

MOBILE WALLET TERMS AND CONDITIONS

These Terms of Use (“Terms”) govern your use of any eligible debit, credit, or prepaid card issued by Midland States Bank (each, a “Payment Card”) when you add, attempt to add, or keep a Payment Card in a digital Wallet or any other electronic payment system into which your Payment Card may be enrolled by you (“Wallet”) on any mobile phone, tablet, watch or other device (“Device”) that supports the Wallet. For Apple Pay users, please note that these Terms supersede in their entirety the Apple Pay Terms and Conditions (last modified on November 17, 2015) and have been revised to govern your use of a Payment Card in any Wallet including, but not limited to, the Apple Pay. These Terms are a legal agreement, so please read them carefully. The words “you” and “your” refer to the holder of the Payment Card or authorized user, and the words “we”, “us”, “our”, and “Midland” mean Midland States Bank.

1. Your Account or Cardholder Agreement Still Applies

Your Payment Card is governed by all terms, conditions, and agreements of the deposit account associated with your debit card or a cardholder agreement (for credit and prepaid cards), including any attachments, which are amended by these Terms (“Account Agreement”). The Account Agreement may describe, for example, the applicable fees, interest, and other rights and obligations that apply when you use a Payment Card. The Account Agreement still applies to your use of a Payment Card in the Wallet. In the event of any conflict between these Terms and your Account Agreement, the terms and conditions of your Account Agreement will control. You understand that your use of the Wallet will also be subject to agreements or terms of use with the relevant Wallet provider (“Wallet Provider”) or other third parties such as wireless companies or data service providers.

2. Using a Payment Card in the Wallet

If you want to add a Payment Card to the Wallet, you must follow the procedures adopted by the Wallet Provider and any further procedures we adopt. You understand that not all Payment Cards are eligible to be added to the Wallet. We may not add a Payment Card to the Wallet if we cannot authenticate the Payment Card or if we otherwise suspect that there may be fraud associated with the Payment Card. The Wallet allows you to make purchases using an added Payment Card wherever the Wallet is accepted. The Wallet may not be accepted outside of the United States or at all places where your Payment Card is accepted.

3. Applicable Fees

We do not charge you any fees for adding a Payment Card to the Wallet. Please consult your Account Agreement or Fee Schedule (for debit cards) or cardholder agreement (for credit cards) for any applicable fees, interest, or other charges associated with your Payment Card. In addition, the Wallet Provider or other third parties, such as wireless companies or data service providers

and your Payment Card Issuer may charge you service fees in connection with your use of your Device or the Wallet. You are solely responsible for the payment of those fees and for reporting and paying all applicable taxes arising from transactions originated using your Payment Card and you shall comply with any and all applicable tax laws in connection therewith.

4. Midland States Bank is NOT responsible for the Use or Function of the Wallet

Midland States Bank is not the provider of the Wallet and is not responsible for its use and function. You should contact the Wallet Provider's customer service if you have questions concerning how to use the Wallet or problems with the Wallet. We are not responsible for any failure of the Wallet or your inability to use a Wallet for any transaction. We are also not responsible for any loss, injury or inconvenience you suffer as a result of a merchant refusing to accept the Wallet.

5. Your Responsibilities to Keep Your Payment Card Secure and Notify Us of Errors or Fraud

You agree to protect and keep confidential your User ID, passwords, and all other information required for you to make purchases with your Payment Card using the Wallet. If you share these credentials with others, they may be able to access your Wallet and make purchases with your Payment Card or obtain your personal information. Your Account Agreement requires you to contact us if you believe there are errors or if you suspect fraud with your Payment Card. We will resolve any potential error or fraudulent purchase in accordance with the Account Agreement. We will not be liable for any losses you incur except as specifically described in the Account Agreement or as otherwise provided by law.

6. Security of the Wallet

The Wallet Provider is responsible for the security of information provided to it or stored in the Wallet. We are not responsible if there is a security breach affecting any information stored in the Wallet or sent from the Wallet. We are not responsible for the performance or nonperformance of the Wallet Provider or any other third parties regarding any agreement you enter into with the Wallet Provider or associated third-party relationships that may impact your use of the Wallet.

7. We Can Block, Suspend, or Cancel Your Use of a Payment Card

We can block you from adding an otherwise eligible Payment Card to the Wallet, suspend your ability to use a Payment Card to make purchases using the Wallet, or cancel entirely your ability to continue to use a Payment Card in the Wallet. We may take these actions at any time and for any reason, such as if we suspect fraud with your Payment Card, if you have an overdue or negative balance on your Payment Card account, if applicable laws change or if directed to do so by the Wallet Provider or the applicable card network (such as MasterCard). You may remove a Payment Card from the Wallet by following the Wallet Provider's procedures for removal.

8. Our Commitment to Your Privacy

We are committed to respecting the privacy of your information and we will not share your information in a manner that is inconsistent with our Privacy Policy, which you would have received when you opened the account associated with your Payment Card and annually thereafter. We will treat all personally identifiable financial information we obtain as a result of your use of the Wallet consistent with the terms of our Privacy Policy.

