agree to be bound by these terms and conditions.

Privacy and Information Security Procedures. Specific policy information may be found in our [Privacy Policy](#).

If there is reason to believe any information has been known or accessed by unauthorized persons, you agree to immediately notify us. The occurrence of unauthorized access should not affect any Pay a Person Payments made in good faith prior to receipt of notification. We reserve the right to suspend or cancel any payment that is made during the period immediately following notification.

Compliance with Information Security Procedures. If a request for a Pay a Person Service Payment (or a request for cancellation or amendment of a Pay a Person Service Payment) purports to have been transmitted or authorized by you, it will be conclusively deemed effective, and payment shall be initiated on your behalf. Under these circumstances, except as limited by applicable law, you are obligated to pay MCB the amount of such Pay a Person Service Payment, even if the payment was not authorized by you, provided that We accepted the payment in good faith and acted in compliance with the security procedures detailed with these terms and conditions. We shall conclusively be deemed to have complied with security procedures if the password entered in connection with the session in which the initiation of a payment matches the password associated with your Account.

Consent to Email and Automated Text Messages. By participating in Pay a Person Services, you represent that you are the owner of the email address or mobile phone number enrolled or that you have the legal authority to act on behalf of the owner of such email address or mobile phone number. As such, you consent to the receipt of correspondence from us, and/or our third-party service provider. Under a variety of circumstances, automated alerts will be sent by text or email, based on your preferences. The frequency of alerts will vary depending on the number and type of alerts requested. We are not liable for any delays, misdirection or failure of delivery, errors in the contents of an alert or for any actions taken or not taken by you or a third-party in reliance of an alert.

You further acknowledge that you are responsible for any fees or charges your wireless carrier may apply relating to text or other messaging services. Please check your mobile service agreement for details or applicable fees as **message and data rates may**

**apply.** You agree to immediately notify us if the email address or mobile phone number you have enrolled has either changed or no longer in service.

Send Limits. Limits are subject to change at any time, however, you may call, send a message on the chat from within the Digital Banking Platform or send a secure message from within the Digital Banking Platform to inquire about specific information regarding current limits.

Transfer Errors. Any transfer errors will be handled pursuant to our dispute process. A transfer error may occur under any number of circumstances, including, but not limited to, attempting a prohibited payment, entering incorrect information for a Recipient (i.e. wrong phone number or email address), and other unplanned technological errors that may occur.

Your Liability for Unauthorized Transfers. Any liability for unauthorized transfer(s) will be resolved pursuant to your applicable Deposit Account Agreement.

Cancellation of Pay a Person Service & Right to Terminate Access. You may cancel the Pay a Person Service by written request or by sending a secure message from within the Digital Banking Platform. We may terminate your access if you fail to maintain eligibility status as described above, or at our sole discretion and without prior notice, unless such notice is legally required.

Amendments. From time to time, we may amend these terms and conditions or the Zelle® And Other Pay a Person Services Additional Terms and Conditions. Such amendments shall become effective at the time they are posted unless an alternative date of effect is stated. Any use of the Pay a Person Service after a notice of change or after the posting of revisions will constitute your agreement to such changes and revisions. In addition, the Pay a Person Service or its related applications may undergo revisions or enhancements, rendering all prior versions obsolete. Under these circumstances, we reserve the right to terminate these terms and conditions as they relate to all prior versions of the Pay a Person Service, limiting access to the most recent revisions.

### **Mobile Banking**

The use of mobile technology to access Digital Banking could present a heightened security risk due to the fact that Mobile Devices have less sophisticated access protections, and wireless (cellular and Wi-Fi in particular) transmissions are vulnerable to interception. We have implemented mobile banking as an accommodation to our customers, recognizing that any web page is accessible by certain Mobile Devices. MCB cannot mitigate all of the additional risks presented by the use of Mobile Devices to access Digital Banking. If you access Digital Banking via a Mobile Device, you do so at your own risk and to the maximum extent permitted by law, MCB shall have no liability to you or to any third party arising from or related to your use of Mobile Banking. For the sake of these terms and conditions, mobile banking means accessing the Digital Banking services using a Mobile Device, whether using our dedicated Mobile Banking Application (the "Mobile Banking App") or navigating to the Digital Banking website through any browser resident on the Mobile Device, unless context dictates otherwise. Mobile Banking is only available when your device is connected to the internet and Digital Banking is available.

All of the terms of the Digital Banking Agreement are applicable to your use of mobile banking. We do not charge a fee for Mobile Banking, however, mobile service provider **message and data rates may apply.** Contact your mobile service provider for details on specific fees and charges. Message frequency depends on Digital Banking profile settings.

By using MCB Mobile Banking, you are agreeing to the terms and conditions presented here and certifying that you are an authorized signer on the Account.

### **Digital Banking Alerts**

Digital Banking offers both mandatory security alerts and optional account alerts regarding your Digital Banking profile, Accounts, and transactions. Security alerts are sent when certain changes to your Digital Banking profile occur, including, but not limited to, successful login, password updates, or changes to your physical or primary email address. These security alerts are sent to either your primary email address or your mobile phone number on file via SMS, and are not optional. In addition to security alerts, we may provide you with the option to choose to receive additional alerts or communications regarding Account activity, delivered by email, push notification or text message to a Mobile Device. By signing up to receive any optional alerts, you consent to delivery of such messages in the format selected (such as email or text message) to the email address or Mobile Device number on file. To change or cancel your optional alerts, login to Digital Banking.

Both security alerts and optional alerts are subject to the following:

If you receive a security alert that you do not expect, is inaccurate, or is related to an action you did not perform, you should contact us immediately at 1-800-852-7632. You are responsible for notifying us of any changes to your email address or Mobile Device number to which alerts are sent. Anyone with access to your email or Mobile Device may be able to access the contents of the security and optional alerts. It is your responsibility to secure the devices, protect your Username and password, and provide timely information about changes to your email address or Mobile Device number. We bear no liability or responsibility for any disclosures that occur because you do not take appropriate steps to prevent access to your Mobile Devices, Username and password or Account information by unauthorized persons, and for alerts sent to the mobile number you provided.

We do not charge you for delivery of security or optional alerts, however, your wireless service provider or Internet Service Provider's **message and data rates may apply,** and they may levy fees or charges for receipt of messages by your Mobile Device or computer. You are solely responsible for such charges. MCB Mobile Banking and alerts are available on networks that support SMS/Text Message services and/or mobile email apps.

The security and optional alerts provided to you are for convenience purposes only. Security and optional alerts may not always be sent in real time. Quiet hours for alerts can be managed by using the device's 'Do Not Disturb' settings. Alerts may not reflect pending transactions, and we do not guarantee the delivery or accuracy of the contents of any alert. The security and optional alerts are available through your Mobile Device when it is within the operating range of your wireless service provider or a computer having an active connection to the internet. The security and optional alerts are subject to transmission limitation or interruption. You agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content in an alert; or for actions taken or not taken by you or any third party in reliance on an alert.

## **Business Accounts**

If you are a Customer who has both business and consumer Accounts with us, you should have a different profiles for each business entity where you are an owner, signer, or user (a business profile), unless those business entities are otherwise affiliated; and one profile for Accounts used for personal or household purposes (a consumer profile). Digital Banking requires an Employer Identification Number for a business profile and Social Security Number for a consumer profile. Consumer and business profiles have different capabilities, designed to mitigate risk and comply with applicable law, as well as allowing you to better manage your financial affairs. The Personal Deposit Account Agreement applies to Accounts used for personal or household purposes and transactions to and from those Accounts. Business Deposit Account Agreement applies to business Accounts and transactions to and from those Accounts, regardless of the profile those Accounts are associated with. You assume all risk of failing to maintain a separate consumer profile for your Accounts used for personal and household purposes, and a business profile for each business entity where you are an owner, signer, or user, including any tax and/or accounting issues or problems.

## **Mobile Deposit Terms and Conditions**

The following terms and conditions are applicable to MCB's Mobile Deposit service ("Mobile Deposit"), through MCB's Mobile Banking Platform. Your use of MCB's Mobile Deposit is governed by the terms of this Agreement. By agreeing to or signing the applicable Account documentation or by using or continuing to use Mobile Deposit you are acknowledging your election to use Mobile Deposit. You acknowledge that email and/or messages displayed on your Mobile Device will be the primary means of communication for Mobile Deposit. You are responsible for maintaining a current email address and you agree that you will, in a timely manner, review messages and notifications you receive from us and check your Account to confirm it reflects recent activity.

Description of Services. You may deposit certain checks using Mobile Deposit to an Account from home or other remote locations using a compatible Mobile Device capable of capturing electronic images of the front and back of certain eligible checks and transmitting them to us. You must be enrolled in both Digital Banking and Mobile Banking. You must be an authorized signer or an owner either individually or jointly on the Account that is eligible for this Mobile Deposit service. Your Account must be active in order to use this service.

Accounts (and the deposits) will be governed at all times by the applicable Account Agreement documents.

Eligibility. MCB's Mobile Deposit is Prohibited from being offered to Money Service Businesses, Owners or Lessors of Privately owned Automated Teller Machines (ATM's), Non-Bank Financial Institutions or Correspondent Banking Customers.

Prohibited Items. Checks must be drawn on United States financial institutions. United States treasury checks, savings bonds, Canadian checks, and foreign checks are ineligible for the Mobile Deposit service. Insurance checks and third-party checks that are payable to any party other than you are prohibited for processing via the Mobile Deposit service. We reserve the right to prohibit you from utilizing the Mobile Deposit service for checks drawn on your Accounts at Metropolitan Commercial Bank or at other institutions, or drawn on the Accounts of any of your household members.

### Requirements:

- Check Images. All check images shall be legible and accurately depict legal and courtesy amount field, payee, date, check number, drawee information, and memo line designation. In addition, you must verify that the Magnetic Ink Character Recognition ("MICR") line is true and accurate in its reproduction on the check image. We have the right to adjust the amount of any deposit based on our review of the image. We shall not be liable for any damage resulting from a check or item's poor image quality, including those related to rejection of or delayed or improper crediting of such a check or item or from any inaccurate information you supply regarding the check or item.
- Endorsement. You must endorse each check before transmission, exactly as the check or item is made payable.
- In addition to signing the check where required you shall mark the back of each check with the notation "For Deposit Only". If the check was previously refused or rejected and is to be presented for deposit or payment subsequently, then the face of the check must be marked with the date the electronic image was refused or rejected.
- Destruction of Checks. All checks shall be retained in a secure fashion after you have deposited the image. Our standards require that the check be retained for a minimum of fifteen (15) Business Days after funds have been made available to you in the Account. You may retain checks for a longer period of time, however, retention should not exceed forty-five (45) calendar days.
- Safeguarding of Checks. You shall safeguard all checks prior to their destruction from unauthorized access and use, including without limitation, theft, alteration, access, re-imaging, and re-presentation.
- No Further Use of Check. You will not permit the check to be presented, returned or otherwise used to obtain a payment that would duplicate the payment sought by the deposit made via the Mobile Deposit service.

- Internet Connectivity. You are responsible for your own hardware and software including the equipment used to provide connectivity to the internet. You are responsible for troubleshooting internet connectivity issues with your Internet Service Provider ("ISP") or Mobile Service Provider. All connectivity and data charges, fees, problems, interruptions and related issues shall be your responsibility and not ours.
- Controls. You agree to have controls in place to ensure your compliance with your obligations to us as set forth in this Agreement, the Account Agreement and elsewhere. Without limiting the generality of the foregoing, you shall maintain the security of access to checks, all relevant banking information and all archives (physical and digital).

Customer's Representations and Warranties:

You represent and warrant that (i) all deposits made via the Mobile Deposit service shall conform in all respects to the requirements herein, the Agreement, any reasonable instructions, rules or policies as may be communicated to you by us from time to time, and any other applicable requirement under the law; (ii) all signatures on each check are authentic and authorized; (iii) the check has not been altered; (iv) all check images are true, authentic representations of the checks they represent and meet the quality standards set forth herein; (v) you have not and shall not submit any duplicate deposit, check, check image or deposit made via the Mobile Deposit service, or otherwise authorize, allow or suffer any third party to submit any duplicate deposit, check, check image or deposit made via the Mobile Deposit service; (vi) you are the Payee and you are entitled to the payment of the item; (vii) you have endorsed the check before transmission, exactly as the check or item is made payable, and have made a notation on the back of the check stating "for deposit only"; (ix) we shall in no event suffer any loss, damage or harm in connection with the deposit of any check made via Mobile Deposit; (x) all information provided to us is true and accurate; (xi) all checks are authorized and valid, and not subject to defenses by the applicable maker or drawee; and (xii) you have complied with all laws, rules and regulations in connection with each Mobile Deposit, including without limitation, the Check Clearing for the 21st Century Act ("Check 21").

Transmission of Deposits:

- Notice of Acceptance. No deposit made via Mobile Deposit service shall be valid against us until receipt of such deposit by us, as evidenced by written acknowledgement of receipt by us. We reserve the right to reject any check or item image transmitted through this service, at our discretion, without liability to you. We are not responsible for any deposit made via Mobile Deposit that we do not receive, regardless of the reason. An image of a check or item shall be deemed received when you receive confirmation from us that we have received the image. Receipt of such confirmation does not mean that the transmission was error free, able to be processed or complete or that funds will be credited for that check or item. In the event you do not receive confirmation of receipt by us within twenty-four (24) hours of transmitting the deposit via Mobile Deposit service, you should contact us by email at [contactcenter@mcbankny.com](mailto:contactcenter@mcbankny.com). Notwithstanding the foregoing, we are not responsible for any deposit made via Mobile Deposit that does not comply with the terms of this Agreement, applicable law or any other requirement of us (including without limitation, check eligibility, image quality, late or missing deposits, or deposit and file limits specified by us).
- Email Notifications. You will receive a "deposit received" confirmation email once you have submitted a deposit. You will receive a second email informing you if the deposit has been approved or declined. If your deposit is made after 8:00 p.m. EST you may not receive the approval or declination email until the next Business Day. A Business Day is every day, except Saturdays, Sundays and holidays.
- Limits. We may establish limits that apply to the amount of any individual check, the dollar amount and number of checks that may be deposited in a day, and the dollar amount of checks that may be deposited in a multi-day period.
- Deadlines. You understand that all deposits made via Mobile Deposit must be received by us by 8:00 p.m. EST, in order for such deposit to be credited on the Business Day it was transmitted. All deposits made via Mobile Deposit received after such deadline (or received on a day other than a Business Day) shall be credited on the Business Day following such receipt. Please refer to your Account Agreement for when funds will be made available.

Notice of Returned Deposits:

- Returned Deposits. You specifically agree that we shall have no obligation whatsoever (including without limitation, to process, repair, return or represent) in connection with any failure of a check, check image, file or deposit to meet any specifications or requirements provided by us to you. Checks returned for stop payment, refer to maker, or any other permanent rejection, reason should not be redeposited.
- Time and Manner of Returns. You agree that you shall accept a returned Mobile Deposit made via the MCB Mobile Deposit service at any time. In the event of a return, you agree that such return may be made in any legally acceptable form (including without limitation, image, image replacement document, or MICR memo).
- A Convenience. You acknowledge and agree that the MCB Mobile Deposit service is a convenience. We reserve the right to discontinue the MCB Mobile Deposit service for any or no reason. We may terminate the MCB Mobile Deposit service at our sole discretion, immediately for any violation of the Agreement, these Mobile Deposit Terms and Conditions or any law, rule or regulation, and for any other reason set forth in the Agreement. We also may terminate these Mobile Deposit Terms and Conditions at our sole discretion for any or no reason upon reasonable advance written notice and you agree that in all cases five (5) Business Days is reasonable. We shall have no liability to you or to any third party for interruption or discontinuation of the MCB Mobile Deposit service. Your sole remedy will be to make your deposit in person at any of our [Banking Centers](#).

**Funds Availability.** Funds shall be available for withdrawal as provided in your Deposit Account Agreement under the Funds Availability section, but such availability shall be subject to our discretion with respect to our risk-based monitoring of your Account. In addition, all funds are available subject to the provisions of the Deposit Account Agreement. You will see your deposit reflected in your available balance once funds become available.

### **Customer Representation and Warranties (Business Customers)**

You make the following warranties and representations:

**Valid Business Entity.** The business that appears in the Account title is a legally organized, validly existing business entity in good standing.

**Not Prohibited Purpose.** We reserve the right to not make the Account available to businesses engaged in certain industries, including but not limited to the following: gambling, pornography and paraphernalia, firearms and paraphernalia, illegal substances, other controlled substances (including medicinal marijuana, marijuana, cannabis, and hemp) and paraphernalia, penny auction companies, money service businesses, and bulk exchange of virtual currency (e.g., cryptocurrency). In addition, Customer may not offer or provide any banking or financial services to any third parties through the Account.

**For Business Purposes Only.** Each of the Accounts and transactions effected through the use of the Username or password issued under this Digital Banking Agreement is maintained primarily for business purposes, and NOT for personal, family or household purposes.

**Appropriate Business Resolution.** The entering into, delivery and performance of this Agreement have been validly authorized by proper sole proprietor, corporate, limited liability company or partnership, or partnership resolutions. The Account signers and persons given access to Accounts through a Username and password have been duly authorized to act on the entity's behalf and bind the entity with respect to the Accounts and services available until actual notice of a change is received by us pursuant to the section in this Agreement which addresses responsibility for electronic transfers, and we have adequate time to act on that notice.

**User Authorization.** All Usernames and passwords issued in connection with the Accounts are issued only to duly authorized representatives and/or signers on the applicable Account. All authorization levels have been reviewed by an authorized representative and are valid and appropriate.

**Businesses using Digital Banking must designate a Primary Administrator to represent and act on behalf of Customer.** The Primary Administrator must be an authorized representative, and is responsible for setting up all other persons authorized to use Online Banking on behalf of your business ("sub-user"). If the Primary Administrator loses or forgets their password, they may use the self-service password reset function, contact us at 1-800-852-7632, by email at [contactcenter@mcbankny.com](mailto:contactcenter@mcbankny.com), or send us a secure message through the Digital Banking Platform. If a sub-user loses or forgets their password, the sub-user may use the self-service password reset function or contact the Primary Administrator for assistance. The Primary Administrator and each sub-user agree to keep, and to cause their Primary Administrator and all sub-users' passwords secure and confidential. Primary Administrator and all sub-users must provide a unique email address and mobile phone number for the use of multifactor authentication or delivery of onetime passwords. Customer agrees that sub-users are fully authorized to act in the authority of any rights granted to them by the Primary Administrator. We will rely on the Primary Administrator's online authentication to establish the identity and authorities of each sub-user. A sub-user may be granted the authority to view or initiate transactions against Accounts as well as perform other Digital Banking functions. Customer indemnifies and holds MCB and each of its directors, officers, employees, agent, successors and assigns ("Indemnitees") harmless from and against all liability, loss and damage from any kind (including attorneys' fees and other costs incurred in connection therewith) incurred by or asserted against such Indemnitee in any way relating to or arising out of or by reason of any of your acts or omissions of any Primary Administrator, or sub-user in connection with the Digital Banking Platform and Services.

### **Safeguarding Security Codes and Security Procedures**

Subject to the next sections, you are responsible for all transfers, payments and other transactions using your Username and password on Digital Banking. We will not be liable for and will not reimburse you for any losses that may occur as a result of use of your Username and password by a third party. You are responsible for keeping your password and Account data confidential.

**Lost, Stolen or Unauthorized Use of Username and Password.** You must tell us at once if you believe that your password has been lost or stolen, otherwise you could lose all of the money in your Accounts plus your maximum overdraft line of credit, if applicable.

If you believe your password has been lost or stolen or that someone has transferred or may transfer funds from your Account without your authorization:

- Call us at 1-800-852-7632
- Send us an electronic message or chat within Digital Banking
- Write to us at: Metropolitan Commercial Bank Digital Banking, 99 Park Ave., 12th Floor, New York, NY 10016

Send us an electronic message at [contactcenter@mcbankny.com](mailto:contactcenter@mcbankny.com)

### **Limitation on Losses Suffered on Consumer Accounts Only**

If you tell us within two (2) Business Days after you discover that your Username or password has been accessed or used without your permission, your liability will not exceed \$50.00. If you do not tell us within two (2) Business Days of the unauthorized use of your Username or password, and we can prove we could have stopped someone from using your password without your permission if you had told us, your liability can be as much as \$500.00.

