

**BANKWELL  
MOBILE CHECK DEPOSIT AGREEMENT**

This Mobile Check Deposit Agreement (“Agreement”) is a contract that governs your ability to use the Mobile Check Deposit remote deposit capture service provided to you by Bankwell Bank (the “Service”). As used in this Agreement, the terms “Bank,” “we,” “us,” and “our” refer to Bankwell Bank. The terms “you” or “your” refer to the personal or business account holder(s) authorized by the Bank to use the Service, all persons authorized to sign on the account holder’s deposit accounts, and anyone else who uses the Service with the permission of the account holder(s). By using the Service, you agree to, and acknowledge that you have read and understand, the terms and conditions of this Agreement.

**1) SCOPE OF AGREEMENT**

The Service allows you to use a compatible camera-enabled mobile phone or device (“Mobile Device”) to scan original checks or other deposit items that meet our required standards (“Checks”) and electronically transmit images of the Checks and associated deposit information to the Bank for deposit to your designated account(s). The Service converts your scanned Checks into substitute checks, in accordance with the Check Clearing for the 21<sup>st</sup> Century Act (“Check 21 Act”) and Federal Reserve Board Regulation CC (“Regulation CC”), to facilitate the deposit and collection of such Checks. You agree that the Bank shall determine in its sole discretion the manner in which Checks are cleared or presented for payment, including without limitation, by substitute check, Automated Clearing House (“ACH”), or image exchange.

The terms and conditions in this Agreement are in addition to, and do not cancel, supersede or replace the agreement governing deposit accounts you maintain at the Bank (your “Bank Account Agreement”), or any other agreements relating to your deposits, loans, services, or other business relationships with the Bank. Additionally, your use of the Service will be subject to all of the terms or instructions which may appear on-screen when you access the Service, or in user guides, and/or other information or documentation that the Bank may provide to you from time to time regarding the Service. Your use of the Service is also subject to, and you agree to comply with, the applicable rules and regulations of the National Automated Clearing House Association (NACHA), all other applicable clearing house rules, regulations, operating circulars and agreements, the Check 21 Act, Regulation CC, Office of Foreign Assets Control sanction laws, the Bank Secrecy Act, the USA PATRIOT Act, the Uniform Commercial Code as enacted in Connecticut, and all other applicable state and federal laws and regulations, all as amended from time to time.

**2) HARDWARE AND SOFTWARE REQUIREMENTS FOR THE SERVICE**

In order to use the Service, you must have a Mobile Device that is acceptable to us and a wireless plan from a compatible mobile wireless provider. You must also use the operating system(s) and software that satisfies all technical specifications and other requirements that we and/or our service provider(s) establish and specify. You can obtain information about compatible Mobile Devices and wireless providers, as well as our technical specifications, by e-mailing us at [ebanking@mybankwell.com](mailto:ebanking@mybankwell.com) or telephoning us at 877-715-3265. We and/or our service provider(s) may change these specifications and/or requirements from time to time. We are not responsible for providing, maintaining or servicing your Mobile Device or any other equipment for you. You agree that you will perform, or cause to be performed by properly trained personnel, all vendor recommended maintenance, repairs, upgrades and replacements. Unless otherwise provided in this Agreement, you are solely responsible, at your own expense, for purchasing, installing, operating, testing and maintaining all hardware and software necessary to use the Service. You must install and test your Mobile Device, your system, and any other required hardware and software before you make your first deposit through the Service. We are not responsible for any third party software that you may need to use the Service. You accept any such software “as is” and subject to the terms and conditions of the software agreement that you enter into

directly with the third party software provider at the time of download and installation. We are not responsible for, and you release us from, any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using the Service, e-mail or the Internet. You agree that all images and files transmitted to us through the Service will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.

### **3) CHECK REQUIREMENTS**

**(a)** Information on the Check. Any image of a Check that you transmit through the Service must accurately and legibly provide all of the information on the front and back of the Check at the time it was presented to you. You must endorse the original Check with a restrictive endorsement before scanning it by applying your signature and the legend, "For Remote Deposit Only." You authorize the Bank to supply an endorsement on your behalf for deposit to your account if a Check is missing or has an improper endorsement. You agree that the scanned image of each Check shall provide the following information: (1) identification of the drawer and the paying bank that is preprinted on the Check, including complete, full-field, and accurate MICR (magnetic ink character recognition) line, routing transit number, number of the account on which the Check is drawn, and drawer signature(s); (2) amount, payee, date, Check number; and (3) other information placed on the Check before imaging, such as any required identification written on the front of the Check and any endorsements applied to the back of the Check.

**(b)** Your Representations and Warranties with Respect to Prohibited Checks. The Bank in its sole discretion may refuse to accept, and you represent and warrant that you shall not use the Service to deposit, any Checks that: i) are payable to any person other than you; ii) are issued by you, or by any other person on any of your accounts or any account on which you are an authorized signer or joint account holder, or any account of any business entity of which you are a principal, officer or authorized signer; iii) contain obvious alteration to any of the fields on the front of the Check, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the account holder; iv) are substitute checks as defined by Check 21 or IRDs (image replacement documents) that purport to be substitute checks and which have been previously endorsed by a financial institution; v) are drawn on a financial institution located outside the United States or are not payable in United States currency; vi) are dated more than six (6) months prior to the date of deposit; vii) have a duplicate MICR code line; viii) are missing or have an invalid or incorrect routing number; ix) are photocopies or otherwise not original paper Checks when they are scanned; x) are issued to multiple parties; xi) are third party or second endorsed Checks; xii) do not qualify as "original checks" as defined in Regulation CC. In the event that you breach any of these representations or warranties, you agree to defend, indemnify and hold the Bank and its agents harmless from and against all liability, damages, and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. You further authorize us to charge your account(s) for the amount of any claim, suit or demand that constitutes a breach of warranty claim under the provisions of Check 21, Regulation CC and/or the Uniform Commercial Code.

**(c)** Image Quality. Both the front and back of each Check must be transmitted to the Bank as provided in any user guide or other instructions provided to you by the Bank or the Service, including on-screen instructions. The Bank in its sole discretion may refuse to accept Checks that do not meet our image quality requirements. This includes, without limitation Checks where: i) the front and/or back image is too large or too small; ii) the front and/or back image is too light or too dark; iii) the front and back images have a dimension or other mismatch or discrepancy; iv) the image has torn or folded edges, cut corners, or other damage; v) the image does not comply with the standards for image quality established from time to time by the American National Standard Institute (ANSI), the Federal Reserve Board, any other regulatory agency, clearing house or association, or by us, or by applicable law.

### **4) REJECTION OF DEPOSITS BY THE BANK**

After we receive Check images and all other required deposit information from you through the Service, we shall provisionally credit your designated account for the total amount of such Checks. The provisional credit is subject to final payment of the Checks and is also subject to your Bank Account Agreement. You agree that all deposits received by us are subject to verification and final inspection and may be rejected by us in our sole discretion, and you shall be liable to the Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against the Bank relating to such deposits. The Bank is not liable for any service or late charges that may be imposed against you due to the Bank's rejection of any Check that you transmit for deposit through the Service. In all cases, you are responsible for any loss or overdraft plus any applicable fees to your account due to a Check being returned. You acknowledge and agree that, while we normally provide notice of rejected deposits, we may reject any Check transmitted through the Service in our sole discretion without notice to you, and we will not be liable for any such rejection or failure to notify you of such rejection. If we reject a Check for remote deposit, you must physically deposit the original Check.

#### **5) CHECKS RETURNED UNPAID**

You are solely responsible for verifying that Checks that you deposit by using the Service have been received and accepted for deposit by the Bank. The Bank will provide you with notice of any deposits that it is unable to process because Checks were returned unpaid by the payor financial institution. You agree to accept such notices at your e-mail address on file with us, but we may choose any reasonable method for providing such notices to you. In the event that the Bank credits your account for a Check that is subsequently dishonored and returned, you authorize the Bank to debit the amount of such Check plus any associated fees from the account. To the extent that funds in your account are insufficient to cover such amount, we shall debit the deficiency amount from any of your other account(s) with the Bank in our sole discretion. Our right to charge your account(s) will apply without regard to whether the Check was timely returned or whether there is any other claim or defense that the Check was improperly returned. You understand and agree that since you will keep the original Check in your possession, it will not be returned and the Bank may charge back an image of the Check, an ACH debit, or other electronic or paper debit, as applicable, to your account. You further agree that any image that we charge back may be in the form of an electronic or paper reproduction of the original Check or a substitute check. You may not use the Service to deposit a substitute check and you may not deposit the original Check through the Service or in any other manner if you receive a dishonored Check. You agree to comply with any additional instructions we may provide to you in connection with returned Checks.

