

Mobile Banking Service Agreement

The Mobile Banking Service is provided to you by Bankwell Bank as an electronic banking service and powered by a third party (the "Licensor") mobile technology solution. Section A of this Mobile Banking Service Agreement is a legal agreement between you and Bankwell. Section B of this Mobile Banking Service Agreement is a legal agreement between you and the Licensor.

SECTION A

1. Introduction.

This Mobile Banking Service Agreement (this "MBS Agreement") is part of the following applicable agreement between you and the Bank: Electronic Banking Access Agreement for consumer customers and certain business customers or the Business Banking Master Services Agreement for certain business customers (each such agreement referred to herein as the "Agreement"). This MBS Agreement is hereby incorporated by reference into the Agreement. The Agreement governs your use of our electronic banking service ("Electronic Banking"). The Mobile Banking Service may be used to access Electronic Banking. In the event of a conflict or inconsistency between this MBS Agreement and the Agreement, the term or terms of this MBS Agreement will control, unless otherwise provided in this MBS Agreement.

The terms and conditions of this MBS Agreement govern your use of certain Electronic Banking services via a cell phone, tablet or other handheld mobile device, as described below (the "Mobile Banking Service" or "MBS"). We may offer additional MBS services and features in the future. Any added MBS services and features will be governed by this MBS Agreement and the Agreement, and by any terms and conditions provided to you at the time the new MBS service or feature is added or at the time of enrollment for the feature or service, if applicable.

By using the MBS, you accept and agree to all of the terms, conditions and notices contained in this MBS Agreement and the Agreement and accept responsibility for your use of the MBS in accordance with the terms of this MBS Agreement and the Agreement. Further, your use of the MBS is subject to the terms and conditions of any agreement between you and Bankwell that is applicable to the products and/or services accessed through the MBS, such as any deposit account agreement and disclosures governing your account, Funds Availability Policy and the Agreement. Please read this MBS Agreement, the Agreement, and all such additional agreements carefully before using the MBS, and keep a copy for your records.

In this MBS Agreement, the words "you" and "your" mean each user who has registered for the MBS, as well as any business entity on behalf of which an individual user registers. The terms "Bankwell", "we," "us" and "Bank" refer to Bankwell Bank, its successors and assigns. Unless otherwise defined in this MBS Agreement, all capitalized terms shall have the meanings given to them in the Agreement. This MBS Agreement covers only the MBS, and it shall not be construed to apply to other products or services.

2. Amendment, Termination or Suspension of Service.

Except as otherwise required by law, we may in our sole discretion change these terms, and modify or cancel the MBS or any of its features, from time to time and at any time, without notice, unless required by law or regulation. This may include adding new or different terms to, or removing terms from, this MBS Agreement or the Agreement. When changes are made we will update this MBS Agreement on the mobile banking portion of our Electronic Banking website at www.mybankwell.com (the "Website"). The Website will be updated on or before the effective date, unless (i) the Licensor has made a modification and did not provide the Bank with advance notice; or (ii) an immediate change is necessary to maintain security or to prevent fraud; or (iii) a legal requirement requires immediate change; in which event this MBS Agreement will be updated within a commercially reasonable period of time. You will be notified of changes to the MBS Agreement which materially affect your rights. By continuing to use the MBS after such notice of any change, you agree to the change. We will provide you with prior notice of amendments to this MBS Agreement when required by applicable law.

We may terminate or suspend all or any part of the MBS at any time, in our discretion, without notice to you, and without liability to you. No termination of the MBS or any part thereof will affect your liability or obligations under this MBS Agreement or the Agreement accruing prior to the date of termination or any provisions of this MBS Agreement or the Agreement which, by their nature or by express provision, are intended to survive termination. When you ask us to activate the MBS, and each time you use or allow others to use the MBS, you confirm your agreement to abide and be bound by the terms and conditions of the MBS and this MBS Agreement as in effect at that time. The MBS is not intended to replace access to your Electronic Banking service from your personal computer. The Bank may limit the types and number of accounts eligible for access through the MBS at any time.

You shall immediately install any upgrades, patches or fixes required for security reasons or otherwise for the proper functioning of the MBS, regardless of whether requested by us or our service providers.

