

Mobile Banking Service Agreement
(Addendum to your Primary Online Banking Service Agreement)

I. INTRODUCTION – PARTIES AND DEFINITIONS

This Mobile Banking Service Agreement (as amended from time to time, this **“Mobile Agreement”**), governs the Mobile Banking service provided by ZB N.A. dba The Commerce Bank of Washington (the **“Bank”**) and your use of that service. This Mobile Agreement also includes certain licensing and end user rights and restrictions.

The terms **“we”**, **“us”** and **“our”** refer to Bank. The terms **“you”** and **“your”** refer to the customer of Bank who is entering into this Mobile Agreement. (**“You and your” also mean any person who downloads Mobile Banking Software to his personal Mobile Device in order to conduct Mobile Banking in a Bank customer’s account, e.g. an agent of a customer using his personal Mobile Device.** Such person represents and warrants to Bank that he is authorized by Bank’s customer to download and use the Mobile Banking Software on the customer’s behalf.)

The term **“Mobile Banking”** means a suite of services that we make available, enabling you to conduct banking transactions with us by using your Mobile Device. **“Mobile Device”** means a cellular telephone or similar wireless communications device (1) that is installed with software permitted by us (**“Mobile Banking Software”**) that you have downloaded in order to conduct Mobile Banking transactions, or (2) that is capable of conducting Mobile Banking transactions by using other protocols we may choose to permit (e.g., Wireless Application Protocol (WAP) or text (SMS) messaging). We reserve the right to change the Mobile Banking Software and other protocols that we allow for Mobile Banking at any time without prior notice.

The term **“Primary Online Banking”** means the personal online banking, business online banking or treasury online banking service in which you are enrolled with Bank and includes your Mobile Banking service hereunder. **“Primary Online Banking Agreement”** means the agreement you accepted as a condition of enrolling in your Primary Online Banking service as amended from time to time. Your Primary Online Banking Agreement also includes related agreements that you have with us in connection with your Primary Online Banking (e.g., any agreement for our Bill Pay service, etc.)

Other terms are defined in your Primary Online Banking Agreement.

This Mobile Agreement is hereby made and accepted by you as an integral part of your Primary Online Banking Agreement. Your Primary Online Banking Agreement includes your consent to receive notices and disclosures electronically, and that consent includes any notices or disclaimers that we provide to you in connection with this Mobile Agreement or the Mobile Banking portion of your Primary Online Banking service. You reaffirm the terms of this Mobile Agreement each time you enroll in the Mobile Banking service, enroll a Mobile Device, download Mobile Banking software, or conduct a Mobile Banking transaction.

II. TERMS AND CONDITIONS

1. CONSENT TO RECEIVE DISCLOSURES AND NOTICES ELECTRONICALLY You hereby consent (and affirm your prior consent under your Primary Online Banking Agreement) to receiving notices and disclosures concerning Mobile Banking, Primary Online Banking, and your enrolled bank accounts electronically, including by mobile phone (e.g. SMS or other text message) or to the e-mail address associated with your Primary Online Banking account (each of the foregoing being an “electronic address”). **You are solely responsible for immediately updating your electronic address if it changes.** You must update your electronic address by logging into your Primary Online Banking service, accessing the electronic page for managing your email address or accessing the Mobile Banking page to update your Mobile Device phone number, and entering your new electronic address. If you need assistance updating your electronic address, you may call the Customer Service Center at (206) 292-3900. All disclosures and notices by us shall be deemed given and received by you immediately upon being sent to the electronic address you have most recently updated. Many disclosures and notices may also or instead appear in one or more of your bank account statements. Unless specifically required by law, we are not obligated to provide any disclosure or notice to you by regular mail or by any means other than electronic transmission. You may, without charge, withdraw your consent to receiving notices and communications electronically by calling our Customer Service Center at (206) 292-3900, but in that event we can terminate your Mobile Banking service.

2. MOBILE BANKING SERVICE AGREEMENT

A. Mobile Banking Functions

To access Mobile Banking service and functions, your Mobile Device must be Internet enabled and connected to the Internet through your mobile communications service provider. You must be enrolled in both a Primary Online Banking service and our Mobile Banking service. You must enroll the particular Mobile Device(s) that you wish to use with Mobile Banking. You must also un-register any Mobile Device(s) that you may no longer wish to be capable of using with Mobile Banking.