#### **6) YOUR DUTY TO REPORT ERRORS**

The Bank will provide you with periodic statements that will identify the deposits that you make through the Service. In addition, you may access the Bank's Online Banking service for information about your deposits, return items, deposit adjustments, Checks and other transactions on your accounts. You agree that it is your responsibility to review all such information that the Bank makes available to you in a timely manner to verify that deposits made through the Service have been received and accepted by the Bank and are accurate. Receipt of a Check by the Bank through the Service does not constitute an acknowledgement by the Bank that the Check is error-free or that we will be liable for the Check.

You agree to notify us promptly of any errors, omissions, or discrepancies in a deposit within the time periods established in your Bank Account Agreement. You may notify us by e-mailing us at [ebanking@mybankwell.com](mailto:ebanking@mybankwell.com), or writing to Bankwell Online Banking Department, 208 Elm Street, New Canaan CT 06840, or telephoning us at 877-715-3265.

You agree to cooperate in any investigation by the Bank of any unsuccessful or lost transmission. Subject to applicable law, any failure by you to notify the Bank of any error, omission or other discrepancy in accordance with this Agreement and your Bank Account Agreement shall relieve the Bank of any liability for such error, omission or discrepancy.

## **7) AVAILABILITY OF THE SERVICE**

At certain times the Service may not be available due to system maintenance or technical difficulties, including those of the wireless service provider, the software, or circumstances beyond our control. If you are not able to use the Service to make deposits you may physically mail or deliver your deposits to the Bank through our branches or through any of our ATMs (with a Bank debit card). Deposit of original Checks at a branch of the Bank or an ATM shall be governed by the terms and conditions contained in your Bank Account Agreement and not by the terms of this Agreement. The Bank is not responsible for providing an alternate method of remote deposit if the Service is not available.

## **8) FUNDS AVAILABILITY**

You agree that the Bank's Funds Availability Disclosure, which governs the availability of funds deposited to accounts at the Bank, does not apply to deposits made through the Service. The funds from Checks that you deposit through the Service may not be immediately available for withdrawal. Generally, if you complete the Check scanning and transmission process before the cut-off time established below on one of our business days, your deposit will be considered as received that same business day. Checks that are scanned and transmitted after the cut-off time on a business day, or on any day that is not a business day, will be considered as received by us on the next business day. The deposit cut-off time for the Service is 5:00 PM, Connecticut time. For purposes of determining when a deposit is received, the Bank's records shall be determinative. Funds from checks you deposit through the Service will generally be available on the next business day occurring after the business day on which your checks are considered deposited under this Section. However, the Bank does not guarantee that checks deposited prior to the cutoff time on a business day will be considered deposited on that same business day. Your receipt of a confirmation does not signify that your deposit has been accepted by the Bank. If Checks you have deposited through the Service are reflected in the available balance displayed in your account history (within the Bank's mobile banking application or online banking service), funds from those Checks are available for withdrawal. For purposes of this Agreement, our business days are Monday through Friday, excluding federal holidays.