3. Services.

The Mobile Banking Service is a service of Electronic Banking. The MBS allows you to access certain Electronic Banking services, which are described in the Agreement. Certain features and functions available through Electronic Banking may not be available using the MBS.

4. Registration/Activation.

In order to access the MBS, you must have a cell phone or other handheld device that can send and receive information using the technology that supports the Mobile Banking Service (a "Mobile Device"). The MBS may not be available through all mobile service providers and carriers, and some mobile phones and other wireless devices may not be supported. The list of Mobile Devices that currently support the MBS is set forth on the mobile banking portion of the Website; however, this list is subject to change from time to time to reflect changes in the Mobile Devices and telecommunications carriers that support the MBS. You are responsible for periodically referring to the Website to determine currently supported mobile service providers, carriers, and Mobile Devices. The technical standards required to access and use the MBS (the

"Mobile Technical Standards") may vary among the types of Mobile Devices and telecommunications carriers that support the MBS, and may be updated from time to time by the carriers. You are responsible for satisfying any Mobile Technical Standards. Those Mobile Technical Standards that carriers have provided to the Bank are found on the Website. You understand and agree that Licensor or the telecommunication carriers may modify the supported Mobile Devices and/or the Mobile Technical Standards at any time, without prior notice, and that Licensor, the telecommunication carriers and the Bank shall not be liable to you for your failure to access or use the MBS due to any such modifications.

Depending on the Mobile Device and telecommunications carrier you use, you may be required to download and install an application or other software to your Mobile Device (a "Mobile Application") in order to access and use the MBS. It is solely your responsibility to download and properly install any Mobile Application that is required in order to access the MBS through your Mobile Device and telecommunications carrier. By downloading the Mobile Application, you agree to the additional terms and conditions contained in the End User License Agreement Terms set forth in Section B of this MBS Agreement, and any other terms and conditions required by the Licensor of the Mobile Application. You understand that the Mobile Application is being provided by a third party, and the Bank has no responsibility whatsoever to you in connection with the Mobile Application. You are solely responsible for complying with all terms of use applicable to the Mobile Application, and properly downloading, installing, updating, and using the Mobile Application. the Bank has no obligation whatsoever to notify you of any changes to or new releases for any Mobile Application and the Bank shall have no liability for any claims or damages arising from or relating to the Mobile Application, or your failure to comply with any terms of use for the Mobile Application or your failure to download and properly install any update. You agree that any Mobile Application is licensed, not sold, solely for your use in accessing the MBS.

Further, any Mobile Application is licensed to you "AS IS" without any warranty. THE BANK DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY MOBILE APPLICATION, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. You release the Bank, its service providers, affiliates and all other parties from all claims and damages that may arise from or relate to your use of any Mobile Application. You agree not to reverse engineer, decompile, disassemble or attempt to learn the source code of any Mobile Application, and you may not redistribute any Mobile Application.

We reserve the right to refuse or cancel your registration for the MBS if we cannot verify information about your Mobile Device. Access to the MBS requires the use of a User Name and User Password, or other security procedure that you select if we offer optional or alternative security procedures, now or in the future. All terms and conditions in the Agreement relating to User Names and User Passwords for the Electronic Banking service apply to the use of your User Names and User Passwords for the MBS.

You accept responsibility for making sure that you understand how to use the MBS before you actually do so, and then that you always use the MBS in accordance with online instructions posted on the Website, which are made a part of this MBS Agreement by this reference. You also accept responsibility for making sure that you know how to properly use your Wireless Device and the MBS software, including the Mobile Application, as they may be changed or upgraded from time to time. The Bank may change or upgrade the MBS from time to time. In the event of such changes or upgrades, you are responsible for making sure that you understand how to use the MBS as changed or upgraded.

5. Third Party Fees.

You are solely responsible for fees, including for web access, cellular and/or data or text message charges, that may be billed by your mobile carrier based on your individual plan. Check with your mobile carrier for details on specific fees and charges that may be applicable.

6. Mobile Banking Service Limitations.

It is important that you understand the limitations of the MBS, including but not limited to the following:

The balance of each deposit account you link to the MBS (each a “Mobile Account”) may change at any time as we process items and fees against your Mobile Accounts, and the information provided to you through the MBS may become quickly outdated.