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

Not all functions that are described in your Primary Online Banking Agreement or available at your Primary Online Banking service website are available with Mobile Banking. All terms and conditions in your Primary Online Banking Agreement or on your Primary Online Banking service's website that limit or govern your use of Primary Online Banking functions will also limit and govern your use of those functions through Mobile Banking.

B. Mobile Banking Service Availability

We will use reasonable efforts to make Mobile Banking service available for your use on a continuous basis. We do not guarantee functionality of Mobile Banking services (or any Mobile Banking Software) on all Mobile Devices, on all communications networks, in all geographic regions, or at all times. Mobile Banking service may be temporarily unavailable for regular or emergency system maintenance. We will endeavor to have our scheduled maintenance occur during non-peak hours, but we may conduct maintenance at any time. In addition, your accessibility to the Mobile Banking service may be interrupted because of conditions beyond our control, including outages in Internet availability. We will use commercially reasonable efforts to re-establish Mobile Banking service in those instances, but we do not promise the Mobile Banking service will always be available for your use. We may elect to discontinue Mobile Banking (or any of the services that we provide, from time to time, through Mobile Banking) at any time. If we choose to discontinue Mobile Banking, we will provide you with reasonable notice. In the case of a disaster, your Mobile Banking may be suspended in order to allow emergency and responding personnel to use the cellular networks. In no event, regardless of cause, shall we be liable to you for unavailability of Mobile Banking services, or your inability to access Mobile Banking or to execute Mobile Banking functions.

C. Fees Charged by Bank

Currently, we charge no fees to enroll in or use Mobile Banking. However, we may assess fees (a) set forth in the other agreements, disclosures or fee schedules for particular banking products or accounts (such as overdraft or funds transfer fees), or (b) for products and services that you may purchase through Mobile Banking.

We reserve the right to institute or change fees for Mobile Banking after sending you prior notice. See the section entitled "Amending this Mobile Agreement or Fees."

D. Mobile Device and Mobile Communications

You are responsible for providing your own Mobile Device that supports 128-bit encryption. Mobile Banking users must download, install and use certain software systems and programs developed by us, our licensors or other third-parties. We are not responsible for any damage to your Mobile Device resulting from those activities, and you will be engaging in those activities at your own risk. To download Mobile Banking Software, please follow the instructions found in the Mobile Banking section of your Primary Online Banking site. Depending on its make and model, your Mobile Device may need to be capable of receiving an SMS text message to initiate the download.

You are responsible for obtaining your own mobile communications service provider. Your mobile communications service provider may charge you for Internet-related use and for text (SMS) messages, so please see your mobile carrier for further details about its charges. You are responsible for all fees and charges that you

may incur to any mobile communications service provider or any other third parties while using Mobile Banking.

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

Your Mobile Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

E. Export Controls

Software programs, materials, tools, and technical data may be subject to U.S. export controls or the trade laws of other countries. You agree to comply with all export control regulations. You also acknowledge that you, not The Commerce Bank of Washington, have the responsibility to obtain such licenses to export, re-export or import as may be required. You agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws.

F. Mobile Banking License Rights Generally

In connection with your use of Mobile Banking Software, we and our licensors (or other third-parties who have directly or indirectly granted rights in those software systems and programs with respect to Mobile Banking) will require your agreement to certain license rights arrangements and/or end-user agreements ("Licenses"). By enrolling in portions of Mobile Banking relating to those software systems and programs, and by downloading and installing Mobile Banking Software, you will be evidencing your acceptance of the terms and conditions of those Licenses. We may also condition your use of Mobile Banking Software upon you affirming such Licenses by the use of "I Accept" dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

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

THE USE AND OPERATION OF MOBILE BANKING OR MOBILE BANKING SOFTWARE, MOBILE BANKING SERVICES AND MOBILE BANKING SOFTWARE ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, OR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NON- INFRINGEMENT, OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY OR COMPLETENESS. YOUR USE OF THE MOBILE BANKING SOFTWARE AND MOBILE BANKING SERVICES, AND ANY MATERIAL OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED VIA MOBILE BANKING, IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

G. Additional Terms and Conditions in Related Agreements with Us

Your use of Mobile Banking is subject to the terms and conditions of your Primary Online Banking Agreement (as amended from time to time). Without limitation, this Mobile Agreement is supplemented by your Primary Online Banking Agreement's provisions regarding disclaimers of warranties, limitations on our liability, indemnity, amendments, dispute resolution terms and procedures, and definitions. For consumer customers, this Mobile

Agreement is also subject to consumer protection provisions in the personal Primary Online Banking Agreement, including limitations on consumer customers' liabilities for unauthorized transfers, and contacting us concerning questions or errors. In the event of any specific conflicts between this Mobile Agreement and the terms of your Primary Online Banking Agreement, the terms of this Mobile Agreement will govern.