## **9) STORAGE, SECURITY AND DESTRUCTION OF ORIGINAL CHECKS**

You agree that once a Check has been deposited through the Service, the original Check is your property and not the property of the Bank. You shall securely store the original Check for a reasonable period, not to exceed ninety (90) days, after you verify that the Check has been deposited to your account. While the original Check is in your possession, you agree to use a high degree of care to safeguard the original Check and related files against security risks. Security risks include, without limitation, the theft or reproduction of the original Check or unauthorized use of the information on the Check or in the file. You shall take appropriate security measures to ensure that: a) only authorized persons shall have access to the original Check; b) the information contained on the Check shall not be disclosed to unauthorized persons; and c) the original Check will not be duplicated, will not be scanned more than one time, and will not be presented, deposited or negotiated again in any way. Upon request by the Bank you will promptly provide to the Bank a retained original Check, or a sufficient copy of the front and back of the Check in form acceptable to us, to aid in the clearing and collection process, or to resolve claims by third parties, or for our audit or fraud loss prevention purposes. After the ninety (90) day retention period expires, you shall destroy the original Check by shredding it or by any other permanent deletion manner that does not allow the original Check to be accessed by an unauthorized person(s) and in a manner that the original Check is no longer readable or capable of being reconstructed. After destruction of an original Check, the image will be the sole evidence of the original Check. You agree to be responsible to us for any losses, costs, expenses, and damages we may incur as a result of your failure to comply with the provisions of this Section.

## **10) PROHIBITION AGAINST PRESENTING CHECKS MORE THAN ONCE**

Once you have used the Service to deposit a Check you agree not to present, or allow anyone else to present, that original Check or a substitute check of that original Check again for deposit through the Service or by any other means. If you or anyone else present a Check or substitute check for deposit more than once, in violation of this Agreement, you agree to indemnify, defend and hold the Bank harmless from and against all liability and damages that may result from any claims, suits or demands from third parties with respect to such Check or substitute check. You agree that we may debit from your Bank account the aggregate amount of any Checks that are deposited more than once. To the extent that funds in your account are insufficient to cover such amount, we shall debit the deficiency amount from any other of your account(s) with the Bank in our sole discretion.

### **11) DEPOSIT LIMITS**

The Bank reserves the right to establish and assign to you deposit limits for the Service (including limits on the dollar amount and/or number of Checks that you may transmit through the Service each day) and to modify such limits from time to time in the Bank's sole discretion, and you agree to comply with all such limits. Currently, if you use the Retail Mobile Banking Service, you may deposit no more than \$2,000 per day and no more than \$5,000 in any thirty-day period through the Service. If you are a Business Mobile Banking customer of the Bank, you may deposit no more than \$10,000 per day through the Service. The Bank may, in its sole discretion, establish higher limits for you.

### **12) COMPLIANCE WITH LAW; PROHIBITED ACTIVITIES**

You agree to use the Service only for lawful purposes and in compliance with all applicable laws, rules and regulations. You are prohibited from engaging in, and you represent and warrant to the Bank, that you do not and shall not engage in, any business or activity that: a) would result in your being or becoming a money service business that regularly cashes third party checks, sells money orders, or handles wire transfers or other financial services for third parties; b) would result in your accepting restricted transactions in connection with another person in unlawful Internet gambling; c) would result in the Bank being used as a conduit for money laundering or other illicit purposes; or d) would directly or indirectly result in any activity or use of the Service that may be illegal or fraudulent.

### **13) YOUR FINANCIAL INFORMATION**

The Bank may request financial and other information from you from time to time in order to evaluate the risks of providing the Service to you. You agree to promptly provide any such financial and other information we request. You authorize the Bank to review your financial information, including consumer reporting agency reports, before we authorize you to use the Service and for as long as you use the Service. If you do not provide any requested financial or other information, or if we determine that the credit, security or other risks of continuing to provide the Service to you are not acceptable, we may immediately terminate your access to the Service without prior notice.

### **14) BANK'S DUTIES AND RESPONSIBILITIES**

Our duties and responsibilities are limited to those described in this Agreement, your Bank Account Agreement, and any other agreements governing your account(s). Except as otherwise required by law or in the case of our intentional misconduct, we shall not be liable or responsible for any loss you incur or damage you suffer as a result of any unauthorized person accessing or using the Service. You assume full responsibility for the consequences of any misuse or unauthorized use or access to the Service or disclosure of any of your confidential information or instructions by your employees, agents, or other third parties. We shall not be responsible for suspension of performance of all or any of our duties or responsibilities under this Agreement if at any time, or from time to time, such performance is prevented or hindered by, or is in conflict with, any federal or state law, regulation or rule, or court order. We shall not be responsible or liable for any loss you incur or damage you suffer in the event of any failure or interruption of the Service or any part of the Service, resulting from the act or omission of any third party, or from any other cause or circumstance not reasonably within our control.