Because the MBS is accessible only through your Mobile Device, your access to the MBS may be limited by the service provided by your telecommunications carrier.

There may be technical or other difficulties related to the MBS. These difficulties may result in loss of data, personalized settings or other MBS interruptions. Except as may otherwise be required by law or regulation, neither the Bank nor its service providers assume any responsibility for the timeliness, deletion, or misdelivery of any user data, failure to store user data, communications or personalized settings in connection with your use of the MBS; nor for the delivery or the accuracy of any information requested or provided through the MBS.

Neither we nor any of our service providers assumes responsibility for the operation, security, functionality or availability of any Mobile Device or mobile network which you utilize to access the MBS, nor guaranty that you will have continuous or uninterrupted access to the MBS. We are not responsible for any delay, failure or error in the transmission or content of information provided through the MBS. Except as may otherwise be required by law or regulation, neither we nor any of our service providers and affiliates will be liable for damages arising from the non-delivery, delayed delivery, or improper delivery of any information through the MBS, from any inaccurate information provided through the MBS, from your use of or reliance on any information provided through the MBS, or from your inability to access the MBS.

We will not be liable to you for any losses caused by your failure to properly use the MBS or your Mobile Device. We reserve the right to refuse to make any transaction you request through

the MBS for any reason. You agree and understand that the MBS may not be accessible or may have limited utility over some mobile networks, such as while roaming.

You agree to exercise caution when utilizing the MBS and/or the Mobile Application on your Mobile Device and to use good judgment and discretion when obtaining or transmitting information.

Financial information obtained through the MBS (including, without limitation, any text message alerts) reflects the most recent Mobile Account information available through the MBS and may not be accurate or current. You agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon, except as may otherwise be required by law or regulation. Certain features and functions available through Electronic Banking may not be available using the MBS.

You understand that the MBS is provided by the Bank through the Licensor, and the Bank shall not be liable to you for any modification, interruption or termination of all or any portion of the MBS due to the acts or omissions of Licensor or its agents.

7. Security.

You will use a User Name and User Password when accessing the MBS, or use such other security procedure that you select if we offer optional or alternative security procedures, now or in the future. You also agree to complete any additional security procedures Electronic Banking or we may require,. Your use of the MBS after we introduce or you select a new security procedure signifies your agreement to the use of such security procedure and that such security procedure, even if it does not involve the use of a User Name or User Password, is reasonable.

Once you have registered for the MBS, your Mobile Device may be used to obtain information about your Mobile Accounts, and perform transactions on and make transfers between Mobile Accounts. You are responsible for maintaining the security of your Mobile Device and you are responsible for all transfers made using your Mobile Device, except as may otherwise be required by law or regulation. The MBS will display sensitive information about your Mobile Accounts, including balances and transfer amounts. Anyone with access to your Mobile Device may be able to view this information.

In order to prevent misuse of your Mobile Accounts through the MBS, you agree to protect your User Names and User Passwords, or other security procedure that you select if we offer optional or alternative security procedures now or in the future, associated with your Electronic Banking service and the MBS, and to monitor your Mobile Accounts on a daily basis.

In addition to protecting your User Names and User Passwords, or other security procedure that you select if we offer optional or alternative security procedures, now or in the future, and other account information, you should also take precautions to protect your personal identification information, such as your driver's license, Social Security Number, etc. This information by itself or together with other account information may allow unauthorized access to your Mobile

Accounts. You are also responsible for protecting and securing all information and data stored in your Mobile Device.

8. Additional Usage Obligations.

When you use the Mobile Banking Service to access your Mobile Accounts, you agree to the following terms (which terms shall survive the termination of this MBS Agreement or the Agreement):

a) Account Ownership/Accurate Information. You represent that you are the legal owner of the Mobile Accounts and other financial information which may be accessed through the MBS. You represent and agree that all information you provide to us in connection with the MBS is accurate, current and complete, and that you have the right to provide such information to us for the purpose of operating the MBS. You agree to not misrepresent your identity or your Mobile Account information. You agree to keep your Mobile Account information up to date and accurate.

b) Proprietary Rights. You are permitted to use content delivered to you through the MBS only in connection with your proper use of the MBS. You may not copy, reproduce, distribute, or create derivative works from this content.

c) User Conduct. You agree not to use the MBS or the content or information delivered through the MBS in any way that would (i) infringe any third-party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the MBS software or the Mobile Applications, (ii) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the MBS to impersonate another person or entity, (iii) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising), (iv) be false, misleading or inaccurate, (v) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers, (vi) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing, (vii) potentially be perceived as illegal, offensive or objectionable, (viii) interfere with or disrupt computer networks connected to the MBS, (ix) interfere with or disrupt the use of the MBS by any other user, (x) result in unauthorized entry or access to the computer systems or networks of others; (xi) send unsolicited electronic mail messages (also known as spam).

d) No Commercial Use or Re-Sale. You agree not to resell or make commercial use of the MBS, provided that a business entity registered to use the MBS as a business entity may use the MBS for its own business purposes.

e) You agree to take every precaution to ensure the safety, security and integrity of your Mobile Accounts and transactions when using the MBS. You agree not to leave your Mobile Device unattended while logged into the MBS and to log off immediately at the completion of each access by you. You agree not to provide your User Password, or other security procedure that you select if we offer optional or alternative security procedures, now or in the future, or other access information to any other person. If you do, we will not be liable for any damage resulting

to you, except as may otherwise be required by law or regulation. You agree to notify us immediately if you lose, or change or cancel the number of, your Mobile Device. If you believe that someone may have unauthorized access to your MBS, you agree to cancel your MBS associated with the Mobile Device immediately. You agree to provide us with immediate notice in the event you suspect fraud or any unauthorized access to any of your Mobile Accounts. You agree to comply with all applicable laws, rules and regulations in connection with the MBS.

f) You agree not to access or use the MBS from locations outside of the United States.

g) You agree to notify us immediately to disable the MBS from your Mobile Device if your User Name or User Password, or other security procedure that you select if we offer optional or alternative security procedures, now or in the future, has been compromised, lost, stolen or used without your authorization, or if your Mobile Device has become compromised, lost, stolen or used without your authorization. Failure to notify us immediately could result in the loss of all money accessible by your User Name and User Password. or other security procedure that you select if we offer optional or alternative security procedures, now or in the future. You could lose all the money in your Mobile Account. For a more detailed explanation of your liability and the liability of the Bank for unauthorized transactions, refer to the Agreement, which was provided to you previously or in conjunction with this MBS Agreement.

h) To the extent that we or our service providers require information about you in order to provide the MBS, you hereby consent to the exchange of such information between us and such service providers.

9. Exclusion of Warranties; Limitation of Liability; Indemnification.

Limitations on the Bank's liability are described in any deposit account agreement and disclosures governing your deposit account and the Agreement. In addition:

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE MBS IS AT YOUR SOLE RISK. THE MBS IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MBS IS OBTAINED AT YOUR OWN DISCRETION AND RISK, AND BANKWELL IS NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL, WHETHER DUE TO ANY COMPUTER VIRUS OR OTHERWISE. BANKWELL MAKES NO REPRESENTATION OR WARRANTY AS TO THE COMPLETENESS, ACCURACY, RELIABILITY, OR CURRENCY OF ANY THIRD PARTY INFORMATION OR DATA THAT YOU OBTAIN THROUGH THE USE OF THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BANKWELL OR THROUGH OR FROM YOUR USE OF THE MBS WILL CREATE ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY STATED IN THESE TERMS.

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NON-PERFORMANCE OF THE MBS (INCLUDING ANY SOFTWARE OR THEIR MATERIALS

SUPPLIED IN CONNECTION WITH THE MBS) SHALL BE FOR US TO USE COMMERCIALY REASONABLE EFFORTS TO CORRECT THE APPLICABLE MOBILE BANKING SERVICE. Some jurisdictions do not allow the exclusion of certain warranties, so the above exclusions may not apply to you. You may also have other legal rights, which vary by state.

