



## **Viking Bank Mobile Remote Deposit Agreement**

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This Mobile Remote Deposit Agreement (“Agreement”) contains the terms and conditions for use of the Viking Bank (“Bank,” “us,” “we,” “our”) mobile check deposit service (“Service”) provided to you (“you,” “your,”). Other agreements you have entered into with Viking Bank in connection with your Viking Bank accounts and other services, including, as applicable, the Bank’s Terms and Conditions, Funds Availability Policy, Privacy Policy, Truth in Savings Disclosure, Electronic Funds Transfer Disclosure, Schedule of Fees and Account Signature Card (collectively, the “Account Documentation”) are incorporated by reference and made a part of this Agreement. In the event of a conflict between this Agreement and the Account Documentation, this Agreement will govern.

### **1. Services**

Mobile Remote Deposit service is designed to allow you to make mobile deposits (each such deposit a “Mobile Deposit” and collectively “Mobile Deposits”) to your checking, savings or money market accounts from home or other remote locations by using a mobile device with the Viking Bank downloadable mobile application “Software” to capture images of paper checks and transmitting the images and associated deposit information to Bank or Bank’s designated processor (“Processor”). You acknowledge and agree that Mobile Deposits made by you using this Service are not an “Electronic Fund Transfer” as that term is defined in the Consumer Financial Protection Bureau Regulation E. The terms “Bank” and “Processor” may be used interchangeably when used in relation to any services performed by a Processor on behalf of Bank including, but not limited to, the receipt and processing of images and check data and any notices related thereto. The mobile device must capture an image of the front and back of each Check (as herein defined) to be deposited (each an “Image” and, if more than one, “Images”) in accordance with the procedures outlined in the Agreement and provided to you in the Service documentation, (“Procedures”). After capture of the front and back Images and all other required data and information from the paper check, you will transmit, via the Internet, the Mobile Deposit containing the Images and all other required data and information from or pertaining to the check to Bank or Processor using the Software. Subject to compliance with the terms, provisions and conditions of this Agreement, Bank will provisionally credit the account or accounts designated by you for the amount of the deposit(s) on the day of receipt of the Mobile Deposit and enter the Images of the checks into the collection process, in accordance with the provisions of Bank’s Terms and Conditions pertaining to the account(s) into which the Mobile Deposit is to be made and this Agreement.

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

**Use of this Service, constitutes your acceptance of this Agreement.** This Agreement is subject to change from time to time. We will notify you of any material change via e-mail, or on our website by providing a link to the revised Agreement or by an online secure message. If required by this Agreement or by applicable law, notice will be given for the applicable required number of days in advance of each such material change. You will be prompted to accept or reject any material change to this Agreement the next time you use the Service after the Bank has made the change. Your acceptance of the revised Agreement along with the continued use of the Service will indicate your consent to be bound by the revised Agreement. Further, the Bank reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Service. Your continued use of the Service will indicate your acceptance of any such changes to the Service. No changes requested by you shall be effective unless received and agreed to in writing by Bank.

### **3. Limitations of Service**

When using this Service, you may experience technical or other difficulties. We will attempt to post alerts on our website or notify you via email of these interruptions in the Service. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. In the event that the Service is unavailable, you may deposit original checks at our branches or through our ATMs. Some of this Service has 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 this Service, in whole or in part, or your use of the Service, in whole or in part, immediately and at any time without prior notice to you.

#### **4. Hardware and Software**

In order to use this Service, you must obtain and maintain, at your sole cost and expense, a compatible mobile device and/or other hardware and Software that meets all technical requirements, as specified by the Bank from time to time, for the proper delivery of the Service and that fulfills your obligation to obtain and maintain secure access to the Internet. The Bank is not responsible for any third party software you may need to use this Service. Any such software is accepted by you as is and is subject to the terms and conditions of the software agreement you entered into directly with the third party software provider at time of download and installation. You understand and agree you may also incur, and shall pay, any and all expenses related to the use of the Service, including, but not limited to, telephone, mobile data, or Internet service charges. You are solely responsible for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of the Service. You understand and agree that you are solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with the Service and the cost thereof, and you hereby agree that you will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements. Bank is not responsible for, and you hereby release Bank from, any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using electronic mail or the Internet. Bank is not responsible for, and you hereby release Bank from, any and all claims or damages resulting from, or related to, defects in or malfunctions of your hardware or software, or failures of or interruptions in any electrical, telephone, mobile data, or Internet services. Bank hereby advises you, and you hereby agree to scan your mobile device hardware and software on a regular basis using a reliable mobile device virus detection product in order to detect and remove mobile device viruses.

#### **5. Fees**

A fee may be charged for this Service. You are responsible for paying the fees for the use of this Service. Any fee that is charged will be disclosed prior to your Mobile Deposit. The Bank may change the fees for use of this Service at any time pursuant to the section above titled "Acceptance of these Terms." You authorize the Bank to deduct any such fees from any Viking Bank account in your name, even if such deduction causes an overdraft in the account. Should you fail or refuse to pay any charges under this Agreement, you agree to pay all collection costs (including reasonable attorney's fees) that may be incurred by Bank.

In addition to the Service fees, you agree to pay all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Service, this Agreement, and/or the software or equipment made available to you (excluding any income tax payable by Bank). You are also responsible for the costs of any communication lines and any data processing charges payable to third parties.

#### **6. Eligible Items and Security Interest**

You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). You agree that the Image of the check that is transmitted to Bank (each such check and other item a "Check" and, if more than one, "Checks") shall be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code (1990 Official Text).

You agree you will not use this Service to scan and deposit any of the following checks or other items (each a "Prohibited Check" and, collectively, "Prohibited Checks"), which shall be considered ineligible:

- Checks or items payable to any person or entity other than the person or entity that owns the account in which the check is being deposited.
- **Checks or items that are drawn, or otherwise issued, by you on any account you maintain at another financial institution.**
- Checks or items containing an alteration to any of the fields on the front of the check or item, 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 is drawn.
- Checks or items payable jointly, unless deposited into an account in the name of all payees.
- Checks or items previously converted to a substitute check, as defined in Reg. CC or are "image replacement documents" that purport to be substitute checks.
- Checks or items drawn on a financial institution located outside the United States.
- Checks or items that are remotely created checks, as defined in Reg. CC.
- Checks or items not payable in United States currency.
- Checks or items dated more than six (6) months prior to the date of deposit.
- Checks or items prohibited by the Bank's current procedures related to this Service or which are otherwise not acceptable under the Terms and Conditions of your Viking Bank account.
- Checks or items payable on sight or payable through Drafts, as defined in Reg. CC.
- Checks or items with any endorsement on the back other than that specified in this Agreement.

- Checks or items that have previously been submitted through this Service or through a remote deposit capture service offered at this financial institution or any other financial institution.
- Checks or items that are drawn or otherwise issued by the U. S. Treasury Department.

If you deposit a Prohibited Check, you agree to indemnify and reimburse Bank for, and hold Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys fees) Bank may incur associated with any warranty, indemnity or other claim related thereto.

You grant Bank a security interest in all of your accounts or other deposits (whether general or special) at the Bank, and in all funds in such accounts or other deposits, to secure you obligations to Bank under this Agreement. This security interest will survive termination of this Agreement.

#### **7. Endorsements and Procedures**

You agree to restrictively endorse any Check transmitted through the Service with your name and the legend "For Mobile Deposit Only" or as otherwise instructed by the Bank. You shall capture an image of the front and back of each Check to be deposited and any other required data from each Check and transmit the Images to be deposited and all other required data and information from or pertaining to such Checks to Bank or its Processor in accordance with the Procedures. Bank reserves the right to amend the Procedures, with or without prior notice to you. You agree to comply at all times with the Bank's Secure Login procedures established for online account access and Bank's mobile "Security Procedures" and to safeguard the confidentiality and security of the Security Procedures and all other proprietary property or information Bank provides to you in connection with the Service and to notify Bank immediately if you have any reason to believe the security or confidentiality required by this provision has been or may be breached. You acknowledge, understand and agree the Security Procedures are not designed for the detection of errors. Bank is not, and will not be, obligated to detect errors by you or others, even if Bank takes certain actions from time to time to do so. To ensure accuracy, you shall key the amount of each Check prior to transmitting the Mobile Deposit in accordance with the Procedures. You may send multiple Mobile Deposits to Bank or Processor throughout the day, not to exceed the deposit limits discussed in Section 14 of this Agreement.

#### **8. Image Quality**

The Images of Checks transmitted to the bank using this Service must be legible, as determined in the sole discretion of the Bank. Without limiting the foregoing, each Image of each Check must be of such quality that the following information can be clearly read and understood by sight review of such Image:

- The amount of the Check;
- The payee of the Check;
- The signature of the drawer of the Check;
- The date of the Check;
- The Check number;
- The information identifying the drawer and the paying bank that is preprinted on the Check, including the MICR line; and
- All other information placed on the Check prior to the time an Image of the Check is captured, such as any required identification written on the front of the Check and any indorsements applied to the back of the Check.

Each Image shall also comply with any other requirements established from time to time by the Bank, and shall meet all standards for image quality established by the American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve, or any other regulatory agency, clearinghouse or association.

You shall ensure the scanned Image of the Check transmitted to Bank includes the full-field MICR encoding on each Check.

#### **9. Receipt of Mobile Deposit and Notification**

You agree that you shall be solely liable for, and Bank shall not have any liability whatsoever to you for, any Mobile Deposit or the Images or other information contained therein that are not received by Bank or for Mobile Deposits or the Images or other information contained therein that are intercepted or altered by an unauthorized third party or dropped during transmission. You agree that Bank has no obligation to accept a Mobile Deposit and, therefore, we reserve the right to reject any Mobile Deposit or the Images or other information contained therein transmitted through this Service, at our discretion, without liability to you. Bank has no obligation to notify you of the rejection of a Mobile Deposit or the Images or other information contained therein and shall have no liability to you for failing to do so. You agree to accept an electronic notification regarding the status of your transmitted Mobile Deposits or the Images or other information contained therein, including any notification of holds placed on the Mobile Deposit or any Image contained therein. A Mobile Deposit is considered received by Bank when a complete copy of the Mobile

Deposit has been written on a Bank electronic storage device in conformity with Bank's technical and operational requirements. To meet the Cut-Off Time (as defined below), the Mobile Deposit must be received by Bank prior to the Cut-Off Time and successfully pass the edits for conformity with the technical requirements. For purposes of determining when a Mobile Deposit has been delivered and received, Bank's records shall be determinative. Upon receipt of a Mobile Deposit, Bank will send a confirmation that we have received the Mobile Deposit. Your receipt of such confirmation does not mean the transmission was error free, complete or will be considered a Mobile Deposit and credited to your account.

Upon receipt of a Mobile Deposit submitted by you, Bank may examine such Mobile Deposit and the Images and other information contained therein to ensure that you have complied with this Agreement and followed the Procedures. If Bank determines that you have not complied with this Agreement or followed the Procedures or if errors exist in the Images or other information contained in the Mobile Deposit, Bank, in its sole discretion, may either reject the Mobile Deposit or elect to correct the error and accept and process the corrected Mobile Deposit (a "Corrected Mobile Deposit"). As a form of correction, Bank may credit your account for the full amount of the deposit and make any necessary adjustments to the account to correct the error. Bank may, at its option, also perform a risk management analysis of one or more Mobile Deposits submitted by you to detect potentially fraudulent Checks, and, in its sole discretion, Bank may reject any such Mobile Deposit or the Images or other information contained therein. If after examination of a Mobile Deposit and the Images and other information contained therein, Bank determines that you have complied with this Agreement and processed and transmitted the Mobile Deposit in accordance herewith and with the Procedures, the Bank shall accept the Mobile Deposit for deposit to your account. Notwithstanding the fact that Bank has accepted a Mobile Deposit for processing, any credit made to your account shall be provisional, and you shall remain liable to Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, Bank.

#### **10. Availability of Funds**

You agree that Mobile Deposits transmitted using this Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. To be eligible for processing on the day transmitted, Mobile Deposits must be received and accepted by Bank on or before the cut-off time established by Bank from time to time (the "Cut-Off Time") on a business day that the Bank is open. A Mobile Deposit that is received after the Cut-Off Time shall be deemed to have been received on the business day following the business day on which the Mobile Deposit is actually received by Bank. **Viking Bank's current Cut-Off Time is 3:00 p.m., Central Standard Time.** Bank reserves the right to change the Cut-Off Time. Any such change shall be effective immediately and may be implemented prior to your receipt of notice thereof. You may contact Bank at any time to verify the Cut-Off Time. Upon acceptance of the Mobile Deposit, Bank shall grant Provisional Credit (as herein defined) to your account for the total amount of the Corrected Mobile Deposit or the accepted Mobile Deposit, as applicable. "Provisional Credit" means that the credit is made to your account subject to final payment of the Checks and subject to the Bank's Terms and Conditions for your account. For the purpose of determining availability of funds, the Bank may hold funds for the period of time permitted by the Bank's Funds Availability Disclosure.

#### **11. Laws, Rules, and Regulations**

You agree to comply with all existing and future operating procedures used by Bank for processing of transactions. You further agree to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts, including, but not limited to, all rules and procedural guidelines established by the Board of Governors of the Federal Reserve and the Electronic Check Clearing House Organization ("ECCHO") and any other clearinghouse or other organization in which Bank is a member or to which rules Bank has agreed to be bound. These procedures, rules, and regulations (collectively the "Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control.

#### **12. Presentment**

The manner in which the Images are cleared, presented for payment, and collected shall be in the Bank's sole discretion subject to the Rules and Bank's Terms and Conditions governing your account. Bank, in its sole discretion, shall select the clearing agents used to collect and present the Images, and Bank's selection of the clearing agents shall be considered to have been designated by you.

#### **13. Maintenance and Disposal of Transmitted Checks**

You shall stamp the original check "Processed" after the process of scanning the Check. Upon your receipt of a confirmation from the Bank that we received your transmitted Image, **you agree to securely store the original Check for a period of 60 calendar days** from the date of the Image transmission (such period the "Retention Period"). During the Retention Period, you shall take appropriate security measures to ensure that: (a) only authorized individuals shall have access to original Checks, (b) the information contained on such Checks shall not be disclosed, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Upon expiration of the Retention Period, you shall destroy the original Check you transmitted as an Image using commercially reasonable methods of destruction approved by Bank. You hereby

indemnify Bank for, and hold Bank harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is (are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the destruction of original Checks by you. During the Retention Period, you agree to promptly (but in all events within 5 business days) provide the original Check to the Bank upon request.

#### **14. Deposit Limits**

We may establish limits on the dollar amount and/or number of Check Images or Mobile Deposits from time to time. If you attempt to initiate a Mobile Deposit in excess of these limits, your Mobile Deposit may be rejected. If we permit you to make a Mobile Deposit in excess of these limits, such Mobile Deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a Mobile Deposit at other times. **The current daily dollar limit per business day as well as limits for daily Images transmitted per business day have been emailed to you upon your acceptance to this service.** Bank reserves the right to change the limits. Any such change shall be effective immediately and may be implemented prior to your receipt of notice thereof. You may contact Bank at any time to verify the current limits.

#### **15. Return of Checks and Chargebacks**

If any Check deposited by you is dishonored or otherwise returned unpaid by the drawee bank, or returned by a clearing agent for any reason including, but not limited to, issues relating to the quality of the Image, you understand and agree that since you either maintain the original Check or have destroyed the original Check in accordance with Section 13 of this Agreement, the original Check will not be returned and that Bank may chargeback an image of the Check to your account. You further understand and agree the image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by the Bank, you agree not to deposit the original Check if an Image or other debit as previously described is charged back to your account. We further reserve the right to chargeback to your account at any time, any Check we subsequently determined was a Prohibited Check. You agree the Bank is not liable for any loss, costs, or fees you may incur as a result of our chargeback of a Prohibited Check.

#### **16. Errors of Checks Deposited**

You agree to notify the Bank of any suspected errors regarding Checks deposited through this Service right away, and in no event later than thirty (30) days after the applicable Viking Bank account statement is sent. Unless you notify the Bank within thirty (30) days, such statement regarding all Mobile Deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against the Bank for such alleged error.

#### **17. Update Notice**

You shall provide written notice to Bank of any changes to the information previously provided by you to Bank. Such notice must be received by Bank within ten (10) business days of the change. You shall provide any additional information requested by Bank within thirty (30) days of such request. Bank retains the right to: (i) review your Checks, Mobile Deposits and activities from time to time and (ii) re-price or terminate the Service based on changes to information you previously provided to Bank.

#### **18. Bank's Duties and Responsibilities**

Bank's duties and responsibilities are limited to those described in this Agreement, Bank's terms and conditions for your accounts, and any other agreements governing the accounts. Bank will use commercially reasonable care in performing its responsibilities under this Agreement. You agree to monitor your account balances and charges, to promptly notify Bank if any periodic statement conflicts with your records, and to refrain from acting on information you have reason to believe is erroneous. In all instances, Bank's and, if the services of a third party provider are utilized in the provision of the Service, such third party's sole liability to you shall be limited to the correction of any errors made. Bank shall not be responsible for suspension of performance of all or any of its obligations, responsibilities or covenants hereunder, whether expressed or implied, if at any time, or from time to time, compliance therewith is prevented or hindered by, or are in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U.S. Postal Service and commercial carrier(s), or electric power disruption or shortage, telecommunications failure or mobile device failures; acts, omissions or errors of any carrier and/or agent operating between you and Bank or Bank and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipients of transferred funds; any incorrect, unauthorized or fraudulent use or other fraud by any person other than Bank's employees; or, without limiting the generality of the foregoing, any other cause or circumstance beyond Bank's control or other conditions or circumstances not wholly controlled by Bank, which would prohibit, retard or otherwise affect Bank's complete or partial performance under this Agreement.

## **19. Internet Disclaimer**

Bank does not, and cannot, control the flow of any documents, files, data or other information via the Internet, whether to or from Bank's network, other portions of the Internet or otherwise. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt your connections to the Internet (or portions thereof). Bank cannot guarantee that such events will not occur. Accordingly, Bank disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall Bank be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the Internet infrastructure or your or Bank's ability or inability to connect to the Internet.

## **20. Financial Information**

Bank may from time to time request information from you in order to evaluate a continuation of the Service to be provided by Bank hereunder and/or adjustment of any limits set by this Agreement. You agree to provide the requested financial information immediately upon request by Bank, in the form required by Bank. You authorize Bank to investigate or reinvestigate at any time any information provided by you in connection with this Agreement or the Service and to request reports from credit bureaus and reporting agencies for such purpose. If you refuse to provide the requested financial information, or if Bank concludes, in its sole discretion, that your credit risk is unacceptable, or if you refuse to give Bank access to your premises, Bank may terminate the Service according to the provisions hereof.

## **21. User Warranties**

You warrant to Bank that:

- You will only deposit Checks that are authorized by this Agreement, the Procedures and Bank's terms and conditions governing your account.
- You will not (i) create duplicate Images of the Checks, (ii) transmit a duplicate Image to Bank, or (iii) deposit or otherwise negotiate the original of any Check of which an Image was created. You further warrant that no subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Check from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Check(s).
- No subsequent transferees of the Image(s), including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check.
- All data and other information you provide to the Bank, including, but not limited to, data contained in the MICR line of each Check is complete, accurate and true and complies with the requirements of this Agreement.
- You will comply with this Agreement and all applicable rules, laws and regulations.
- You are not aware of any factor which may impair the collectability of the Check.
- This Agreement is valid and enforceable against you in accordance with its terms, and the entry into, and performance of this Agreement by you will not violate any law, or conflict with any other agreement, to which you are subject.
- There is no action, suit, or proceeding pending or, to your knowledge, threatened, which if decided adversely, would affect your financial condition or operations.
- All Checks and your transactions are, and will be, bona fide. All signatures on Checks are authentic and authorized.
- You agree to indemnify and hold harmless Bank from and against any and all claims, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from a breach of any of your warranties, representations and/or obligations under this Agreement or any other agreement between you and Bank, including, but not limited to, Bank's terms and conditions governing your account. The terms of this paragraph shall survive the termination of this Agreement.

## **22. Cooperation with Investigations**

You agree to cooperate with the Bank in the investigation of unusual transactions, poor quality transmission, and resolution of client claims, including by providing, upon request and without further cost, any originals or copies of Checks deposited through the Service in your possession and your records relating to such Checks and transmissions.

## **23. Termination**

We may terminate this Agreement at any time for any reason. This Agreement shall remain in full force and effect unless and until it is terminated by the Bank. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use this Service for any unauthorized or illegal purposes or you use the Service in a manner inconsistent with the

terms of the Bank's Terms and Conditions, or any other agreement with us. Sections 6, 8, 11, 13, 15, 16, 21, 23, 27, 28, and 29 shall survive termination of this Agreement

#### **24. Enforceability**

We may waive enforcement of any provision of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of the Agreement. Any such waiver shall not affect our rights with respect to any other transaction or to modify the terms of this Agreement. In the event that any provision of this Agreement shall be deemed to be invalid, illegal, or unenforceable to any extent, the remainder of the Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

#### **25. Ownership and License**

You agree the Bank retains all ownership and proprietary rights in this Service, associated content, technology, and website(s), including, but not limited to, the object and source codes therefore, and any and all updates, upgrades, fixes and enhancements thereto and any and all documentation, user guides and instructions pertaining thereto. Your use of the Service is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Service. Without limiting the restriction of the foregoing, you may not use the Service (i) in any anti-competitive manner, (ii) for any purpose which would be contrary to the Bank's business interest, or (iii) to the Bank's actual or potential economic disadvantage in any aspect. You may use this Service only for the purpose intended in accordance with this Agreement. You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer, reverse compile, or create derivative works from any of the technology used to provide this Service.

#### **26. Other Terms**

You may not assign this Agreement. This Agreement is entered into in Alexandria, MN and shall be governed by the laws of the State of Minnesota and of the United States. The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement. This Agreement constitutes the entire statement of the terms and conditions that apply to the subject matter hereof. This Agreement supersedes any prior agreements between the parties relating to the Service.

#### **27. Indemnification and Liability; Third Party Claims**

You hereby indemnify Bank and each of its parents, subsidiaries and affiliates and their respective officers, directors, employees, members, partners, agents, insurers and attorneys (each an "Indemnified Party" and, collectively, the "Indemnified Parties") for, and hold each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorneys' fees) of any nature or kind (including those by third parties) arising out of, or related to, this Agreement, including all actions, causes of action, claims, damages, liabilities and expenses arising out of, related to or resulting from: (a) your (i) failure to report required changes, (ii) transmission of incorrect data to Bank or (iii) failure to maintain compliance with the Rules, (b) (i) Bank's provision of the Service, (ii) Bank's action or inaction in accordance with, or in reliance upon, any instructions or information received from any person Bank reasonably believes to be you, (c) your breach of any of your representations, warranties, covenants or other agreements or responsibilities under this Agreement and/or (d) your breach or violation of any Rules; provided, however, you are not obligated to indemnify Bank for any damages solely and proximately caused by Bank's gross negligence or willful misconduct.

#### **28. DISCLAIMER OF WARRANTIES**

YOU AGREE YOUR USE OF THIS SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THE SERVICES (i) WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED. YOU AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR THE SERVICE TO BE PERFORMED PURSUANT HERETO.

BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO YOU OR TO ANY OTHER PERSON AS TO ANY MOBILE DEVICE HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH THE SERVICE, INCLUDING, BUT NOT LIMITED TO, YOUR MOBILE DEVICE OR RELATED EQUIPMENT, YOUR COMPUTER SYSTEMS OR RELATED EQUIPMENT, YOUR SOFTWARE, OR YOUR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF BANK'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE

THAT YOU USE, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **29. LIMITATION OF LIABILITY**

ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, BANK SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND BANK'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) YOUR ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY YOU TO BANK FOR THE SERVICE. YOU AGREE THE BANK WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF THIS SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF THE BANK HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH BANK'S LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BANK'S LIABILITY TO YOU UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM BANK'S FAILURE TO EXERCISE ORDINARY CARE.

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