

**FIRST MINNETONKA CITY BANK  
ONLINE BANKING AGREEMENT**

**WHEN YOU ACCESS ANY OF YOUR ACCOUNTS FOR THE FIRST TIME THROUGH THE USE OF ONE OR MORE OF THE SERVICES DESCRIBED BELOW, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ANY ADDITIONAL TERMS AND CONDITIONS AS MAY BE APPLICABLE TO THE SERVICE BEING UTILIZED. IF YOU HAVE ANY QUESTIONS OR DO NOT UNDERSTAND ANY TERMS OF THIS AGREEMENT, PLEASE CONTACT THE BANK PRIOR TO YOUR USE OF THE SERVICES.**

The terms "we," "us," "our," and "Bank" refer to First Minnetonka City Bank. The terms "you" and "your" refer to each person listed who is entitled to use the Bank account according to such person's existing agreements with the Bank. If there is a conflict between the terms and conditions of this Agreement and one or more terms contained in the other agreements between you and Bank, this Agreement will control.

1. **SERVICES** - Bank agrees to provide you with the Online Banking Services described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Services"). You agree to the terms and conditions contained in this Agreement, including all exhibits attached hereto. (Some services may require prior bank approval.)

2. **IDENTIFICATION** - To utilize our Online Banking Services you must have one or more accounts with the Bank, an Internet Banking ID and a personal Password.

3. **OUR LIABILITY FOR FAILURE TO COMPLETE TRANSACTIONS.** – If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we might be liable for some of your losses or damages. However, we will not be liable:

- If through no fault of ours, you do not have enough money in your account to make a transfer or bill payment;
- If we are directed to prohibit withdrawals from the account by applicable law or court order; or if the money in your account is subject to legal process or other encumbrances restricting transfer;
- If your account is closed or if it has been frozen;
- If the transfer or bill payment would cause your balance to go over the credit limit for any credit arrangement set up to cover overdrafts;
- If you, or anyone you permit to utilize the Services, commits any fraud or violates any law or regulation;
- If any electronic terminal or telecommunication device malfunctions or is otherwise not working properly and/or prevents the utilization of the Services;
- If you have not provided us with complete and correct payment information, including, without limitation, the name, United States address, and payment amount for the payee on a bill payment;
- If you have not properly followed the instructions for using the Services;
- If circumstances beyond our control (such as fire, flood or improper transmission or handling of payments by a third party) prevent the utilization of the Services, including without limitation a transfer or bill payment, despite reasonable precautions taken by us.

4. **LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES** - The Bank's liability for damages arising out of this Agreement will not exceed the aggregate fees paid by you to the Bank as stated in this Agreement. In no event shall either party have any liability to the other party or any third party for any lost profits or costs of procurement of substitute goods or services or for any indirect, special or consequential damage resulting from or arising out of this Agreement. Notwithstanding the foregoing, in no event shall the Bank be liable for any losses or damages resulting from:

- Services and/or data provided by your data processing or telecommunications vendor(s);
- A virus, the prevention of which was beyond the reasonable control of bank, or
- A third party gaining access to the Bank's system and obtaining or altering data.

Except as otherwise provided in this Agreement or by law, we are not responsible for any loss, injury, or damage, whether direct, indirect, special or consequential, caused by these Services or the use thereof or arising in any way out of the installation, operation, or maintenance of your PC

equipment or mobile device. You, in consideration of being allowed access to the Services, agree to indemnify and hold the Bank harmless for any losses or damages to you resulting from use of the Services, to the extent allowed by applicable law.

**5. NO WARRANTIES** –The Bank makes no representations or warranties to you or any other person, expressed or implied, in law or in fact, regarding any of the services provided by the Bank under this agreement or any computer software products or programs provided by the Bank under this agreement, or as to the stability or compatibility of the Bank's software, equipment or communication interfaces with those used by you. THE SERVICE IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" AND FIRST MINNETONKA CITY BANK AND IT'S SERVICE PROVIDERS MAKE NO REPRESENTATION OR WARRANTY RELATING TO THE SERVICES, (INCLUDING, WITHOUT LIMITATION, THEIR PERFORMANCE, AVAILABILITY, CONTENTS OR FUNCTION) INCLUDING, WITHOUT LIMITATION, EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND TITLE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NON-PERFORMANCE OF THE SERVICE (INCLUDING ANY SOFTWARE OR OTHER MATERIALS SUPPLIED IN CONNECTION WITH THE SERVICES, IF APPLICABLE) SHALL BE FOR FIRST MINNETONKA CITY BANK TO USE COMMERCIALY REASONABLE EFFORTS TO PERFORM AN ADJUSTMENT OR REPAIR OF THE SERVICE.