INDEMNIFICATION. EXCEPT AS OTHERWISE REQUIRED BY LAW OR REGULATION, YOU AGREE TO INDEMNIFY, HOLD HARMLESS AND DEFEND US, OUR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS AND SERVICE PROVIDERS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LIABILITY, DAMAGES, EXPENSES AND COSTS (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS FEES) CAUSED BY OR ARISING FROM YOUR USE OF THE MBS, OR THE USE OF THE MBS BY ANY OF YOUR CO-DEPOSITORS OR ANY OTHER PERSON WHOM YOU HAVE PERMITTED TO USE THE MBS, YOUR BREACH OF THIS AGREEMENT, YOUR INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER RIGHT OF ANY PERSON OR ENTITY, AND/OR YOUR COMMISSION OF FRAUD OR ANY OTHER UNLAWFUL ACTIVITY OR CONDUCT.

11. Miscellaneous.

- a) Consent to use of Data. You agree that the Bank may collect information about your Mobile Device, system and application software in connection with offering and operating the MBS and to enhance your experience when using the MBS. To read our privacy statement, visit the Website.
- b) We reserve the right to block access or delete the MBS software from your Mobile Device if we or our agents or the MBS service providers have reason to believe you are misusing the MBS or otherwise not complying with this MBS Agreement or the Agreement, or have reason to suspect your Mobile Device has been infected with malicious software or virus.
- c) The Bank is not responsible for translating any of the information contained within the MBS to any other language and we are not responsible for the accuracy of any third party translating services.
- d) For assistance with our Mobile Bank Service visit the Website, call (877) 715-3265 or visit a local branch of the Bank. Do not attempt to communicate with a Bank representative via SMS Text Messaging or any form of unencrypted electronic message.
- e) The Bank may provide links to third party websites without endorsing the accuracy or safety of the third party service, and the Bank disclaims all liability for any linked sites or their content. It is important for you to take necessary precautions to ensure appropriate safety from viruses, worms, Trojan horses, and other potentially destructive items. When visiting external websites, you should review those websites' privacy policies and other terms of use to learn more about how they collect and use any personally identifiable information.

- f) The Bank reserves the right to employ "cookie" technology as a prerequisite for your use of the MBS. You must allow the use of "cookies" or the MBS may not function as intended.
- g) You are responsible for the acquisition, upkeep and management of your Mobile Devices. Further, you are responsible for procuring network or cellular connections. The Bank does not provide internet or cellular connectivity or the devices associated with the use of this Service.
- h) You are responsible for the accuracy of your data entry and use of the application when accessing Mobile Accounts and conducting transactions. The Bank is not liable for errors caused by your misuse or error. This includes any error caused by "pre-filling" or automated entry done on your behalf by the device, system or application software.
- i) You are responsible for keeping all Mobile Account and login information private and ensuring that you do not download viruses or malicious software that could put your confidential information at risk.
- j) The Bank maintains the right to contact you via your Mobile Device as a means to relay important Mobile Account information or information about the use of the MBS for as long as you are enrolled in the MBS.
- k) We specifically do not warrant that the MBS will function in any foreign countries.
- l) The Bank locations are provided to you as a convenience and we are not liable for the accuracy or effectiveness of the information. We are not liable for death or damage as it relates to the use of such location services.
- m) The Bank shall not be liable for any failure to perform its obligations under this MBS Agreement or the Agreement due to the occurrence of an event beyond our control (including without limitation as fire, flood, power outage, acts of God, government or civil authority, civil or labor disturbance, war, riots, or the failure of our service providers to perform).

12. Third Party Beneficiaries.

You agree that our MBS service providers (including any provider of the Mobile Application or other MBS software) may rely upon your agreements and representations in this Agreement, and such service providers are third party beneficiaries of such agreements and representations, with the power to enforce those provisions against you, as applicable and as the circumstances or context may require.

SECTION B

END USER LICENSE AGREEMENT TERMS FOR THE DOWNLOADABLE APP

To be Agreed to by End User Prior to Use of the Downloadable App

1. Ownership. You acknowledge and agree that a third party provider or licensor to your financial services provider ("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to mobile banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

2. License. Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

3. Restrictions. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

4. Disclaimer Warranty. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR , THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE 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. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights. The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

7. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the state of California excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of California and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation are and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.

8. Content and Services. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.