Midland States Bank's privacy policy is available at:
<https://www.midlandsb.com/privacy-policy>

9. Use of Your Information

To the extent you provide any ideas, requests, feedback, reports, suggestions, recommendations or other information to us, in writing, orally, by demonstration or otherwise, regarding your use of the Wallet, you hereby grant to us a fully paid-up, perpetual, irrevocable, worldwide license to use, reproduce, incorporate, modify, display, perform, sell, make or have made derivative works of, distribute (directly or indirectly) and sublicense, such feedback in connection with our products and services or otherwise. The Wallet Provider may use your information for different purposes, so please review carefully the portion of the Wallet Provider's agreements and disclosures relating to how it uses your information. You agree that we may exchange information about you with the Wallet Provider and the applicable card network (such as MasterCard) to facilitate any purchase you initiate using a Payment Card. We may also share your information to make information available to you in the Wallet about your Payment Card transactions, or to assist the Wallet Provider in improving the Wallet. We are not responsible for any loss, injury or other harm you suffer in connection with the Wallet Provider's use of your information. By provisioning your Payment Card to the Wallet, you are changing your information use and sharing choices to allow all such sharing.

10. You Agree to Allow Us to Contact You Electronically

You agree to receive electronic communications from us, including emails to the email address you have provided as well as calls made by an automatic telephone dialing system, pre-recorded or artificial voice messages, or text messages to any cellular telephone number you have provided in connection with your Payment Card account. You agree to update your email address or cellular telephone number when it changes by contacting us using the contact information in your Account Agreement. You may also contact us if you wish to withdraw your consent to receive these electronic communications, but doing so will result in your inability to continue to use your Payment Card in the Wallet.

11. We May Change these Terms at Any Time

We may change these Terms at any time, by changing these Terms or your Account Agreement, and we will provide advance notice of these changes if we are required to do so under applicable laws. You agree to any such changes by continuing to keep a Payment Card in the Wallet. The most recent version of these Terms is shown at the bottom of these Terms. If you do not accept a change to these Terms, you must remove all Payment Cards from all Wallets.

12. Indemnity

You agree to indemnify, defend, and hold Midland States Bank harmless from and against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of, or attributable to: (i) your use of, and any transactions resulting from or relating to any Digital Wallet; (ii) any breach or violation of these Terms by you or other users using your Payment Card or credentials; (iii) your failure to provide accurate, complete or current information requested or required by the Wallet; (iv) any negligent or intentional action or inaction on your part or other users of the Wallet using your Payment Card or credentials; and or (v) the violation of the rights of any third party caused by you or others using your Payment Card or credentials.

This Section 12 shall survive the termination of this Agreement for any reason.

13. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF PAYMENT CARD AND THE WALLET IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR FACILITATION OF YOUR USE OF THE WALLET AND THE ELIGIBLE PAYMENT CARDS IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE", WITH ALL DEFECTS THAT MAY EXIST FROM TIME TO TIME AND WITHOUT WARRANTY OF ANY KIND. WE HEREBY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS WITH RESPECT TO OUR FACILITATION OF YOUR USE OF THE WALLET AND THE ELIGIBLE CARD, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS.

This Section 13 shall survive the termination of this Agreement for any reason.

14. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT SHALL WE, OUR SUBSIDIARIES, AFFILIATES, AGENTS, EMPLOYEES OR REPRESENTATIVES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL OR FINANCIAL DAMAGES, LOST REVENUES, PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR OTHER LOSSES OF ANY KIND, ARISING OUT OF THESE TERMS THAT IS IN ANY WAY RELATED TO YOUR USE OR INABILITY TO USE THE WALLET OR ANY PAYMENT CARD, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL

PURPOSE. OUR LIABILITY AND THE LIABILITY OF OUR SUBSIDIARIES, AFFILIATES, AGENTS, EMPLOYEES OR REPRESENTATIVES ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED \$50.

This Section 14 shall survive the termination of this Agreement for any reason.

15. GOVERNING LAW

These Terms, your use of any Eligible card and the Wallet, and any claim, dispute or controversy arising from or relating to these Terms or your use of the Wallet shall be governed by, construed and enforced in accordance with the laws of the state of Illinois (without regard to its conflict of law rules) and applicable federal law. These Terms are entered into between you and Midland States Bank in Effingham County, Illinois. Subject to the arbitration provisions in any applicable Cardholder Agreement, you expressly agree that any civil action or legal proceedings arising out of or relating to these Terms will be brought in the courts of record in the State of Illinois in Effingham County or the United States District Court, Southern District of Illinois. You consent to jurisdiction of such courts in a civil action or legal proceedings and waive any objections to venue.

This Section 15 shall survive the termination of this Agreement for any reason.

16. NOTICES

We can provide notice to you regarding these Terms and use of your Payment Card in the Wallet by posting the material on our website, through electronic notice given to any electronic mailbox we maintain for you, through email at any email address you provide to us, by phone at any number provided to us, or by contacting you at the current address we have on file for you. You agree to update your contact information with us when it changes.

17. QUESTIONS?

If you have any questions, disputes, or complaints about the Wallet, you should contact the Wallet Provider. If you have any questions, or complaints about your Payment Card, you should contact us by email at info@midlandsb.com or by phone at 1-855-696-4352.