**6. AUTHORITY** - You warrant to the Bank that you have full and complete authority to enter into this Agreement. Bank may accept oral or written instructions (including written instructions sent via facsimile or other electronic transmission) from any person. Any person may utilize the services that has been provided a PIN or user ID number by you or provides a valid PIN or user ID number (collectively "Authorized Person"). The Bank may require further written confirmation of instructions given orally or by facsimile. Any person authorized to sign on an account is also deemed to be authorized to conduct any transaction related to that account and the Bank may, at its discretion, rely on any written notice containing signatures of an Authorized Person if the Bank believes, in good faith, that the signature is genuine. Each Authorized Person may act alone. If the Bank receives conflicting instructions from Authorized Persons, the Bank may:

- Refuse to honor any of the instructions until the Bank receives instructions to which all Authorized Persons agree or
- Honor one or more of the instructions received,
- Submit to a court all funds which are subject to the conflicting instructions.

**7. SECURITY PROCEDURES - BY** accessing the Services, you hereby acknowledge that you will be entering a protected web site owned by the Bank, which may be used only for authorized purposes. The Bank may monitor and audit usage of the Services, and all persons are hereby notified that use of the Services constitutes consent to such monitoring and auditing. Unauthorized attempts to up-load information and/or change information on these web sites are strictly prohibited and are subject to prosecution under the Computer Fraud and Abuse Act 1986. You acknowledge and agree that you have approved such security procedures and that the procedures are commercially reasonable and adequate for the purposes intended. The Bank may rely on the security procedures identified herein to determine whether any instructions are authorized. You will be bound by instructions issued in your name (or in the name of your Authorized Persons) and accepted by the Bank in compliance with the security procedures set forth, whether or not you actually authorized such instructions. If the security procedures include a PIN or user ID number (collectively, a "password"), you agree that you and your Authorized Persons will keep the passwords confidential. If you believe or have reason to believe that any security procedure or password has or may have become known by unauthorized persons you will immediately notify the Bank in person or by telephone and agree to confirm that oral notification in writing to the Bank within 24 hours. The Bank shall have no liability for losses caused by unauthorized access to any confidential information in your control. You will hold Bank harmless from any losses, costs, suits, damages, liabilities and expenses resulting from your failure to keep the password confidential or otherwise adequately manage the use of the password. You will be liable for any instructions and other communications initiated before the Bank has received such notice and has had reasonable opportunity to act on such notice. Bank reserves the right to change any or all of the security procedures at any time by giving written notice (which may be made by email or facsimile) to you.

YOU UNDERSTAND THAT THERE ARE RISKS ASSOCIATED WITH USING THE INTERNET OR TELECOMMUNICATION SERVICE TO ACCESS YOUR ACCOUNT, AND THAT YOU WILL ADHERE TO YOUR RESPONSIBILITIES OUTLINED IN THESE SERVICE TERMS.

8. **E-MAIL COMMUNICATION** - The Bank will not communicate personal information or information about your accounts and your transactions with us via unsecured e-mail unless specifically authorized to do so by you. The Bank shall have no liability for any losses caused by unauthorized access to confidential information sent via e-mail whether initiated by you or by the Bank at your request and you will hold the Bank harmless from any losses, costs, suits, damages or expenses resulting there from.

9. **BUSINESS DAY** - Unless otherwise defined by this Agreement or as amended in an Exhibit, a Business Day is any day that the Bank is operating and open for business. Saturdays, Sundays and elected federal holidays shall not be considered Business Days. You may contact the Bank to inquire if a given Federal Holiday is determined by the Bank to be a Business Day. All transactions, deposits, instructions and entries received by Bank on a day, which is not a Business Day, will be treated as if received on the next Business Day. The Bank's normal business hours and Business Day cutoffs are listed in Exhibit "C".

10. **HOURS OF ACCESSIBILITY** - You can usually access your Bank accounts through the Services seven (7) days a week, 24 hours a day. However, at certain times, some or all of the Services may not be available due to system maintenance or reasons beyond the Bank's control. The Bank specifically does not warrant that the Services will be available at all times. During those times when services are not available, you may use touch-tone telephone service, a Bank ATM or a Bank branch to conduct your transactions (assuming you have applied for and been accepted to utilize such telephone and ATM services). A transfer, other than a wire transfer, initiated through the Services before 5:00 p.m. (Central Time) on a business day is posted to your account the same day. All transfers completed after 5:00 p.m. (Central Time) on a business day or on a Saturday, Sunday or banking holiday, will be posted on the next business day.

11. **TERMINATION** - Either party may terminate this Agreement and your access to the Services, in whole or in part, at any time by providing the other party written notice. If you want to terminate your access to the Services, call us at 952 935-8661. After receipt of your call, we will send a written termination authorization for you to sign and return to us. In order to avoid imposition of the next monthly fee, we must receive your written authorization to terminate three (3) days before your service charge is scheduled to assess. **RECURRING TRANSFERS WILL NOT NECESSARILY BE DISCONTINUED BECAUSE YOU TERMINATE ACCESS TO THE SERVICES. IF YOU WANT TO MAKE SURE THAT RECURRING TRANSFERS BETWEEN ACCOUNTS ARE STOPPED, YOU MUST FOLLOW THE PROCEDURES FOR CANCELING PAYMENTS OUTLINED IN EXHIBIT A BELOW.**

12. We reserve the right to terminate the Services, in whole or in part, at any time with or without cause and without **prior** written notice. The Bank may at its option discontinue making previously authorized transfers, including recurring transfers and other transfers that were previously authorized but not yet made. We also reserve the right to temporarily suspend the Services in situations deemed appropriate by us, in our sole and absolute discretion including when we believe a breach of system security has occurred or is being attempted. We may consider repeated incorrect attempts to enter your PIN or password as an indication of an attempted security breach. We will notify you after any termination or suspension of the Services. Such notice will identify the affected Services and the effective date of the action. Termination of the Services does not affect your obligations under this Agreement with respect to occurrences before termination.

13. **FEES AND CHARGES** - You agree to immediately pay the Bank for the Services in accordance with the Bank's fee schedule, which is included as part of Exhibit "B". The Bank may modify its fee schedule at any time upon 30 day prior written notice to you. You are also responsible for; any telephone, data or internet access charges which you may incur by accessing your accounts utilizing the Services, any charges imposed by third parties for receiving notices or "Alerts" provided by the Services and other applicable fees or charges imposed by others as a result of using the Services.

14. **AUTHORIZATION TO OBTAIN INFORMATION** - You agree that we may obtain and review your credit report from a credit bureau or similar entity. You also agree that we may obtain

information regarding your Payee Accounts in order to facilitate proper handling and crediting of your payments.

**15. DISCLOSURE OF INFORMATION TO THIRD PARTIES** - You authorize Bank and each of its affiliates to disclose to third parties information you have provided or that we or our affiliates have obtained about your accounts and the transfers you make:

- To comply with government agency rules, regulations, court orders, or other applicable law; or
- To verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- Where it is necessary for completing transactions or resolving errors involving the Services; or
- To our employees, service providers, auditors, collection agents, affiliated companies, or attorneys in the course of their duties and to the extent allowed by law: or
- To provide services relating to your account or to offer other products and services; or
- If you otherwise give us your written permission.

#### **Miscellaneous Terms and Conditions**

1. **SEVERABILITY** - If any section, provision or condition of this Agreement is deemed invalid or unenforceable, the provision deemed invalid or unenforceable will, to the extent permitted by applicable law, be deemed reformed so as to be valid and enforceable. If such reformation is not possible, this Agreement will be read as if that provision was never a part of it, and the remainder of the Agreement will be valid and enforceable.

2. **NO WAIVER** - No waiver of the terms of this Agreement will be effective, unless in writing and signed by an authorized officer of the Bank. If the Bank waives any failure or breach by you hereunder, such waiver will not operate to waive any other breach of the same or different provision.

3. **ADDITIONAL INFORMATION** - You agree to execute any additional documents and to provide any information (including information necessary to remake or reconstruct any deposit, transmission, file or entry) that the Bank reasonably requests.

4. **FORCE MAJEURE** - No party will be deemed to have breached this Agreement if it fails to perform because of a cause beyond the reasonable direct control of that party, and without fault or negligence of that party. Examples of causes beyond the reasonable direct control of a party include, without limitation, any failure or interruption of any electronic communication system between you and the Bank, equipment or software failure or malfunction, electrical, computer, or mechanical failure or malfunctions, action or inaction of government, civil or military authority, fire, strike, lockout or other labor disputes, flood, hurricane, war, riot, theft, earthquake, natural disaster, default of common carriers or third party vendors, and suspension in payments by another financial institution.

5. **SUCCESSORS AND ASSIGNS** - This Agreement is binding upon and is for the benefit of the Bank and you and their respective successors and assigns. The Bank may, at any time, assign this Agreement to any affiliate, subsidiary, parent, any company owned or controlled by any affiliate, subsidiary or parent company or any entity who acquires substantially of the business of the Bank. Otherwise, the Bank and you may not assign this Agreement to any other person without the express written agreement of the other party.

6. **AMENDMENTS** - We reserve the right to change the charges, fees or other terms described in this Agreement. When changes are made to any fees, charges, or other material terms, we will update this Agreement, and send a notice to you at least thirty (30) days in advance of the change. We do not need to provide you with any prior notice where an immediate change in the terms or conditions of this Agreement is necessary to maintain or restore the security of our system or an account. However, even in these cases, if the change is to be made permanent, we will provide you with a notice of the change with the next regularly schedule periodic statement we send you, or within thirty (30) days, unless disclosure would jeopardize the security of our system or an account.

7. **APPLICABLE RULES, LAWS, AND REGULATIONS** - This Agreement shall be governed by, and you agree to comply with, the laws and regulations of the State of Minnesota and applicable Federal laws and regulations. In addition, you agree to be bound by and will comply with the terms of this Agreement, requirements of Your Account, the Bank's rules and regulations and the rules and regulations of any funds transfer or wire system to which the Bank belongs. Any dispute between Bank and you must be brought in the relevant court in Hennepin County, Minnesota where the Bank

is located. Customer acknowledges that he/she has reviewed this Customer Agreement, understands the terms and conditions set forth herein, and agrees to be bound hereby.

8. **NOTICES** - Unless otherwise required by applicable law or specified by you, notices, disclosures or communication under this agreement will be considered effective if sent to you electronically to your e-mail address as reflected in our then current records. Otherwise, such notices shall be mailed to the most recent street address reflected in your Checking or Savings Account records at the bank. (Please notify the Bank at (952) 935-8661 if you do not wish to receive such notices electronically). Notices or Alerts requested under the "Alert" option will be delivered by e-mail message, text message or as an Online Banking notification. You agree that each Alert or notice may not be encrypted and may include your name and information pertaining to your Account(s). Receipt of any Alert or notice may be delayed, or prevented by factors affecting your Internet service provider(s), phone operator(s), and other relevant entities. We neither guarantee the delivery or the accuracy of any Alert or notice. First Minnetonka City Bank will not be liable for any losses or damages arising from (a) non-delivery, delayed delivery, or wrong delivery of any notice or Alert ; (b) inaccurate content of an Alert, or (c) your use or reliance on the contents of any Alert for any purpose. We reserve the right to terminate any request from you, for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays.

9. **ENTIRE AGREEMENT** - This agreement and all amendments, exhibits and attachments embody the entire agreement between you and the Bank regarding the services covered under this agreement. It supersedes all proposals and prior agreements and all oral discussions relating to the subjects covered by evidence of prior, contemporaneous or subsequent oral agreements between you and the bank.

#### **QUESTIONS OR ERROR CORRECTION ON ONLINE BANKING AND BILL PAY TRANSACTIONS**

1. In case of questions or errors about on-line funds transfers or bill payments made through the use of the Services, you should call your local branch.
2. Write to your local branch as soon as you identify any errors or discrepancies in your statement or transaction record, or if you need more information about a transaction listed on the statement or transaction record.
3. We must hear from you no later than sixty (60) days after we have sent the first paper or online statement on which the problem or error appeared. If you notify us orally, we may require that you send us your complaint or question in writing within ten (10) business days.
4. When you tell us about the problem, please:
  - Tell us your name and account number;
  - Describe the error or the transaction you are unsure about, and explain why you believe it is in error or what additional information you need;
  - Tell us the dollar amount of any suspected error;
  - For a bill payment, tell us the checking account number used to pay the bill, payee name, date the payment was sent, payment amount, reference number, and payee account number for the payment in question.
5. We will tell you the results of our investigation within ten (10) business days, or twenty (20) business days in the case of point of sale purchases, after we hear from you and we will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days, or ninety (90) days in the case of point of sale or international transactions, to investigate your complaint or question. If we decide to do this, we will re-credit your account within ten (10) business days, or twenty (20) business days in the case of point of sale or international transactions, for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days of this request, we will not re-credit your account. If we determine there was no error, we will send you a written explanation within three (3) business days after we finish our investigation and debit the amount of the error that we previously credited. You may request copies of the documents that we used in our investigation.

6. Unauthorized Transactions in Your Accounts: Notify us at once if you believe another person has improperly obtained your Online Password. Also notify us if someone has transferred or may transfer money from your account without your permission, or if you suspect any fraudulent activity on your account. To notify us, call or write to your local branch.
7. If your Online Password has been compromised and you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50 if someone used your Online PIN without your permission to access a Bank deposit account. If you do NOT tell us within two (2) business days after you learn of the loss or theft, and we could have stopped someone from taking money without your permission had you told us, you could lose as much as \$500. Also, if your statement shows withdrawals, transfers or purchases that you did not make or authorize, please notify us at once. If you do not notify us within sixty (60) days after the paper or Online statement was sent to you, and we could have stopped someone from taking money if you had told us in time, you may not get back any money you had lost after sixty (60) days. If extenuating circumstances, such as a long trip or hospital stay kept you from telling us, the time periods in this section will be extended.

## **Exhibit A SERVICES**

### **The Following Services are Available through Online Banking (subject to certain restrictions and limitations)**

#### **1. Basic Online Banking and Bill Payment**

You may use a Personal Computer ("PC") through an Internet connection to obtain your account balances and transaction information. Subject to certain limitation you may also use your text enabled cell phone to access your Account by subscribing to Mobile Banking. You may also use your PC to obtain statements on your accounts or transfer money between your accounts. However, transfers from your savings and Money Market accounts are considered pre-authorized transfers, and pre-authorized transfers are limited to six (6) per monthly statement cycle by federal regulation. In addition, you may use your PC to electronically direct us to make payments from your account to parties ("Payees") that you have selected to receive payment through the Services. You may make payments through the Services to any business professional, merchant, or friend. The "Account" means your designated bill payment personal checking account at the BANK from which we make bill payments on your behalf pursuant to this Agreement. By subscribing to, or using any of these Services you acknowledge that you agree to be bound by the terms of this Agreement.

##### **a. Your User Code and Password.**

Each individual who has access to Online Banking, including each individual named on joint accounts, must designate a Password. Your Password must be a minimum of 10 characters, up to a maximum of 17 characters, which must consist of at least one (1) number, one (1) lower case letter and one (1) upper case letter. You may be required to change your Password periodically to enhance security. If you forget your Password you may contact Customer Service at (952) 935-8661.

##### **b. Scheduling Payments.**

You may choose to add Bill Pay and use your PC to electronically schedule payments with the Service. Payments are posted against your balance available for withdrawal, as defined in the Bank's Funds Availability Policy, plus the available credit on your overdraft protection, if any, or other line of credit.

