

GOTHAM BANK INTERNET BANKING AGREEMENT

This Internet Banking Agreement (the "Agreement") is made as of this ____ day of _____, 20__ between Gotham Bank of New York and (i) _____ (an individual residing at _____), or (ii) _____, a corporation with its principal office located at _____. By signing this Agreement, the undersigned acknowledges receipt of and agreement with the terms and conditions contained in the Funds Transfer Instructions Agreement and the Internet Banking Application, each of which it has duly signed. If any inconsistency shall exist between this Agreement and the terms of the Funds Transfer Instructions Agreement and/or the Application, the terms of this Agreement shall be controlling.

1. **Meaning of certain words.** In this Agreement, (a) "we," "us," "our" and "ours" mean Gotham Bank of New York, 1412 Broadway, New York, NY 10018, (b) "you" and "your" mean anyone who signs a Gotham Bank Internet Banking Application, (c) "your Application" means that Application, as submitted to us or as changed by any updating information submitted to us at any time, whether through our Services as described in the Application (collectively, the "Services"), in writing or in any other way, (d) "your deposit accounts" means all deposit accounts with us that are designated in your Application and are approved by us as deposit accounts accessible through the Services, (e) "your loan accounts" means your line of credit accounts and all other mortgage, installment, and other loan accounts with us that are designated by you on forms we will provide and which are approved by us as loan accounts accessible through the Services, and (f) "your identification numbers" means all the customer identification numbers and personal identification numbers assigned to you by us or chosen by you for use with the Services.

2. **Computer related equipment and software.** The installation, maintenance, operation and use of the computer related equipment (for example, modem, telephone, and other telecommunications equipment) and software (including any browser software we provide to you) for your use with our Services are accepted by you under your full responsibility. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WE WILL NOT BE RESPONSIBLE FOR ANY LIABILITY, LOSS, INJURY, OR DAMAGE (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE) IN ANY WAY ARISING OUT OF (A) ANY ERROR IN THE INSTALLATION, MAINTENANCE, OPERATION, OR USE, OR ANY CONFIGURATION PROBLEM OR INCOMPATIBILITY, OF THE COMPUTER RELATED EQUIPMENT OR SOFTWARE, (B) ANY FAILURE OR MALFUNCTION OF THE COMPUTER RELATED EQUIPMENT OR SOFTWARE, (C) ANY FAILURE OR MALFUNCTION OF, OR ANY COMPROMISE OF DATA SENT USING ANY TELEPHONE, INTERNET ACCESS, OR OTHER SERVICE YOU USE TO CONNECT TO OUR SERVICES, (D) ANY VIRUS OR SIMILAR PROBLEM RESULTING FROM THE USE OF OUR SERVICES, OR (E) PROVIDING YOU ANY NOTICE OF ANY UPGRADE, FIX, OR ENHANCEMENT OF ANY BROWSER SOFTWARE WE PROVIDE TO YOU. WE DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTY(IES) CONCERNING ANY BROWSER SOFTWARE WE PROVIDE TO YOU (FOR EXAMPLE, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

3. **Your identification numbers.** Your identification numbers will be used to initiate funds transfers and payment orders as described in Section 6 through our Services. A customer identification number (called an Internet ID) and a personal identification number (called an Internet PIN) will be required for use with our Services. We will assign the customer identification number to you, but you can rename it with an alias. The personal identification number will initially be the last four digits of your social security or taxpayer identification number, as the context requires, but you will be required to choose a new personal identification number for use with our Services. You should not choose as the new personal identification number any personal identification number for any card that is tied to any of your deposit accounts. You must not allow anyone else to have any of your identification numbers unless you authorize him or her to use your identification numbers to initiate funds transfers and payment orders as described in Section 6 through our Services. You must keep your identification numbers confidential and in a secure location separate from the computer-related equipment and software you will use with our Services. For reasons of security, we can cancel the effectiveness of any of your identification numbers at any time without giving you any notice that the cancellation is going to occur. If you are a corporation, partnership, limited liability company, or other organization: (a) we will assign a customer identification number to each individual designated in your Application to act on your behalf in connection with the Services, but he or she can rename it with an alias, and (b) the personal identification number of each individual designated in your Application to act on your behalf in connection with the Services will initially be the last four digits of your employer identification number, but he or she will be required to choose a new personal identification number for use with the Services. No one other than you or anyone designated in your Application to act on your behalf in connection with the Services may be allowed to have any of your identification numbers unless you authorize, or anyone designated in your Application authorizes, him or her to use your identification numbers to initiate orders and instructions as described in Section 6. You and anyone designated in your Application to act on your behalf in connection with the Services must keep your identification numbers confidential and in a secure location separate from the computer, related equipment and software you use for the Services.

4. **Your responsibility for transactions.** You will be solely responsible for each transaction conducted by any order or instruction described in Section 6 that is given through our Services by you, by anyone else you allow to use any of your identification numbers, or by any person who gains access by any means to our Services.

5. **Gotham Internet Services.** Our Services offer four (4) features; each of which is described in the Application and hereafter.

6. **Gotham Internet Banking Services described.**

(a) Subject to the provisions of this Agreement, our Services can be used to give (i) an order to us to make a non-recurring transfer of funds from any of your deposit accounts to any other of your deposit accounts as long as your Application designates the account from which the transfer is to be made as an account from which transfers can be made and designates the account to which the transfer is to be made as an account to which transfers can be made, (ii) a request to us for available information concerning any of your loan or deposit accounts and transactions involving any of your deposit accounts, (iii) an order to us to transfer

funds to any other financial institution worldwide with which we have or can arrange correspondent banking contact and communication, provided sufficient available funds are in your account(s), and (iv) an order to make a recurring or non-recurring payment in respect of a bill or charge which you wish to have paid.

(b) With respect to the bill payment feature noted in subsection (iv), above, we cannot accept bill payment orders against an account which requires more than one authorized signature unless all authorized signatories have signed this Agreement or have given us a written instruction to that effect which has been signed by all of the authorized signatories. In addition, these restrictions will also apply to all bill payments; namely,

- we reserve the right, for security reasons, to limit the frequency and the dollar amount of transactions from your account(s);
- only payees located within the United States are eligible for this Service;
- we reserve the right to pay your payees either electronically or by a bank check and will charge your account(s) for such payments. We will need at least seven business days' notice before the date the payment is due to make a payment to a check payee and three business days' advance notice before the date the payment is due to make a payment to an electronic payee; and
- we are not able to send the payment stub to the payee as your instructions are sent to us over the internet. Some payees insist on receipt of the stub and it will be your responsibility to be sure the payment is promptly posted by the payee if it does not receive the payment stub along with our payment.

7. Limitations applicable to transactions. The following limitations apply to transactions applied for through our Services:

(a) No transfer of funds from any of your deposit accounts can be ordered through our Services if you do not have an unrestricted right to withdraw funds from the account (for example, if two or more persons are required to sign a check written on the account or a withdrawal order pertaining to the account).

(b) Any transfer of funds from any of your deposit accounts ordered through our Services will be subject to sufficient funds being available for withdrawal from the account when the order or instruction to us requesting the transfer is to be charged against the account.

(c) If and when any order or instruction to us to make a transfer of funds (including any bill payment order) from any of your deposit accounts is to be charged against the account and the amount of the transfer exceeds the amount of money available for withdrawal from the account, we can either (i) make the transfer (in which case you will be liable for the excess), or (ii) refuse to make the transfer. In either case, you will be liable for any fee applicable to the withdrawal or attempted withdrawal of money from the account in excess of the amount of money available for withdrawal from the account.

(d) If and when any order or instruction to us to make a transfer of funds (including any bill payment order) from any of your loan accounts is to be charged against the account and the amount of the transfer exceeds the amount of credit available under the account, we can either (i) make the transfer, in which case the amount of the transfer will be considered to be credit extended under the account, or (ii) refuse to make the transfer. In either case, you will be liable for any fee applicable to the obtaining of the credit or attempted obtaining of credit in excess of the amount of credit available under the account.

(e) For reasons of security, we can at any time and without giving you any notice that we are going to do so refuse to honor any order or instruction to us to make a transfer of funds from any of your deposit accounts or any of your loan accounts. For example, we can do so if, for reasons of security, we believe that it is advisable to limit the dollar amount or frequency of transfers of funds from any of your deposit accounts.

(f) We can, at any time and without giving you any notice that we are going to do so, refuse to honor any order or instruction to us if the order/instruction reasonably appears to us to be fraudulent or erroneous.

(g) If any of your deposit accounts is a money market deposit for purposes of Federal Reserve requirements, during any calendar month there can be no more than six transfers of funds from the account that are (i) transfers of funds to any other of your deposit accounts ordered through the Services or (ii) preauthorized or automatic transfers of funds to any other of your deposit accounts; and no more than three transfers of funds in any calendar month may be made to third parties such as (i) preauthorized, automatic, or telephonic transfers of funds to a third party, (ii) transfers of funds made by using a card tied to the account to pay for a purchase of goods or services, and (iii) transfers of funds made by using a check, draft, or any other order payable to a third party.

(h) If an order or instruction to us to make a transfer from any of your deposit accounts or any of your loan accounts is received by us on any of our business days by 4:00 p.m. Eastern United States time, the order will be processed and charged against the account that day. If the order is received by us on any of our business days after 4:00 p.m. Eastern United States time or on a day that is not one of our business days, it will be processed and charged against the account on our next business day.

(i) No order or instruction to us to make a transfer from any of your deposit accounts or any of your loan accounts can be canceled after it is given to us.

8. Authorization and appointment of agent. You authorize us and appoint us as your agent to take on your behalf any action we believe necessary or appropriate to implement any order or instruction described in Section 6. For example, you authorize us and appoint us as your agent on your behalf (a) to withdraw money from any of your deposit accounts and deposit the money in any other of your deposit accounts in order to implement any order to us to transfer funds from the first account to the other account and (b) to withdraw money from any of your deposit accounts and use the money to make any payment under any of your loan accounts in order to implement any order to us to transfer funds from the deposit account to the loan account. Our withdrawal of money from any of your deposit accounts or loan accounts for any purpose

whatsoever is under the authority you have given to us and in our capacity as your agent. Such withdrawal will be as effective as though you had signed a check or withdrawal form to make the withdrawal or to obtain the credit. We will have no liability for damages you may suffer as a result of our failure to comply with any funds transfer or payment order sent to us and in no event will we be liable to you for special, consequential, or punitive damages

9. **Fees.** You must pay us each fee we impose for the use of our Services, and you authorize us to charge the fees against any of your deposit accounts or any other account you have with us now or in the future. The schedule accompanying this Agreement shows the fees we impose for the use of our Services, which are in addition to the fees applicable to any of your deposit accounts or any other account you have with us now or in the future. [SEE ATTACHED FEE SCHEDULE]

10. **Statements.** We will send or deliver a statement for each of your deposit accounts to you approximately once a month. The statement will show all transactions credited to or charged against the account during the period covered by the statement, and you shall be responsible to promptly review the statement and notify us of any errors or discrepancies in such statement within ten days of your receipt thereof; failure to do so shall relieve us of any and all responsibility therefor.

11. **Business days.** Our business days are Monday through Friday, excluding legal holidays.

12. **Our liability for failure to complete transactions.** Without exception, we will not be liable for damages you suffer as a result of our failure for any reason to make, on time and in the correct amount, any transfer of funds to or from any of your deposit accounts requested by a timely and properly initiated order to us to make the transfer given through the Services or otherwise. Whether the order is timely will be determined under Section 7. The order will not be properly initiated unless (a) the computer related equipment and software you use for the Services and each telephone, internet access, and other service you use to connect to the Services are properly functioning, (b) the instructions on how to give the order to us are properly followed, (c) the order is as described in Section 6 and is correct and complete and (d) the transfer would not be subject to any limitation referred to in Section 7.

13. **Notice of loss, theft or unauthorized use.** If you believe that any of your identification numbers has been lost or stolen or that any transaction involving any of your deposit accounts may have been or may be made without your authorization, you must contact our Internet Department at once. You can do so by telephoning 212-944-2599 and asking for our Internet Department or writing Gotham Bank of New York, 1412 Broadway, New York, NY 10018, Attention: Internet Department.

14. **Liability for unauthorized use.** You shall bear the loss of money transferred from any of your deposit accounts in any transaction or series of transactions ordered through our Services by an order or orders to us initiated by using any of your identification numbers.

15. **Disclosure.** In the regular course of our business, we will disclose information concerning any of your deposit accounts or any transaction involving the account (a) as

necessary to complete the transaction or to resolve any error concerning the transaction, (b) in any statement we send or deliver for the account, (c) to someone in whose name the account is open, (d) in accordance with the written permission of someone in whose name the account is open, (e) to verify the existence and condition of the account or to report our experience concerning the account to a third party, such as another financial institution, a credit reporting agency, or a merchant, (f) to any affiliate of ours for the purpose of offering or providing another product or service to you, (g) to any agent, contractor or vendor of ours for the purpose of providing any service to us in the regular course of our business or completing marketing activities of ours (for example, to any other party providing any service to us in connection with our Services) or (h) to comply with applicable law, any order of any court, or any order or request of any other governmental body or regulatory agency having supervisory responsibilities for us.

16. **Cancellation.** You can cancel your right to use our Services at any time by notifying us in writing. The cancellation will not take effect until we receive the notice and have a reasonable time to act on it. At any time, for any reason and without notifying you that we are going to do so, we can cancel your right to use our Services. The cancellation will take effect immediately unless we decide to have it take effect later. Once the cancellation by you or us of your right to use our Services takes effect, we can, but we will not have to, process any order described in Section 6 before the cancellation takes effect. The cancellation by you or us of your right to use our Services will not affect any of your obligations under this Agreement.

17. **Electronic mail.** Electronic mail sent to us through our Services must not be used to communicate urgent information (for example, a stop payment order or a report of an unauthorized transaction involving a deposit or loan account). We will not have to take any action based on any electronic mail sent to us through our Services until we receive and have a reasonable time to act on a written or telefacsimile (signed) instruction relating thereto.

18. **Recording and obtaining of information.** You consent to the tape recording by us or any other party providing any service to us in connection with our Services of any information, notice, order, or other communication sent to us (for example, electronic mail sent to us).

19. **Reasonable time to act.** A reasonable time for us to act on any information, notice, order, or other communication or document received by us (for example, electronic mail sent to us) will not end until at least the close of business on our first business day after our business day on which we have received the information, notice, order, or other communication or document.

20. **Notices and change of address.** Any notice we send you concerning this Agreement or our Services will be sent to your current mailing address shown in our records concerning this Agreement. We can send it by regular mail. If your mailing address changes, you must promptly notify us in writing of the new address. Any notice you give us concerning this Agreement must be given in writing unless applicable law provides that it can be given in any other way.

21. **Changes in Agreement, etc.** No change in this Agreement can be made except in a writing signed by us. We can change this Agreement or the Schedule accompanying this Agreement at any time, and we can change our Services at any time by adding, deleting, or changing any feature thereof. We will send or deliver to you any notice of the change that applicable law requires us to send or deliver to you. If applicable law does not require us to send or deliver any notice of the change to you, we will either send or deliver a notice of it to you or post a notice of it in our banking offices. By using any added or changed feature of our Services, you will be agreeing to be bound by all our requirements relating to the added or changed feature.

22. **No notice or loss of rights.** We can exercise, give up, fail to exercise, or delay exercising any of our rights with respect to you or our Services without notifying you. By exercising, failing to exercise or delaying the exercise of any of the rights, we will not lose it or any other of the rights. By giving up any of the rights on any single occasion, we will not lose it on any other occasion.

23. **Giving up of rights.** None of our rights with respect to you or our Services can be given up by us except in a writing signed by us.

24. **No transfer of rights and obligations.** You cannot transfer any of your rights and obligations under this Agreement to anyone else. Any transfer of any of the rights and obligations will be void.

25. **Conflicts.** If any part of this Agreement conflicts with applicable law, the law will control, and this Agreement will be considered changed to the extent necessary to comply with such law.

26. **Continued effectiveness.** If any part of this Agreement is determined by a court to be invalid, the rest will remain in effect.

27. **What law applies; jurisdiction; jury trial waiver.** Any legal question concerning this Agreement or our Services will be decided in accordance with (a) New York State law without regard to the law of any other state and (b) to the extent applicable, federal law. Both parties hereto agree to the jurisdiction of the State or Federal Courts located in the Borough of Manhattan to resolve any dispute relating hereto. Both parties irrevocably and unconditionally waive their rights to a trial by jury in any such action or proceeding.

28. **Entire Agreement.** Except for any agreement between you and us concerning any of your deposit accounts, any of your loan accounts or transfers of funds to or from any of your deposit accounts or any of your loan accounts, this Agreement (supplemented by the agreements referred to in the first paragraph above) is the final and complete agreement between you and us concerning our Services. If any part of any agreement described in the preceding sentence is incompatible with any part of this Agreement, the part of this Agreement will control. Any statement concerning our Services made by any of our employees or anyone else is not part of this Agreement.

29. **Agreement.** By using our Services or allowing anyone else to have any of your identification numbers or to use our Services in any way described in Section 6, you agree to be

bound by all provisions of this Agreement, all our requirements relating to all of the services provided through our Services, all legal terms and conditions contained on the home page of our Worldwide Web site, if any, and all provisions of the license agreement for any browser software used to access our Services.

30. **Customer service problems or errors.** Telephone Customer Service Assistance at 212-944-2599 and request the Internet Department or:

Write to us at: Gotham Bank of New York
1412 Broadway
New York, NY 10018
Attention: Internet Department

as soon as you can after receipt, if you think that your statement is wrong or if you need more information about a transfer listed on the statement. You must provide us with the following information:

- (1) Tell us your name and account number.
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we will require that you send us your complaint or question in writing within 10 days.

We will tell you the results of our investigation within 10 days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

Please signify your agreement to the foregoing by signing below. Thank you.

Customer: _____

By: _____
Name & Title:
Date:

By: _____
Name & Title:
Date:

We agree to the foregoing.

GOTHAM BANK OF NEW YORK

By: _____
Name & Title: