

# Electronic Document and Disclosure Agreement

Effective March 2018

This agreement (“Agreement”) made between you and First Merchants Bank. The purpose of this Agreement is to allow you to receive an electronic version of your account statement online (an “eStatement”) and to receive electronic notifications (“Notifications”) that your eStatement is available for your account(s). This Agreement governs the terms of use of First Merchants Bank’s eStatement delivery and Notifications service (“the Service”). As used in this Agreement the words “we”, “our”, and “us” mean First Merchants Bank, its affiliates, successors and assigns, and the words “you” and “your” mean the user who has elected to receive his or her eStatement and Notifications.

This Agreement is in addition to other agreements between you and us, including the applicable deposit account disclosures, agreements, loan notices, tax documents, Deposit Account Agreement and First Merchants Bank’s Consumer or Business Online Banking Service Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of any other agreements between you and us as they relate to eStatements, Notifications or the Service, this Agreement will control.

**Receiving Electronic Account Statements.** You may elect to receive your periodic statement online for eligible account(s). When you enroll for the service all of your eligible account statements will be viewable electronically in a form that you can view online, save or print at your convenience. Any legal notices that normally accompany your mailed statement will either continue to be mailed under separate cover or delivered to you electronically. eStatements will be available at the same frequency as your statement that was previously mailed.

You understand and agree that by enrolling in the Service, you will no longer receive a statement by mail your eligible account(s). You may contact the bank to receive a paper statement for requested accounts in addition to eStatements. Additional fees apply.

**Registration for the Service.** In order to use the Service, you must be a First Merchants Bank Online Banking customer. You must accept the terms of the E-SIGN Act in addition to this Agreement to become a registered user of the Service.

**Eligible Customers.** Any First Merchants Bank Online Banking customer with proper authority to an eligible account can activate the Service. Once service is activated, paper statements will no longer be mailed for the account(s). The account statement will be available for viewing online to all users with access to the account who are enrolled in First Merchants Bank Online Banking regardless of which user activated the Service.

**Accessing Your eStatement.** Your eStatement, legal notices and disclosures will be presented to you via First Merchants Bank Online Banking or by another method of delivery. Access to history may vary by account type. All statements are in a format that can be printed or saved to a computer hard drive.

If you close your account or cancel the Service, you will no longer be able to view any account statements online. Before cancelling the Service or closing your account, print or electronically save copies of your eStatements for your records. You may also request that a copy of your current or previous statement be mailed to you at your address of record for the account. Please refer to Schedule of Service Fees for applicable charges.

**Customer Responsibilities.** You are responsible for accessing, opening and reading your eStatements and Notifications at your earliest convenience. These contain important and legally binding information and disclosures. You are responsible for promptly notifying First Merchants Bank, if any documents you receive are incomplete, unreadable or inaccessible. You must have a valid email address. You agree to immediately notify First Merchants Bank of any changes to your email address. Failure to update and/or correct your email address may result in First Merchants Bank reinstating the delivery of your statements and notifications in paper form. As a First Merchants Bank Online Banking customer, you have chosen a personal Login ID, Password and for business customer a Company ID which allows you login to our service. You are responsible for keeping your Login ID and Password confidential and for ensuring that you have logged out when your session is complete to prevent unauthorized access. You understand that you have a duty to exercise reasonable promptness in examining the eStatement checks for unauthorized signatures, alterations, forgery, posting errors, etc. The statute of limitations governing these responsibilities will commence at the time First Merchants Bank sends you the email notification that your eStatement is available.

**Change Statement Delivery Method.** If at any time you would like to discontinue the Service, contact Customer Service or visit one of our branch locations during normal business hours. We may require written confirmation of the request to discontinue the Service.

When you discontinue the Service, you will automatically receive paper statements beginning with your next statement cycle. Please allow 5 business days for your request to be processed. Electronic delivery of account statements and notifications will then be discontinued. The statements that were previously presented online will not be mailed to you and you will not be able to access them online; however, you can order copies of past statements through the Request a Statement Copy option under Service. Please refer to Schedule of Service Fees for applicable charges. Please note that any accounts that were previously combined on your paper statement will not automatically be recombined. You may contact Customer Service to set up a combined statement.

**Description of Notifications.** When you register to receive an eStatement Notification, you will receive Notifications informing you when your eStatement is available for viewing within First Merchants Bank Online Banking. Notifications will be sent to an email as designated by you. You agree to notify us of any change to your email address or your secured in-box in order to ensure continued delivery of your Notifications.

You understand and agree that Notifications will not be sent immediately as events occur. Notifications will be sent at scheduled delivery times after your statement cycle is complete. We reserve the right to change the frequency or timing of Notifications at any time.

Notifications are not intended to replace your eStatements or any other communications we may provide to you regarding your accounts.

**Adding or Removing Features.** We may add to, modify or delete any feature of the Service at our sole discretion.

**Change in Terms.** First Merchants Bank reserves the right to modify this Agreement at any time. Modifications will be effective when they are posted to the Service. You will be notified as soon as possible when any changes are made that materially affect your rights. Notifications will either be mailed under separate cover or delivered to you online. By using the Service after the terms of this Agreement have been revised, you will be deemed to have accepted the revised terms. If you do not wish to accept the revised terms, do not use the Service and follow the cancellation process outlined in the Termination section below.

**Termination.** This Agreement will be in effect from the day your registration is submitted by you and accepted by First Merchants Bank and at all times while you are using the Service. After you have activated the Service, you can withdraw your consent to this Agreement or future electronic receipt of documents described by this Agreement by contacting us at 1-800-205-3464 1-866-833-0050 for business customers or visiting your local branch. However, withdrawing your consent means you will no longer be able to receive the documents and Notifications described in this Agreement online.

First Merchants Bank may terminate this Agreement and your use of the Service at any time without prior notice. We will notify you of the change in an appropriate manner as soon as reasonably possible.

**Survival.** All applicable provisions of this Agreement shall survive termination by either you or us, including, without limitation, provisions related to proprietary materials and trademarks, warranty disclaimers, limitations of liability, indemnification and other miscellaneous provisions.

**Exclusion of Warranties; Limitation of Liability.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OR EXCEPT AS REQUIRED BY APPLICABLE LAW, WE MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, TO YOU REGARDING THE SERVICE OR ANY ASPECT THEREOF, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Except as otherwise provided in this Agreement or otherwise expressly provided by applicable law or regulation, you agree that neither First Merchants Bank nor any agent, independent contractor or subcontractor of any of the forgoing (“Service Providers”) will be liable for any loss, injury or damage, including, without limitation, direct, indirect, incidental, special, consequential or punitive damages, whether under a contract, tort or any other theory of liability, arising in any way out of the enrollment in, use or maintenance of the Service, or of the Internet access provider used to access the Service, or of the equipment used to access the Service, including, without limitation, any loss, injury or damage relating to any failure of performance, error, omission, interruption, defect, delay in operation or transmission, computer virus, line failure or unauthorized interception or access to your communication with us, even if we or the service providers are aware of the possibility of such events.

**Attorney's Fees.** In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

**Indemnification.** You agree to indemnify and hold First Merchants Bank and its affiliates, officers, directors, employees, consultants, agents, service providers, licensors, successors and assigns, harmless from any and all third party claims, liability, damages and/or costs arising from (a) a third party claim, action or allegation of infringement, misuse or misappropriation based on information, data, files or other materials submitted by you to the Service; (b) any fraud, manipulation or breach of this Agreement by you; (c) your violation of a law or rights of a third party; (d) your use of the provision of the Service or use of your account by any third party. First Merchants Bank reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with First Merchants Bank in asserting available defenses. You will not settle any action or claims on First Merchants Bank's behalf without the prior written consent of an authorized officer of First Merchants Bank

**Severability.** If any provision of this Agreement is held to be void or unenforceable in any jurisdiction, such ineffectiveness or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction or any other provision in that or any other jurisdiction.

**Waiver.** We may waive any term or provision of this Agreement at any time or from time to time, but any such waiver shall not be deemed a waiver of the term or provision in the future. We shall not be deemed to have waived any of our rights or remedies with regard to this Agreement hereunder, unless such waiver is in writing and signed by an authorized representative of First Merchants Bank. No delay or omission on the part of First Merchants Bank or its affiliates, or their respective successors and assigns, in exercising any rights or remedies shall operate as a waiver of such right or remedies or any other rights or remedies.

**Assignment.** You may not assign this Agreement to any other party. We may assign this Agreement or delegate or transfer any or all of our rights and responsibilities under the Agreement to any third party or parties.

**System Requirements.** You are responsible for and must provide all equipment, software and services necessary to access the Service at your own expense. In order to use the Service and to access, receive and retain information electronically, you must satisfy the hardware and software requirements below:

#### **Acceptable Browsers:**

Minimum system requirements: To receive and review disclosures electronically, and to view, download, and print your electronic statements, you will need a currently supported internet browser tool such as; Microsoft Internet Explorer, Mozilla Firefox, Apple Safari, Google Chrome . Cookies and JavaScript must be enabled in the browser options.

We will give you notice of any change to the hardware and software requirements if the change will adversely affect your ability to access, receive and retain documents, eStatements, disclosures and legal notices.