In addition, each deposit account or credit account that you access using Mobile Banking, and each transaction made in such accounts using Mobile Banking, remains subject to the general terms, conditions, and agreements governing those accounts (e.g., as applicable, the deposit account agreement, credit cardholder agreement, line of credit agreement, etc.).

H. Amending this Mobile Agreement or Fees

We may amend this Mobile Agreement at any time by sending notice in the manner described in your Primary Online Banking Agreement. In addition to such consent in your Primary Online Banking Agreement, this Mobile Agreement includes your further consent to electronic delivery of that notice. You may choose to accept or decline the change. By continuing to use Mobile Banking after the effective date stated in the notice, you are deemed to accept that change.

I. Lost or Stolen Mobile Device or Password; Unauthorized Transactions

If you believe your Mobile Device, user name (Login ID), password, or other approved access device has been lost or stolen, or that someone has transferred or may transfer funds from your account without your authorization, contact us **AT ONCE** at (206) 292-3900. For additional information regarding your and our rights and responsibilities regarding unauthorized transactions, please review your Primary Online Banking Agreement and the applicable agreement(s) governing the affected deposit account or credit account.

J. In Case of Errors or Questions about Your Account

In case of errors in or questions about your deposit or credit accounts, contact our Customer Service Center at (206) 292-3900. For additional information regarding your and our rights and responsibilities regarding errors in or questions about your accounts and how such errors and questions are processed, please review your Primary Online Banking Agreement and the applicable agreement(s) governing the affected deposit account or credit account.

For questions or concerns about the Mobile Banking service itself, you may call us at (206) 292-3900 or by mail at:

The Commerce Bank of Washington
601 Union Street, Suite 3600
Seattle, Washington 98101

K. End User Provisions

(i) **Ownership.** You acknowledge and agree that Bank or its third party vendors is the owner of all rights, title and interest in and to the mobile technology solution made available to you hereunder, including but not limited to any downloaded software and the computer programs contained therein, as well as any accompanying user documentation, and all subsequent copies, updates or versions thereof, regardless of the media or form in which they may exist.

(ii) **License.** Subject to the terms and conditions herein and any other end user agreement or license provided to you in connection with downloading or using the Mobile Banking software, you are hereby granted a personal, nonexclusive, nontransferable license to use the Mobile Banking Software (in machine readable object code form only) for the sole purpose of enabling you to use Bank's Mobile Banking service. This is not a sale of any Software. All rights not expressly granted to you are hereby reserved by Bank and its third party vendors. Nothing herein entitles you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Mobile Banking Software. Your license may be terminated at any time, for any reason or no reason, by you, Bank or its third party vendors. Upon termination, you agree to immediately destroy all copies of any Mobile Banking Software which has been downloaded to your Mobile Device or otherwise in your possession or control.

(iii) **Restrictions.** You shall not: (i) modify, revise or create any derivative works of the Mobile Banking Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Mobile

Banking Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Mobile Banking Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Mobile Banking Software, including, but not limited to, any trademark, logo or copyright.

(iv) **Updates.** These End User Provisions will govern any updates that replace and/or supplement the original Mobile Banking Software, unless such update is accompanied by a separate license in which case the terms of that license will govern.

(v) **Consent to Use of Data.** You agree that Bank and third party vendors of the Mobile Banking Software may collect and use technical data and related information, including but not limited to technical information about your Mobile Device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services (if any) related to the Mobile Banking Software. We and they may use that information, as long as it is in a form that does not personally identify you, to improve their products or provide services or technologies.

(vi) **Disclaimer of Warranty.** NO WARRANTY IS PROVIDED THAT THE MOBILE BANKING SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY MATERIAL OR SERVICES OBTAINED OR ACCESSED VIA THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

(vi) **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BANK, ITS THIRD PARTY VENDORS OF MOBILE BANKING SOFTWARE, OR THEIR RESPECTIVE AFFILIATES OR LICENSORS BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE MOBILE BANKING SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED.