

**FIRST COMMUNITY BANK**  
**MOBILE BANKING AND MOBILE CHECK DEPOSIT TERMS AND CONDITIONS**

**END USER TERMS**

Mobile Banking and Mobile Deposit Services are provided to you by First Community Bank and powered by a Third Party (the "Licensor") mobile technology solution. Section A of these End User Terms and Conditions is a legal agreement between you and First Community Bank. Section B of these Terms and Conditions is a legal agreement between you and the Licensor.

**SECTION A**

This Agreement ("Agreement") governs your ("You", "Your," "Customer") use of the Mobile check deposit ("We", "Our") Mobile Banking and Mobile Deposit services, combined with your mobile device's text messaging capabilities.

Other agreements you have entered into with First Community Bank, including the Online Banking, Bill Pay (where applicable) and your Deposit Account Agreement(s), are incorporated herein by reference.

Except as modified by this Agreement, all terms and conditions in the Consumer Online Banking Terms and Conditions and Bill Pay Terms and Conditions remain in full force and effect. If there is a conflict with the Consumer Online Banking Terms and Conditions and/or the Bill Pay Terms and Conditions and this Agreement, this Agreement shall control.

Your use of the Mobile Banking and Mobile Deposit Services also requires your agreement to and compliance with an End User License Agreement required by the Mobile Banking and Mobile Deposit software provider and included at the end of this Agreement. Any breach of these End User Terms constitutes a breach under this Agreement.

Please read this Agreement carefully. You may request that we mail or email you a copy of this Agreement by calling 608-868-7644. By accessing Mobile Banking or by using any related services, including new services as they become available, you agree to comply with the terms and conditions set forth in this Agreement.

**1. Services**

First Community Bank offers Mobile Banking and Mobile Deposit as a service to our customers. Mobile Banking is not intended to replace access to Online Banking or other methods you use to manage your accounts. Mobile Banking and Mobile Deposit services ("Services") are designed to allow you to view activity, transfer money, pay bills using First Community Bank's online Bill Pay service, and make deposits into certain accounts that are eligible to receive mobile check deposits ("Mobile Accounts" ) by taking pictures of checks and delivering the images and associated deposit information to First Community Bank via an application (the "App" ) installed on your supported mobile device. The App is considered part of the Service.

First Community Bank makes Mobile Banking and Mobile Deposit Services available to our Online Banking customers at our sole discretion and this service may not be available to all First Community Bank customers.

## **2. Acceptance of these Terms**

Your use of Mobile Banking and Mobile Deposit constitutes your acceptance of this Agreement. This Agreement may be amended at any time by us without specific notice to you. In addition to this Agreement, you agree to be bound by and to comply with the applicable terms and conditions governing your account(s). Please consult your Account Agreement for information. You also agree to be bound by and to comply with the Online Banking Terms and Conditions and if applicable, Bill Pay Terms and Conditions.

First Community Bank reserves the right to change, modify, add, or remove portions of these Services without notice. Your continued use of the Mobile Banking and Mobile Deposit Services will indicate your acceptance of any such changes to the Services.

## **3. Equipment/Data Service**

To use the Services, you must obtain and maintain, at your expense, a supported mobile device with compatible hardware and software and suitable data service, as specified by First Community Bank's Mobile Banking provider. Neither we nor any of our service providers assumes responsibility for the operation, security, functionality or availability of any Wireless Device or mobile network which you utilize to access Mobile Banking.

We do not guarantee that your particular mobile device, mobile device camera, mobile device operating system, mobile carrier, or data service will be compatible with the Services.

You are responsible for understanding the operation and maintenance of your equipment. It is your responsibility to update your Mobile Banking app and your device's operating system as needed.

First Community Bank is not responsible for the cost of upgrading your equipment to stay current with Mobile Banking nor are we responsible under any circumstances for any damage to your equipment.

First Community Bank is not responsible for failures, errors, delays, or inability to access Mobile Banking caused by your equipment or by your failure to properly use Mobile Banking and Mobile Deposit Services.

We are not responsible for any third party software you may need to use the Services. Any such software is accepted by you, as is, and is subject to the terms and conditions of the software agreement you enter into directly with the third party software provider at time of download and installation.

Mobile phones with Internet capabilities are susceptible to viruses. You are responsible for making sure your equipment is protected from and free of viruses, worms, Trojan horses, or other harmful components which could result in damage to programs, files, phones, or that could result in interception of information by a third party.

We are not responsible for or liable for any indirect, incidental, special, or consequential damages that may result from harmful hardware or software components on equipment or liable if sensitive information accessed via Mobile Banking is intercepted by a third party.

You agree to comply with all applicable laws, rules and regulations in relation to the use of the Services. We make no representation that content or use of Mobile Banking is available for use in locations outside

the United States. Accessing from locations outside of the United States is at your own risk.

#### **4. Limitations**

Neither First Community Bank nor our service providers can always foresee or anticipate technical or other difficulties related to Mobile Banking. These difficulties may result in loss of data, personalization settings or other Mobile Banking interruptions. Neither we nor any of our service providers assumes responsibility for any disclosure of account information to third parties by someone other than us or our service providers, the timeliness, deletion, or failure to store any user data, communications or personalization settings in connection with your use of Mobile Banking.

We reserve the right to limit the number of Mobile Devices through which you may access the Service and to deactivate service to mobile numbers that have been inactive for 90 days or more.

You agree to exercise caution when utilizing the Mobile Banking application on your wireless device and to use good judgment and discretion when obtaining or transmitting information.

For security reasons, Mobile Banking and Mobile Deposit Services have qualification requirements, and we reserve the right to change the qualifications at any time without prior notice. We reserve the right to change, suspend or discontinue the Services, in whole or in part, or your use of the Services, in whole or in part, immediately and at any time without prior notice to you.

Information about activity is synchronized between the Mobile Banking and Online Banking systems. Transfer and payment information available via the Mobile Banking system may differ from the information available directly through Online Banking. Information available directly through Online Banking may not be available via the Mobile Banking system, may be described using different terminology, or may be more current than the information available via Mobile, including but not limited to account balance information. The method of entering instructions via the Mobile Banking system also may differ from the method of entering instructions in Online Banking.

We are not responsible for such differences, whether or not attributable to your use of the Mobile Banking system. Additionally, 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.

First Community Bank will make every reasonable effort to secure the service to prevent access by unauthorized persons and to prevent malicious content such as viruses. We reserve the right to take actions to protect our systems and information; we may at our discretion deny access to users of the mobile banking service.

The accounts that you access using the mobile banking service are subject to the terms and conditions of your Deposit Account Agreement, as well as the terms and conditions for Electronic Funds Transfer, Online Banking and, where applicable, Bill Pay.

Except as expressly provided in this Agreement, deposits made through the Service are subject to all limitations and terms set forth in the relevant deposit agreement governing your Mobile Account as it may be modified from time to time, including, but not limited to, those related to deposit acceptance, crediting, collection, endorsement, processing order and errors.

## **5. Security**

Once you have registered for Mobile Banking, your mobile device may be used to obtain information about your accounts and make transfers between your accounts. You are responsible for maintaining the security of your mobile device and, except as otherwise provided in this Agreement, you are responsible for all transfers made using your mobile device.

You agree to provide us with a valid mobile phone number and to notify us immediately if you lose, cancel, or make any changes to your registered device, including changing telephone numbers. In case of loss or cancellation of your mobile phone service, you agree to deactivate your device via the Mobile Banking Center in Online Banking or by calling your branch office.

In case of unauthorized access to your device, you agree to cancel enrollment associated with the device immediately via the Mobile Banking Center in Online Banking or by calling your branch office.

You agree to indemnify, defend, and hold us harmless from any third party claims, liability, damages or costs arising from providing us with a phone number that is not your own.

You agree that we will not be liable for failed, delayed, or misdirected delivery of, information; any errors in such information; any action you may or may not take or any disclosure of account information to third parties resulting from your use of Mobile Banking.

Although Mobile Banking will not display the full account number for any of your accounts, it will display other sensitive information about your accounts, including balances and transfer amounts. Anyone with access to your mobile device may be able to view this information. We are not liable for any damages or disclosure of information to third parties due to your inability to ensure the safety, security and integrity of your account and transactions when using Mobile Banking.

You further understand the importance of your role in preventing misuse of your accounts through the Mobile Banking. You agree to promptly examine your statement for each of your accounts as soon as you receive it and to report any suspicious or incorrect transactions by calling 608-868-7644 within 60 days (exclusive of weekends and applicable holidays).

If notified within such period, we shall correct and resubmit all erroneous files, reports, and other data at our then standard charges, or at no charge, if the erroneous report or other data directly resulted from our error.

You agree to protect the confidentiality of your account and account number, and your personal identification information.

Notwithstanding our efforts to insure the security of Mobile Banking, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be intercepted by others. We cannot and do not warrant that all data transfers utilizing Mobile Banking or e-mail transmitted to and from us, will not be monitored or read by others.

## **6. Mobile Bill Pay Service**

You agree to abide by the Bill Pay Terms and Conditions, including any amendments we may make from time to time.

For your protection, you must enroll in Bill Pay using your Online Banking access. You must also use your Online Banking access to add new payees to your Bill Pay account. Once payees have been entered via Online Banking, you may schedule one-time payments using your mobile device.

You agree that payments made using the Mobile Bill Payment Service are the same as those made using paper checks, drafts, transfers, or online payments and are bound by the same rules, regulations, state, and federal laws.

## **7. Mobile Deposit**

By clicking the electronic signature "acceptance" below and/or by your use of Mobile Deposit services, you and any joint owners or authorized users, jointly and severally, agree to the terms of this Agreement, including the following terms and conditions:

**A. Eligible Checks and Items.** You agree to scan and deposit only "checks" as defined in Federal Reserve Regulation CC and only those checks that are permissible under this Agreement or such other items as we, in our sole discretion, may elect to include under the Service.

Scanned items meeting our requirements will be converted to substitute checks, as defined in the Check Clearing for the 21st Century Act ("Check 21") and Federal Reserve Regulation CC, to facilitate the deposit and collection of such items. You agree to be bound by any clearinghouse agreements, operating circulars and image exchange agreements to which we are a party.

You agree that you will not use the Service to scan and deposit any checks or other items as shown below:

- Checks or items payable to any person or entity other than you or you and another person (endorsement must have both signatures);
- Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into;
- Checks or items containing alterations to any of the fields on the front of the check or item (including the MICR line), or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn
- Checks or items previously converted to a substitute check, as defined in Regulation CC;
- Checks or items drawn on a financial institution located outside the United States;
- Checks or items that are remotely created checks, as defined in Regulation CC;
- Checks that have previously been submitted through the Service; through a remote deposit capture service offered at any other financial institution; or by any other means;
- Checks or items not payable in United States currency;
- Checks or items dated more than 6 months prior to the date of deposit;
- Checks or items on which a stop payment order has been issued;
- Checks or items for which there are insufficient funds;
- Checks or items prohibited by our current procedures relating to the Service or which are otherwise not acceptable under the terms of your Mobile Account;

- Checks with any endorsement on the back other than that specified in this Agreement;
- Money Orders;
- Traveler's Checks;
- Insurance drafts; and
- Credit card cash advance checks.

Nothing in this Agreement should be construed as requiring First Community Bank to accept any check or item for deposit, even if we have accepted that type of check or item previously. First Community Bank is not required to identify any checks or items that you may scan and deposit that fail to meet the requirements of this Agreement.

**B. Endorsements and Procedures.** Before transmission, you agree to properly endorse any check or item transmitted through the Service with all necessary signatures.

You agree to supply any information in your possession that we may request regarding a check or item deposited or attempted to be deposited through the Service.

You agree to write "Mobile deposit on [date]" on the front of your check after you have received confirmation that your Mobile Deposit has been successfully transmitted.

You agree to retain the original items that have been deposited via Mobile Deposit for a reasonable period of time in order to verify reconciliation and credit or to balance periodic statements, but in no case beyond fifteen (15) days from the date processed. You agree to properly destroy and dispose of such original checks after such time.

During the period that you maintain the original checks, you understand and agree that you must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via Mobile Deposit) and (ii) unauthorized use of information derived from the original checks.

You understand and agree that when you destroy the original checks deposited through Mobile Deposit, you use a high degree of care to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process (e.g., through the use of competent shredding equipment) and that, once destroyed, the original checks are no longer readable or capable of being reconstructed.

You agree to follow any and all other procedures and instructions for use of the Service as we may establish from time to time.

**C. Transaction Limits.** Mobile deposit limits are determined at the sole discretion of First Community Bank and are subject to change without notice. Currently these limits are no more than \$2,500 per business day.

If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.

Mobile banking transfers from Savings and Money Market accounts are subject to the transaction limitations outlined in the Truth-In-Savings disclosure provided at account opening, which limit pre-

authorized transfers, automatic transfers, telephone transfers, online or mobile banking transfers, or transfers made by check, draft, debit card, or similar order payable to a third party to six per month.

**D. Funds Availability.** Deposits received after 4 p.m. CST will be processed on the next business day.

You agree that items transmitted using Mobile Deposit are subject to a different availability than checks deposited in person. Next day availability will apply to the first \$500 of the deposit and the remaining funds will be available in two business days.

If it is necessary to extend the check hold longer than two (2) business days, we will tell you when the funds will be available. In certain circumstances, we may make all or a portion of your funds available immediately.

You can review your available balance through Online or Mobile Banking to determine if a Mobile Deposit has been credited to your account.

All Mobile Deposits are subject to proof and verification. Acknowledgment of the receipt of a Mobile Deposit transmission does not constitute an acknowledgment by us that the deposit is correct or that the item will be accepted.

**E. Presentment Prohibitions.** You shall not present, or attempt to present, or allow others, either directly or indirectly, to present, or attempt to present, for deposit by any means (i) any substitute check that has already been presented for deposit via Mobile Deposit, or (ii) any original check, the substitute check of which has already been presented for deposit via Mobile Deposit.

In the event that you or any third party, presents, or attempts to present, a deposit in violation of this subsection, you agree to defend, indemnify, and hold us and our agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such substitute check or original check.

You agree that the aggregate amount of any items which are deposited more than once will be debited from your account, and to the extent funds in your account are insufficient to cover such amount, any balance shall be debited by us from any other deposit accounts with us in our sole discretion.

You further acknowledge that you are solely responsible for the cost of processing and handling of any original items which are imaged and deposited utilizing Mobile Deposit and you assume all liability to the drawer of any item imaged using Mobile Deposit or liability arising from our printing of any substitute check from those images.

**F. Image Quality.** You are responsible for the image quality of any check or item that you transmit. The image of a check or item transmitted to us via Mobile Deposit must be legible. The image quality of the checks and items must comply with the standards established by any clearing house we use, agreement we have with respect to processing checks or items, or any higher standard set by us.

You agree that we shall not be liable for any damages resulting from a check or item's poor image quality, including those related to rejection of or the delayed or improper crediting of such a check or item, or from any inaccurate information you supply regarding the check or item.

**G. Exception Items.** When we review and process your electronic check, we may reject any electronic image that we, in our sole discretion, determine to be ineligible for Mobile Deposit. We will notify you of any Exception Items.

You agree that you shall only deposit Exception Items to your accounts by depositing the original item on which the Exception Item is based.

You acknowledge and agree that even if we do not initially identify an electronic image as an Exception Item, the substitute check created by us may nevertheless be returned to us because, among other reasons, the electronic image is deemed illegible by a paying bank. Our failure to identify an Exception Item shall not preclude or limit your obligation to us.

**H. Financial Data.** We agree to transmit to you all the financial data under our control required to utilize Mobile Deposit and to act on appropriate instructions received from you in connection with Mobile Deposit. We shall exercise due care in seeking both to preserve the confidentiality of your number, password, or other personal information and to prevent the use of Mobile Deposit by unauthorized persons. In this connection, it is understood and agreed that implementation of our normal procedures for maintaining the confidentiality of information relating to our customers shall constitute due care, but shall not otherwise be under any liability of any kind for any loss incurred or damage suffered by you by reason of any misuse or unauthorized use of Mobile Deposit or disclosure of any confidential information of yours.

## **8. Fees**

First Community Bank does not charge for access your account through Mobile Banking or to make Mobile Deposits.

However, you are responsible for all fees associated with your accounts as described in our Schedule of Fees and Services. These may include, but are not limited to, chargeback fees, non-sufficient funds fees, Bill Pay service fees, and excessive activity fees.

You are solely responsible for any mobile phone or text messaging charges, internet access fees, and other expenses you incur by accessing your account through Mobile Banking. Please check with your mobile service provider for information on their fees.

## **9. Changes or Cancellation**

You may cancel your participation in Mobile Banking and/or Mobile Deposit services by calling us at 608-868-7644. You may reactivate Mobile Banking and/or Mobile Deposit services at any time after cancellation, provided your account is in good standing.

We reserve the right to change or cancel Mobile Banking services, in whole or in part, at any time without notice. We also reserve the right to temporarily suspend Mobile Banking services at our sole discretion.

We may also suspend or terminate your use of Mobile Banking and/or Mobile Deposit at any time without notice and for any reason, including but not limited to, your non-use of Mobile Banking Services.

We may immediately suspend or terminate your access to Mobile Banking in the event that we reasonably determine such suspension or termination is necessary in order to protect Mobile Banking and/or First Community Bank from harm or compromise of integrity, security, reputation, or operation.

You agree that we will not be liable to you or any third party for any modification or discontinuance of Mobile Banking.

Upon any termination of this Agreement, (i) You will immediately cease using Mobile Banking, and (ii) you shall promptly remit all unpaid monies due under this Agreement.

After suspension, cancellation or termination, First Community Bank may, but is not obligated to, continue making previously authorized transfers.

Suspension or termination of Mobile Banking by either party does not affect your obligations under this Agreement for transactions that have been or will be processed on your behalf. You will remain responsible for all outstanding fees and charges incurred prior to the date of termination.

In addition, you agree to keep your account(s) with us open and to maintain funds in such account(s) in amounts and for a period of time determined by us in our reasonable discretion to cover any outstanding checks and your obligations for returns of checks, warranty claims, fees and other obligations.

If any such liabilities exceed the amount in the applicable account, we may charge such excess against any of your other accounts with us, and you will pay immediately upon demand to us any amount remaining unpaid.

## **10. SMS Mobile Banking Terms**

Your use of SMS (short message service) Mobile Banking constitutes your agreement to these terms and conditions. You agree that we may send you text messages through your wireless provider.

We do not charge for SMS. However, you understand that you are responsible for any fees or other charges that your wireless carrier may charge for any related data or message services, including, without limitation, for short message service.

You understand that balances provided may not include recent or pending transactions that have not yet posted to your account and that other restrictions may apply. Please consult your Account Agreement for more information.

Notify us immediately if you lose, cancel or make any changes to your registered device. In case of unauthorized access to your device or SMS, you agree to cancel enrollment associated with the device immediately.

You agree to indemnify, defend, and hold us harmless from any third party claims, liability, damages or costs arising from your use of SMS or from you providing us with a phone number that is not your own.

You agree that we will not be liable for failed, delayed, or misdirected delivery of, an information sent through SMS; any errors in such information; any action you may or may not take in reliance on the information or SMS; or any disclosure of account information to third parties resulting from your use of SMS.

You have the right to withdraw this consent and cancel SMS at any time by texting the word "STOP" to 79680 from your registered mobile device. If you have questions please contact First Community Bank at 608-868-7644.

## **11. Use of Data**

We and our service providers will use the information you provide for the purposes of providing Mobile Banking Services and to prepare analyses and compilations of aggregate customer data that does not identify you (such as the number of customers who signed up for Mobile Banking in a month).

If you use location-enabled Mobile Banking, we may collect and process information about your actual location, such as GPS signals sent by a mobile device. We may use location information we collect in order to protect against actual or potential fraud.

We collect only information that is necessary to serve you and administer our business. Please refer to our Privacy Statement for more information.

## **12. Third Party Beneficiary**

You agree that our service providers may rely upon your agreements and representations in this Agreement, and such service providers are third party beneficiaries to this Agreement, with the power to enforce its provisions against you.

## **13. Warranty Disclaimers**

We and our service providers disclaim all warranties relating to the Mobile Banking Services or otherwise in connection with this Agreement, whether oral or written, express, implied or statutory, including, without limitation, the implied warranties of merchantability, fitness for particular purpose and non-infringement.

Neither we nor our service providers will be liable to you or any third party for any indirect, incidental, exemplary, special, punitive or consequential damages of any kind, or for any loss of profits, business, or data, whether based in statute, contract, tort or otherwise, even if we or our service providers, as applicable, have been advised of, or had reason to know of, the possibility of such damages.

You acknowledge and agree that we shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by us in performing Mobile Deposit, in accordance with or unintentional deviation from the terms and conditions of this Agreement, ,including exhibits or addenda. You acknowledge that our systems and procedures established for providing Mobile Deposit are commercially reasonable.

Maintenance of Mobile Banking, Mobile Deposit, or any related services may be performed from time-to-time resulting in interrupted service, delays, or errors. Attempts to provide prior notice of scheduled maintenance will be made, but we cannot guarantee that such notice will be provided.

UNLESS OTHERWISE REQUIRED BY LAW, WE SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE CAUSED BY MOBILE BANKING. NOR SHALL WE BE RESPONSIBLE FOR ANY LATE FEES, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OR MAINTENANCE OF MOBILE BANKING.

OUR LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY YOU AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDED THAT THE MAXIMUM AGGREGATE

LIABILITY OF US RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY YOU FOR MOBILE BANKING SERVICES RESULTING IN SUCH LIABILITY IN THE TWO MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED.

MOBILE BANKING IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF MERCHANTABILITY OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DISCLAIM ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF MOBILE BANKING (INCLUDING WITHOUT LIMITATION THAT MOBILE BANKING WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE).

We shall not be responsible for liability, loss or damage of any kind resulting from any delay in the performance of or any failure to perform our responsibilities hereunder due to causes beyond our reasonable control.

#### **14. User Conduct**

You agree not to use Mobile Banking or the content or information delivered through Mobile Banking in any way that would (a) infringe any third party copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve gambling, involve the sale of counterfeit or stolen items or use Mobile Banking to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation; (d) be false, misleading or inaccurate; (e) create liability for us

or our affiliates or cause us to lose (in whole or in part) the services of any third party providers; (f) be defamatory, trade libelous, threatening or harassing (g) may potentially be perceived as obscene or pornographic or contain child pornography or racially, ethnically or otherwise objectionable; (h) interfere with or disrupt computer networks or infect the computer networks with viruses; (i) interfere with or disrupt the use of Mobile Banking by any other party; (j) use Mobile Banking in any manner to gain unauthorized entry or access into our computer systems; or (k) resell or make any commercial use of Mobile Banking.

#### **15. Indemnification**

You agree to indemnify, defend, and hold us and our employees harmless (by counsel of our choosing) from and against every claim, demand, action, cost, loss, liability, cause of action of third parties, and expenses (including without limitation attorneys' fees) relating to our provision of or your use of any of Mobile Banking which we incur by (a) acting in accordance with this Agreement or as a result of your failure to abide by its terms, (b) your breach of any representation or warranty herein, (c) the willful misconduct, fraud, criminal activity, intentional tort or negligence of you or any of your representatives involving use of Mobile Banking; (d) the actions, omissions or commissions of you, your employees, consultants and/or agents relating to Mobile Banking; and (e) any transmission or instruction, whether or not authorized, acted upon by us in good faith. This paragraph shall survive termination of this Agreement.

#### **16. Severability**

If any provision of this Agreement is declared invalid by a court or other tribunal of competent jurisdiction then, such provision shall be ineffective only to the extent of such invalidity, so that the

remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

## **17. Governing Law**

Except for the End User License Agreement, all other portions of this Mobile Banking Service Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin, excluding that body of laws pertaining to conflict of laws.

All disputes relating to this Mobile Banking Service Agreement, excluding the End User License Agreement, are subject to the exclusive jurisdiction of the courts of Wisconsin and the parties expressly consent to jurisdiction and venue thereof and therein.

## **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 is 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**

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