**Third Party Services.** All matters concerning third party services are solely between you and the third party service provider. We make no warranties or representations whatsoever with regard to third party service provider services. The inclusion of advertisements or links to such websites does not imply any endorsement of the material on such websites by First Merchants Bank and First Merchants Bank is not responsible or liable to you for any damages, losses or injuries when you access third party web sites and the services available on them.

**Joint Accounts.** If your account is owned jointly with another person either one of you may consent to receive or cancel the Service. Such consent shall apply to all owners. A Notification or eStatement delivered to one owner of a joint account is considered notice to all owners.

**Delay in Notification Delivery.** You understand and agree that receipt of Notifications may be delayed or prevented by factors affecting your Internet Service Provider(s), phone operator(s), and such other relevant entities (“Third party Service Providers”). All matters concerning Third Party Service Providers are solely between you and the Third Party Service Provider. First Merchants Bank and its affiliates neither guarantee the delivery nor the accuracy of the contents of any Notification. First Merchants Bank will not be liable for losses or damages arising from (a) non-delivery, delayed delivery or misdelivery of an Notification; (b) inaccurate content in the Notification; or (c) your use or reliance on the content of any Notification for any reason.

**Security.** Information you provide in connection with the Service will be stored and transmitted in a secured fashion following best industry practices and regulatory requirements; however, the security of your account information is also contingent upon your responsible behavior in protecting your User ID and Password for the Service. Please use maximum caution in protecting your User ID and Password.

**Privacy.** Protecting your privacy is important to First Merchants Bank, our affiliates and associates. We will gather and disclose personal information about you only as allowed by law. All information gathered from you in connection with using this Service will be governed by the First Merchants Bank Privacy Policy. Personal information about you may be used for the purpose of operating the Service and First Merchants Bank internal purposes.

**Providing Personal Information.** You agree to provide true, accurate, current and complete information about yourself or business as requested and you agree not to misrepresent your identity.

**No Illegal use of the Service.** You agree not to use this Service to conduct any business or activity or solicit the performance of any activity prohibited by law or any contractual provision by which you are bound. You agree to comply with all applicable laws, rules and regulations in connection with the Service.

**Capacity to Contract.** You certify that you are 18 years of age or older or otherwise able to lawfully enter into contracts.

**International Use.** First Merchants Bank does not make any representations that any content or use of the Service is appropriate or available for use in locations outside of the United States and accessing the Service from territories where its content or use is illegal is prohibited by First Merchants Bank. If you choose to access the Service from locations outside of the United States, you do so at your own risk and you are responsible for compliance with local laws.

**Proprietary Materials.** Other than your materials and account information, all content included or available in the Service, such as advertisements, graphics, logos, icons, images, audio clips and software, is the property of First Merchants Bank and/or third parties and is protected by copyrights, trademarks, or other intellectual and proprietary rights. The compilation of all content on this Service is the exclusive property of First Merchants Bank and/or its licensors and is protected by copyrights or other intellectual property rights.

**Trademarks.** The trademarks, logos, and service marks displayed in the Service (collectively “Trademarks”) are the registered and unregistered Trademarks of First Merchants Bank or third parties. Under no circumstances may you use, copy, alter, modify or change these Trademarks. Nothing in this Service should be construed as granting, by implication or otherwise, any license or right to use any trademark without express written permission from First Merchants Bank or the third party that has rights to such trademark.

**Headings.** The headings in this Agreement are for convenience and reference only and do not govern the interpretation of provisions of the Agreement.

**Applicable Law.** Regardless of where you live or work or where you access the Service, this Agreement will be governed by the substantive laws (excluding laws of conflict) and regulations of the United States and the State of Indiana, including without limitation, the Indiana Uniform Commercial Code.

**Venue; Waiver of Jury Trial.** IF A DISPUTE OR CLAIM IS NOT SUBJECT TO ARBITRATION FOR ANY REASON, THEN THE DISPUTE OR CLAIM SHALL BE DECIDED IN THE COURTS OF DELAWARE COUNTY, INDIANA, WITHOUT A JURY. YOU AND FMB IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY.

**Consent.** By clicking the “I Accept” button and enrolling in the Service, you agree to abide by the terms and conditions set forth in this Agreement and acknowledge your receipt and understanding of the agreement and disclosures contained in the Agreement. You affirmatively consent to receive, and acknowledge that you can receive, access and retain all eStatements, disclosures and legal notices provided by First Merchants Bank Please read this Agreement carefully and retain a copy for your records. You understand that clicking the “I Accept” button shall operate as your official signature and warrant that you have proper authority to enter into the Agreement. If you click the “Cancel” button, you will not be enrolled in the Service and will not be bound by this Agreement.

Confirmation Code: 17a632