## **15) SERVICE FEES**

Currently we do not impose any fees for the Service. We reserve the right to impose fees for the Service in the future and we will notify you of any such fees, in the manner and to the extent required by this Agreement and by law. Your use of the Service after the effective date of any fee changes shall constitute your agreement to such fee changes. You also understand and agree that you are responsible for any wireless service provider charges and any and all other fees and charges that you may incur by accessing and using the Service.

## **16) YOUR REPRESENTATIONS AND WARRANTIES**

In addition to your representations and warranties contained in other provisions of this Agreement, you represent and warrant that:

- (a) Each image of a Check you transmit to us is a true and accurate rendition of the front and back of the original Check, without any alteration, and the drawer of the Check has no defense against payment of the Check.
- (b) You are authorized to enforce each Check you transmit for deposit or are authorized to obtain payment for each Check on behalf of a person entitled to enforce such transmitted Check.
- (c) You are solely responsible for any and all financial risk that may be associated with your use of the Service, including without limitation the risk that a Check will be returned for insufficient funds.
- (d) You are solely responsible for the instructions you provide to the Bank and for failing to properly access or use the Service, including without limitation input errors.
- (e) You will not deposit or otherwise endorse to a third party the original Check, and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the original Check or a paper or electronic representation of the original Check such that the person will be asked to make payment based on an item that has already been paid.
- (f) You will only transmit acceptable items for deposit and have handled the original items in accordance with applicable laws, rules and regulations.

If you breach any of these representations and warranties, you agree to indemnify, defend and hold the Bank, its shareholders, parents, subsidiaries, affiliates, officers, directors, employees, agents, and its and their successors, heirs and assigns harmless from and against any and all liability, damages, or losses arising from any claims, suits or demands from third parties with respect to such breach.

## **17) YOUR AUTHENTICATION METHOD**

You agree that we are entitled to act upon instructions we receive with respect to the Service under your user ID, password, test key or other code or authentication method that we require (these components are referred to herein collectively as your "Authentication Method"). You are liable for all transactions made or authorized with the use of your Authentication Method. We have no responsibility for establishing the identity of any person who uses your Authentication Method. You agree that if you give any component of your Authentication Method to anyone or fail to safeguard its secrecy, you will be in violation of your obligations under your Bank Account Agreement and this Agreement. You agree to take appropriate steps to ensure that all components of your Authentication Method are protected and kept confidential.

You agree to indemnify and release us from any and all liability, and agree not to make any claim or bring any action against us, relating to our honoring or allowing any actions or transactions that are conducted under your Authentication Method or acting upon instructions, messages or authorizations provided to us using your Authentication Method.

By accessing the Service with your Authentication Method, you authorize us to complete the requested transaction(s) through the Service. Any requests or instructions we receive from you through the Service using your Authentication Method shall be considered "in writing" under all applicable law and shall

have the same force and legal effect as a writing signed by you. This includes, but is not limited to, inquiries, deposit transactions, Checks deposited, Check images, changes to accounts or services or any other communication you provide us through the Service using your Authentication Method.

#### **18) MOBILE DEPOSIT SECURITY; DATA SECURITY**

You understand that Check images captured using your Mobile Device are stored on the Mobile Device only until the associated deposit has been successfully submitted. You agree to promptly complete each deposit. In the event that you are unable to promptly complete your deposit, you agree to ensure that your Mobile Device remains securely in your possession until the deposit has been completed or to delete the associated images from the application. It is your responsibility to notify us immediately by e-mailing us at [ebanking@mybankwell.com](mailto:ebanking@mybankwell.com) or telephoning us at 877-715-3265 if you learn of any loss or theft of original Checks. You will ensure the safety and integrity of original Checks from the time of receipt until the time of destruction. You agree to protect the confidentiality of your account and account number, your data, and your personal identification information. Notwithstanding our efforts to ensure that the Service is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including e-mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Service or e-mail transmitted to and from us, will not be monitored or read by others.

#### **19) PROPRIETARY RIGHTS**

You acknowledge and agree that the Bank and its service providers retain all ownership and proprietary rights in and to the Service, associated content, technology and website(s). You are permitted to use the Service only as expressly authorized by this Agreement. In addition, you agree that you will not: a) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Service; b) copy or reproduce all or any part of the technology or Service; or c) interfere, or attempt to interfere, with the technology or the Service.