### **Limitation on Losses Suffered on Business Accounts Only**

You are fully responsible for any transaction made by use of your computer, a Username and password or Security Procedure. You agree to immediately reimburse us for any loss, claim or damage which we sustain as a result of the use of your computer, a Username and password or procedure issued at your request. We shall have no liability for any loss, claim, or damage which you sustain as a result of the use of your computer, a Username and password or Security Procedure issued pursuant to this Agreement. This is true even if your Username and password is lost, stolen or obtained or retained by a person not authorized by you to initiate electronic transactions. This is true even if your Security Procedures are compromised, stolen or obtained by a person not authorized by you to initiate electronic transactions. We shall have no liability for any loss, claim or damage which you sustain as a result of the use of your computer, a Username and password or Security Procedure and even if the use occurs after you have asked us to deactivate your Digital Banking or security procedure, whether we have acted on that request.

### **Reviewing Your Statements**

In case of errors or questions about your electronic transfers or payments listed on your statement or appearing in your online Account Transaction History, do one of the following, as soon as possible:

- Call us at 1-800-852-7632
- Send us an electronic message or chat within Digital Banking
- Write to us at: Metropolitan Commercial Bank Digital Banking, 99 Park Ave., 12th Floor, New York, NY 10016
- Send us an electronic message at [contactcenter@mcbankny.com](mailto:contactcenter@mcbankny.com)

### **Use of Certain Account Information**

You consent to MCB sharing your personal information, which may include Account information. Personal information may be shared for any reason related to this Agreement or as a customer of MCB, including, but not limited to:

- Where it is necessary for completing authentication or a transaction;
- As necessary to resolve problems relating to transfers;
- Verifying the existence of your Account and/or Username and password;
- In order to verify the existence and condition of your Account for a third party, such as a credit bureau or Payee;
- In connection with a transaction that you initiate or to which you consent;
- In order to comply with a governmental agency or court order;
- If you give us permission, which we may require in writing;
- In order to collect information for our internal use, marketing, the use of our service providers, our servicing agents and contractors;
- Determining your location;
- If it involves a claim by or against us concerning a deposit to or withdrawal from your Account;
- Compliance with inquiries in connection to fraud or an investigation; or
- Where otherwise required or permitted under state or federal laws and regulations or as permitted by the terms of MCB's [Privacy Policy](#) and [Privacy Notice](#).

### **Viewing External Account Information**

By using the External Account Service, you authorize us and our service provider to access third-party sites and third-party Account information to retrieve and register such information and Accounts, as requested by you. For all of these purposes, you grant us and our service provider a limited power of attorney and you appoint us and our service provider as your agent to access third-party sites, servers or documents, retrieve information and use your information as described above. You agree that External Account providers shall be entitled to rely on the forgoing authorization and agency. You further understand and agree that the Service is neither endorsed nor sponsored by any third-party Account providers. We are not responsible for any information provided by third-party providers or its availability.

### **Authorization to Obtain Information**

You agree that we may obtain and use information from credit bureaus and consumer reporting agencies. We may also verify your employment, income, pay, salary, assets, debts, and references. You also agree that we may obtain information regarding your Payee Accounts in order to facilitate proper handling and crediting of your payments.

### **Statements/Notices**

We may send you your monthly (or quarterly) Account statement via email or U.S. mail, or we may make it available by hyperlink which we send to you by message in your Digital Banking messaging service.

### **Waivers**

No delay or omission by us in exercising any rights or remedies hereunder, shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy by us shall not preclude further exercise thereof or the exercise of any other right or remedy by us. No waiver by us shall be valid unless in writing signed by us.

### **Assignment**

You may not assign this Agreement to any other party. We may assign this Agreement or delegate any or all of our rights and responsibilities under this Agreement to any third parties, without notice to you.

### **Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws and principles.

## Amendments

We may amend or change any of the terms and conditions of this Agreement at any time upon at least twenty-one (21) days written notice to you prior to the effective date of any change or amendment. If you do not agree to the change or amendment, you must notify us prior to the effective date of the change or amendment and terminate your use of Digital Banking. NOTWITHSTANDING THE FOREGOING, WE MAY AMEND OR CHANGE THE TERM(S) OR CONDITION(S) WITHOUT PRIOR NOTICE TO YOU IF THE CHANGE DOES NOT RESULT IN HIGHER FEES, MORE RESTRICTIVE SERVICE USE, OR INCREASED LIABILITY TO YOU.

## Fees

You will not be charged for Digital Banking, although some optional transaction fees apply. Fees are described in the Schedule of Fees and Charges. Fees may change over time. You are also responsible for all data, telephone, cable, satellite, SMS messaging or other telecommunications charges incurred in connecting to Digital Banking, Mobile Banking, and for charges by any Internet Service Provider providing connection to the Internet.

## Arbitration Agreement

PLEASE READ THIS SECTION CAREFULLY. EXCEPT IF YOU OPT-OUT, AND EXCEPT AS THE ARBITRATION AGREEMENT OTHERWISE PROVIDES, YOU AND WE WAIVE OUR RIGHTS TO TRY A CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS, COLLECTIVE, OR OTHER REPRESENTATIVE ACTION.

Arbitration involves the review and resolution of the dispute by a neutral party. Claims subject to this Arbitration Agreement include claims that arose before you and we entered into this Agreement (such as claims relating to advertising) and after termination of this Agreement. In lieu of arbitration, either you or we can bring an individual claim in small claims court consistent with any applicable jurisdictional and monetary limits that may apply, provided that it is brought and maintained as an individual claim.

Claims Subject to Arbitration. Except as specified in the paragraph entitled "Claims Not Subject to Arbitration" below, any dispute or claim between you and us must be arbitrated if either party elects arbitration of that dispute or claim. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- Claims arising out of or relating to the Digital Banking Platform and/or Services and any aspect of your relationship between you and us, whether based in contract, tort, fraud, misrepresentation, or any other statutory or common-law legal theory;
- Claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising or disclosures for any of our products or services);
- Claims for mental or emotional distress or injury not arising out of bodily injury;
- Claims asserted in a court of general jurisdiction against you or us, including counterclaims, cross-claims, or third-party claims, that you or we elect to arbitrate in the answer or other responsive pleading;
- Claims relating to the retention, protection, use, or transfer of information about you or any of your Accounts for any of our products or services;
- Claims relating to communications with you, regardless of sender, concerning any of our products or services, including emails and automatically dialed calls and text messages;
- Claims of breach, enforcement, interpretation, application, or validity of this Agreement or this Arbitration Agreement; and
- Claims that may arise after the termination of this Agreement.

In this arbitration provision only, references to "MCB" "we" "us", and "our" mean Metropolitan Commercial Bank and its parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as each of those entities' agents and employees, now existing and that may exist at the time of the dispute. In this arbitration provision only, references to "you" and "your" mean the Account owners, all authorized or unauthorized users or beneficiaries of the Account, each of those person's assignees, heirs, trustees, agents, or other representatives, and if the Account owner is a business, the Account owner's parents, subsidiaries, affiliates, predecessors, successors, assigns, and each of those entities' agents and employees, now existing and that may exist at the time of the dispute, as such pertains to the use of Digital Banking. This arbitration agreement does not preclude you or us from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against you or us on the other's behalf. Nor does this arbitration agreement preclude either you or us from exercising self-help remedies (including setoff), and exercising such a remedy is not a waiver of the right to invoke arbitration of any dispute. **You and we each waive the right to a trial by jury or to participate in a class action whenever either you or we elect arbitration.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

Claims Not Subject to Arbitration. You and we agree that the following disputes or claims cannot be arbitrated:

- Claims arising from bodily injury or death;
- Claims seeking only individualized relief asserted by you or us in small claims court, so long as the action remains in that court and is not removed or appealed to a court of general jurisdiction, in which case either party may elect arbitration;
- Claims to collect or challenge debts owed pursuant to an extension of credit under a separate agreement or note (such as a separate loan agreement, promissory note, or bank card agreement), in which case the dispute over the debt shall be governed by the dispute-resolution procedures set forth in that separate agreement or note, including any right to set-off; and
- Disputes over the scope and enforceability of this arbitration provision, whether a dispute or claim can or must be brought in arbitration, or whether the paragraphs entitled "Commencing Arbitration" or "Requirement of Individual Arbitration" of this arbitration provision have been violated.

These exclusions from arbitration are intended to be interpreted narrowly. Excluded claims must be resolved by a court with jurisdiction.

Jury Trial and Class Action Waiver. Except as this Arbitration Agreement otherwise provides, if either you or we choose arbitration, you and we acknowledge and agree that neither you nor we will have the right to litigate that dispute in court or to have a jury trial on that

dispute. You and we further agree that any arbitration shall be conducted in your or our individual capacities and not as a class action or other representative action and you and we expressly waive your or our right to file, participate as a representative or member of any class, or seek relief on a class basis pertaining to any dispute either you or we elect to arbitrate. The arbitrator's decision generally will be final and binding.

You and we may not be plaintiffs or class members in any purported class, collective, or representative proceeding, and may each bring claims against the other only in your or our individual capacity. Unless mutually agreed to by you and us, arbitration claims may not be consolidated or joined with claims of other persons who may have similar claims other than joint Account holders or beneficiaries on your Account and/or related Accounts. The arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the claimant's individual claim.

If there is a determination that any term in the immediately preceding paragraph is unenforceable for any reason as to any claim, then this Arbitration Agreement will be inapplicable to that claim, and that claim will proceed instead through litigation in court rather than by arbitration but only after the conclusion of the arbitration of any claim that is subject to arbitration.

**Pre-Arbitration Notice of Disputes and Informal Resolution.** Before either you or we commence arbitration, the claimant must first send to the other a written Notice of Dispute ("Notice"). The Notice to us should be sent by certified mail to: Office of the General Counsel, Metropolitan Commercial Bank, 99 Park Ave., 13th Floor, New York, NY 10016 ("Notice Address"). The Notice to you will be sent to your address on file with your Account. The Notice must (a) include your name and Account number; (b) describe the nature and basis of the claim or dispute; and (c) set forth the specific relief sought. If you have retained an attorney, please be advised that we cannot disclose information about your Account to your attorney unless you have provided us with signed, written permission to do so. Accordingly, when submitting your Notice, please also provide signed written authorization for us to share your confidential Account records with your attorney, if necessary, in resolving your claim.

After the Notice containing the required information above is received, within 45 days, either party may request a conference to discuss informal resolution of the dispute ("Informal Settlement Conference"). If timely requested, the Informal Settlement Conference will take place at a mutually agreeable time by telephone or videoconference. You and our business representative must both personally participate in a good-faith effort to resolve the dispute informally without the need to proceed with arbitration. Any counsel representing you or us also may participate. The requirement of your personal participation in an Informal Settlement Conference may be waived only if both you and we agree in writing.

Any applicable statute of limitations will be tolled during the Informal Resolution Period, which is the period between the date that a fully complete Notice is received by the other party and the later of (i) 45 days after receipt of the Notice or (ii) if an Informal Settlement Conference is timely requested, 30 days after either the request is withdrawn or the Informal Settlement Conference is completed. In addition, if a timely requested Informal Settlement Conference cannot be scheduled within 60 days of the request despite the claimant's providing written notice of at least five times during business hours on separate days during which the claimant is available, the Informal Resolution Period shall end on the 60th day.

**Commencing Arbitration** - An arbitration proceeding cannot be commenced until after the Informal Resolution Period has ended. A court will have authority to enforce this paragraph, including the power to enjoin the filing or prosecution of arbitrations without first providing a fully complete Notice and participating in a timely requested Informal Settlement Conference. The court also may enjoin the assessment or collection of arbitration fees incurred as a result of such arbitrations. Further, unless prohibited by applicable law, the arbitration provider shall not accept nor administer any arbitration unless the claimant has complied with the Notice and Informal Settlement Conference requirements of the paragraph entitled "Pre-Arbitration Notice of Disputes and Informal Resolution".

**Governing Law and Arbitration Rules.** This Arbitration Agreement evidences a transaction in interstate commerce and thus the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (FAA), will govern the interpretation and enforcement of this Arbitration Agreement. If the FAA is found not to apply to any issue that arises in the enforcement of this Arbitration Agreement, then this issue will be resolved under the laws of the State of New York.

The arbitration will be conducted under the then current and applicable Commercial Rules of the American Arbitration Association (AAA) for business Accounts and the then current and applicable Consumer Rules of the AAA for consumer Accounts. The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by Writing to the Notice Address. The arbitrator, and not any federal, state, or local court or agency will have exclusive authority to resolve any dispute about the interpretation, validity, applicability, or enforceability of this Arbitration Agreement. The applicable AAA rules will determine payment of fees by you and us.

**Location and Procedure.** If your claim is for \$10,000 or less, you may choose to have arbitration conducted solely on the basis of documents submitted to the arbitrator, via a telephone hearing, or by an in-person hearing at a location within the federal judicial district where you reside, or as otherwise mutually agreed by the parties.

**Arbitration Fees.** If you complied with the Notice and Informal Settlement Conference requirements above in the paragraph entitled "Pre-Arbitration Notice of Disputes and Informal Resolution", after we receive notice at the Notice Address that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000 in value. (If you are unable to pay this fee, we will pay it directly upon receiving a written request at the Notice Address.) We also will pay all other AAA filing, administration, and arbitrator fees for that arbitration. If, however, the arbitrator finds that either the substance of your claim or the relief you seek is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse us for all monies previously disbursed that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek relief valued at greater than \$10,000 (either to you or to us), the payment of these fees will be governed by the AAA rules. We will pay all AAA filing, administration, and arbitrator fees for any arbitration we commence against you.

Arbitrator's Decision. The arbitrator's award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. To the extent allowed by applicable law, the arbitrator may award arbitration costs and attorney's fees to the prevailing party

Requirement of Individual Arbitration. The arbitrator may award declaratory or injunctive relief only in favor of the claimant seeking relief and only to the extent necessary to provide relief warranted by that claim. YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless both you and we agree otherwise, the arbitrator may not consolidate the claims of more than one person (except for the claims of co- or joint Account owners pertaining to that Account), and may not otherwise preside over any form of a representative, class, or private attorney general proceeding. If, after exhaustion of all appeals, any of these prohibitions on non-individualized declaratory or injunctive relief; class, representative, and private attorney general claims; and consolidation are found to be unenforceable with respect to a particular claim or with respect to a particular request for relief (such as a request for injunctive relief), then that claim or request for relief shall be severed and decided by a court after all other claims and requests for relief are arbitrated.

Additional procedures for complex disputes. If the actual damages sought by either you or us in an arbitration exceeds \$250,000 (not counting amounts sought for punitive, statutory, treble, or emotional harm damages or for attorneys' fees or costs), then the following additional procedures apply. First, if you are a business customer, the AAA's Commercial Arbitration Rules rather than the Consumer Arbitration Rules shall apply and, unless you and we agree otherwise, the dispute shall be resolved by a three-arbitrator panel, with each party choosing one arbitrator from the AAA's roster and the two party-appointed arbitrators selecting a third, who shall preside over the panel. If you are a consumer customer, the same switch to the Commercial Arbitration Rules and a three-arbitrator panel shall apply if both you and we agree. Second, regardless of whether you are a business or consumer customer, either party may appeal the final award to a three-arbitrator panel pursuant to the AAA's Optional Appellate Rules by providing written notice within 30 days of the award. The appellant shall pay all fees and costs for the appeal unless the panel determines that the appellant is the prevailing party, in which case the panel shall have the discretion in its final award to reallocate the fees and costs as justice or otherwise applicable law requires. If there is a cross-appeal, the costs shall be borne equally by both sides, subject to reallocation by the panel in its final award as justice or otherwise applicable law requires.