#### **20) DISCLAIMER OF WARRANTIES**

YOU AGREE THAT YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTY SERVICE PROVIDERS) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN THE SERVICE OR THE TECHNOLOGY SUPPORTING THE SERVICE WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET, AND TELECOMMUNICATION LINES OR CIRCUITS. YOU HEREBY ASSUME ALL OF THE FOREGOING RISKS. YOU AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE SERVICE.

#### **21) LIMITATION OF LIABILITY**

The Bank shall not be liable to you for any damages or losses that you may suffer or incur in connection with the Service, including, without limitation, any failure to provide, or delay in providing, access to the Service, except: a) as specifically stated in this Agreement; or b) to the extent such damages or losses are solely and proximately caused by our gross negligence or willful misconduct. Without limiting the

foregoing, we shall not be liable to you for any of the following: a) any damages, losses, costs or other consequences caused by our actions that are based on information or instructions you provide; b) any unauthorized actions initiated or caused by you or your employees, agents or representatives; c) any refusal of a payor financial institution to pay a Check for any reason (other than that caused by our gross negligence or willful misconduct), including without limitation, that the Check was unauthorized, counterfeit, altered, or had a forged signature; d) your or any other parties' inability to transmit or receive data; e) if you do not comply with your representations or warranties in this Agreement. Our liability for errors or omissions with respect to the data transmitted or printed by us in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Checks to the payor financial institution. The limitations of liability and remedies in this Section are in addition to, and not in lieu of, other limitations or remedies contained elsewhere in this Agreement.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY BANK ACCOUNT AGREEMENT OR ACCOUNT DISCLOSURES TO THE CONTRARY, YOU AGREE THAT IN NO EVENT WILL THE BANK OR ANY THIRD PARTY SERVICE PROVIDER BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER LOSSES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE, INABILITY TO USE, OR THE TERMINATION OF THE USE OF THE SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE OR ANY THIRD PARTY SERVICE PROVIDER HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE PROVIDED BY LAW. YOU ACKNOWLEDGE THAT, IN PROVIDING THE SERVICE, THE BANK MAY UTILIZE AND RELY UPON CERTAIN THIRD PARTY SERVICE PROVIDERS TO PROVIDE SERVICES TO THE BANK. YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOUR RIGHTS UNDER THIS AGREEMENT SHALL BE SOLELY AND EXCLUSIVELY AGAINST THE BANK, AND YOU SHALL HAVE NO RIGHT OR RECOURSE AGAINST ANY THIRD PARTY SERVICE PROVIDER HEREUNDER WHATSOEVER, AND YOU HEREBY WAIVE ANY AND ALL SUCH RIGHTS OR RECOURSE, DIRECTLY OR INDIRECTLY, AGAINST ANY THIRD PARTY SERVICE PROVIDER.

## **22) TERMINATION**

**(a)** How to Cancel the Service. If you wish to cancel the Service, you must notify the Bank, and you must also discontinue using the Service at that time. You may notify us by writing to Bankwell Online Banking Department, 208 Elm Street, New Canaan CT 06840, or telephoning us at 877-715-3265.

**(b)** Bank Termination of Use or Access. We will not in any way be obligated to grant you use of or access to the Service if: (1) such use or access is not in accordance with any term or condition applicable to the Service; (2) such use or access is not permitted by any state or federal law or regulation; (3) the Bank has reasonable cause to believe that such use or access may not be authorized by you or any third party whose authorization the Bank believes is necessary for such use or access; or (4) the Bank has reasonable cause to deny such use or access for your or our protection.

**(c)** Bank Termination of the Agreement. The Bank reserves the right in its sole discretion at any time to terminate this Agreement and therefore to limit or terminate your use of or access to the Service at any time, with or without cause and without prior notice. The Bank will not have liability to you for any losses or damages you may suffer or incur as a result of any such limitation or termination. Any termination will not affect our obligations arising prior to termination, such as the obligation to process any Checks (including returned Checks) that were in the process of being transmitted or collected prior to the termination date. Termination will not affect your liability or obligations under this Agreement for transactions that have been processed through the Service for you. You will remain responsible for all outstanding fees and charges incurred prior to the date of termination. In addition, you will keep your



account(s) at the Bank open, and you will maintain funds in such account(s) in amounts and for a period of time as we determine in our sole discretion to cover any outstanding Checks and your obligations for returns of Checks, warranty claims, fees and other obligations. If any such liabilities exceed the amount in the applicable account, we may charge such excess against any of your other accounts at the Bank, and you will pay us any amount remaining unpaid immediately upon our demand. You will also continue to retain original Checks and forward Checks to the Bank on our request in accordance with the provisions of this Agreement.

### **23) YOUR INDEMNIFICATION OBLIGATION**

You understand and agree that you are required to indemnify us and hold us harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and other legal expenses arising from your use of the Service and/or breach of this Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement.

You understand and agree that you are required to, and will, indemnify the third-party technology partners we use to provide the Services, and hold them and their parents, subsidiaries, affiliates, directors, officers, shareholders, employees and agents, harmless from and against any third party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and other legal expenses, arising from such claims, to the extent any such claim is related to the Bank or your use of the Service, or such third parties' technology applications, unless such claim directly results from an action or omission made by such third parties in bad faith. You understand and agree that this paragraph shall survive the termination of this Agreement.

### **24) WAIVERS**

The Bank will not be deemed to have waived any of its rights or powers under this Agreement unless such waiver is in writing and such writing is signed by an authorized representative of the Bank. No delay, extension of time, compromise, or other indulgence that may occur or be granted from time to time by the Bank under this Agreement will impair our rights or powers under this Agreement.

### **25) AMENDMENT**

We reserve the right to modify the Service from time to time without prior notice to you. However, if we are required by law or regulation to provide notice of changes to this Agreement, we will provide such notice in accordance with such laws and regulations. In most cases you will receive the notice online through the Service; however, the Bank reserves the right to notify you by e-mail or by U.S. Postal Service mail, in its discretion. You may decline a change by notifying us prior to the change's effective date to discontinue the Service. If you do not accept and agree to the change, you will not be entitled to use the Service. However, if you do not terminate your Service and you use it on or after the effective date of the change(s), you will be deemed to have accepted and agreed to the change(s), and they and the Agreement, as amended, will become legally binding upon you.

### **26) NOTICES**

All notices from the Bank to you shall be in writing and shall be made either via e-mail, U.S. Postal Service mail or messages delivered through the Service, at our discretion. Any written notice that we give to you will be effective when it is deposited in the U. S. mail or delivered to you to the e-mail address in our records or posted for you online through the Service. If your Account is a joint or multiple party account, notice from us to any one of you is notice to all of you. Unless otherwise provided in this Agreement, any notice from you to the Bank must be in writing. Any written notice that you give us will be effective when it is actually received by us, provided we have reasonable opportunity to act on it. You may notify us by e-mailing us at [ebanking@mybankwell.com](mailto:ebanking@mybankwell.com), or writing to Bankwell Online Banking Department, 208 Elm Street, New Canaan, CT 06840, or telephoning us at 877-715-3265.

**27) ASSIGNMENT**

You may not assign any of your rights, duties and obligations under this Agreement. We may assign or delegate some or all of our rights and responsibilities under this Agreement to independent contractors, service providers, or other third parties.

**28) GOVERNING LAW**

This Agreement is governed by, and is subject to, the laws of the State of Connecticut, without regard to its choice or conflicts of laws provisions.

**29) SEVERABILITY**

If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of such provision in other jurisdictions, and of the remaining provisions of this Agreement in all jurisdictions, will not in any way be affected or impaired.

**30) ENTIRE AGREEMENT**

The terms of your Bank Account Agreement and all other agreements you have with the Bank pertaining to your account(s) are incorporated by reference and made a part of this Agreement. In the event of any inconsistency between such agreements, the provisions of this Agreement shall control to the extent necessary. You agree that the most current version of this Agreement as it appears on our website, including any amendments that we may make from time to time, constitutes the entire agreement between us. Any prior or contemporaneous agreements, representations, statements, negotiations, undertakings, promises or conditions, whether oral or written, with respect to the Service which conflict with the provisions in this Agreement are superseded by this Agreement.