Additional Procedures for Mass Arbitration. If twenty-five (25) or more arbitration claims involving the same or similar subject matter and/or issues of law or fact, and where representation of all claimants is the same or coordinated across the cases ("Mass Arbitration"), then the following additional requirements apply ("Mass Arbitration Procedures"). You understand and agree that these procedures related to mass arbitrations will apply and that they are designed to (a) lead to the streamlined and cost-effective resolution of claims; (b) ensure that large volume filings do not impose unnecessary burdens or impediments to the resolution and cost-effective adjudication of your Claim and similar claims; and (c) preserve the integrity of the arbitration process. YOU AGREE TO THESE PROCEDURES EVEN THOUGH THEY MAY DELAY THE ARBITRATION OF YOUR INDIVIDUAL CLAIM. IF AT ANY POINT YOU ARE UNSATISFIED WITH THE SPEED BY WHICH YOUR MATTER IS PROCEEDING, YOU ARE FREE TO WITHDRAW YOUR ARBITRATION DEMAND AND PROCEED IN SMALL CLAIMS COURT IF THE CLAIM IS IN THAT COURT'S JURISDICTION AND PROCEEDS ON AN INDIVIDUAL BASIS.

In addition to the requirements set forth in the AAA Mass Arbitration Supplementary Rules, you agree that upon commencing a case with the AAA, you will provide your name, full MCB account number, mailing address, telephone number, email address, a factual description of every disputed transaction for which you seek compensation (date, amount, and transaction type) and/or event (date, location, and individuals involved), explanation of the basis of your Claim, an itemized calculation of all alleged damages, and, if represented by counsel, a signed statement authorizing us to share information regarding your account and the Claim with them. You agree and understand that failure to provide this information may result in dismissal of your Claim, though you have the right to refile once you provide the information described.

You and MCB agree that before an arbitrator is assigned to determine the merit of your claim, a "Process Arbitrator" will be appointed. The Process Arbitrator will have the authority to ensure these Mass Arbitration Procedures and the AAA rules are followed. The Parties agree that the Process Arbitrator will be selected by the process set forth in AAA Mass Arbitration Supplementary Rule MA-7(a).

In addition to the authority outlined in AAA Mass Arbitration Supplementary Rules, the parties agree that the Process Arbitrator shall be empowered to resolve any dispute regarding whether your Claim should be dismissed. You agree that if the Process Arbitrator finds you failed to comply with any requirement, your claim will be dismissed, without prejudice to refile once the deficiencies are remedied. The Process Arbitrator will also have the power to decide whether, based on the information submitted in the Mass Arbitration Filing Requirements, other threshold eligibility issues for your case to proceed, including but not limited to whether you had an account at MCB, experienced the transaction, fee, or event at issue, or otherwise cannot pursue the claim due to a clear legal or factual deficiency, and to dismiss your claim as appropriate. The Process Arbitrator shall have the power to determine whether or not a given dispute regarding these Mass Arbitration Filing Requirements and/or Procedures are within their jurisdiction. The Process Arbitrator shall be authorized to afford any relief or impose any sanctions available under Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, or any applicable state law.

Duration. This Arbitration Agreement shall survive termination of this Agreement.

Opt-out of Agreement to Arbitrate. You may decline to arbitrate. If you do so, neither you nor we can require the other to participate in an arbitration proceeding. To decline to arbitrate, you must notify us in writing within 30 days of the date you first became subject to this arbitration provision. You must use this address to opt-out:

Office of the General Counsel, Metropolitan Commercial Bank Digital Banking, 99 Park Ave., 12th Floor, New York, NY 10016

You must include your name and residence address, the email address you use for you Digital Banking Platform, and a clear statement that you want to opt-out of this arbitration agreement.

Military Lending Act. If you are a covered member of the armed forces or the dependent of a covered member within the meaning of the Military Lending Act and your Agreement with us involves an extension of consumer credit under that Act, then you are not required to arbitrate disputes.

Right to Resort to Provisional Remedies Preserved. Nothing herein will be deemed to limit or constrain our right to resort to self-help remedies, such as the right of setoff or the right to restrain funds in an Account, to interplead funds in the event of a dispute, to exercise any security interest or lien we may hold in property, or to comply with Legal Process, or to obtain provisional remedies such as injunctive relief, attachment, or garnishment by a court having appropriate jurisdiction; provided, however, that you or we may elect to arbitrate any dispute related to such provisional remedies.

#### **Waiver of Trial by Jury**

To the extent permitted by law, if any dispute or claim results in a lawsuit, and neither you nor we have elected or requested arbitration, you and we knowingly and voluntarily agree that a judge, without a jury, will decide the case. The trial will be brought individually and not as part of a class action. If it is brought as a class action, it must proceed on an individual (non-class, non-representative) basis. YOU KNOWINGLY AND VOLUNTARILY AGREE THAT YOU AND WE ARE WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY CLASS ACTION LAWSUIT.

#### **Entire Agreement**

This Agreement is the complete and exclusive agreement between you and us related to Digital Banking and supplements any other agreement or disclosure related to your Account(s) including the applicable Deposit Account Agreement. In the event of a conflict between this Agreement and any other agreement or disclosures, as it relates to Digital Banking, this Agreement shall control.