##### **c. Delivery of Your Payments and Transfers.**

You may schedule payments to be initiated on the current business day, on a future date, or on the same date of each month, subject to the restrictions in the Agreement. Although you can enter payment information through the Service twenty-four (24) hours a day, seven (7) days a week, payments can be initiated only on business days. Funds will be deducted from your Account on the business day on which a payment is to be "initiated." This date is referred to in this Agreement as the "Transaction Date." If you designate the initiation of a payment to occur on a day other than a business day, it will be initiated on the following business day. After funds are withdrawn from your Account, we may remit your payments by mailing your Payee a check, by electronic funds transfer, including ACH (Automated Clearing House) or by other means. Because of the time it takes to send your payment to them, your

Payees generally will not receive payment on the Transaction Date. This applies regardless of whether the payment is a next-day payment, a future payment, or a recurring payment, as described below. Therefore, in order to provide sufficient time for payments to be received by your Payees, the Transaction Date should be 5 to 7 business days prior to the date your payment is due, excluding any applicable grace periods (the "Due Date"). It will be helpful if you allow additional time for a payment to be completed the first time you send a payment to a Payee through the Service. This allows the Payee to adjust to the new form of payment. You may schedule a payment to be initiated on any business day or any future date. Payments must be scheduled by the normal cut-off time of 5:00 p.m. (Central Time) on any business day in order for the payment to be initiated for that business day. Transfers must be scheduled by the normal cut-off time of 5:00 p.m. (Central Time) in order for the transaction to be completed on that business day.

**d. Recurring Payments.**

Recurring payments are those made for the same amount and are made on a weekly, bi-monthly, monthly basis, etc. Once started, recurring payments will be made automatically until you tell us to stop or cancel the service and we have a reasonable opportunity to react.

**e. Cancelling Payment.**

You may use your PC to cancel a payment up to 5:00 p.m. (Central Time) on the business day your payment is scheduled to be initiated ("Transaction Date"). There is no fee for canceling payment Online. Canceling by other means must be made at least one (1) day prior to scheduled payment date. We may be able to stop individual payments after the transaction date if we are given timely notice. However, we cannot guarantee the ability to recall an item. Individual stop payment requests will be subject to the bank's regular stop payment fee (Exhibit B).

**f. Statements.**

All payments, transfers, and/or fees made with the Service will appear on your monthly Account statement. The Payee name, payment amount, and date of the payment will be shown for each payment made through the Service during that month.

**g. Alerts**

Using the "alerts" option you may instruct the Bank to notify (Alert) you whenever certain designated events occur with regard to your Account(s). You may receive Alerts through e-mail message(s) and/or text enabled cell phones. Each Alert will be effective after set up of the Alert parameters and delivery points using the Alert service. You will manage the types and timings of your Alerts and these Alerts may be stopped or suspended by you at any time.

## **2. Mobile Banking Services**

Mobile Banking is a personal financial information management service that allows you to use your mobile phone or compatible wireless device to conveniently access First Minnetonka City Bank Online Banking Services using a designated "App" installed on your smart phone or compatible wireless device. Subject to bank approval, you may also use the Mobile Deposit feature to deposit "eligible checks" to your eligible personal checking or savings account at First Minnetonka City Bank (subject to certain restrictions) using an image recorded by, and subsequently transmitted to us using your smart phone or compatible wireless device.

*Not all Mobile Banking Services are available on all types of Mobile devices. See our Web site at [www.fmcbank.com](http://www.fmcbank.com) for the most up-to-date list of Services.*

**a. Access.**

To access Mobile Banking Services you must first be an Online Banking user, then you must download the **Mobile Banking App (TouchBanking)** to your smart phone or compatible wireless device and agree to the specified terms and conditions prior to its activation. Once activated you may use your device to access all of the services available through Online Banking (See Exhibit D for the Mobile Banking Addendum to our Online Banking Agreement for additional Terms and Conditions.).

**b. Mobile Deposit.**

If you qualify for Mobile Deposit you must first be an Online Banking customer, have the Mobile Banking App installed and have a smart phone or compatible wireless device capable of recording and transmitting images that meet the technical standards required by the banking industry for

electronic presentment between banks (See Exhibit D for additional Terms and Conditions governing Mobile Deposit).

**c. Fees.**

Charges for any and all of the above listed services shall be automatically deducted from customer's Account and BANK shall provide to Customer monthly notice of such debit(s) on your statement. (See Exhibit B for the Schedule of Service Fees.)

**d. Equipment.**

You are solely responsible for the equipment (including, in the case of Online Banking, your personal computer or cell phone and enabling software) you use to access the Service. We are not responsible for errors or delays or your inability to access the Services caused by your equipment. We are not responsible for the cost of upgrading your equipment to stay current with the Services nor are we responsible, under any circumstances, for any damage to your equipment or the data resident thereon.

**Exhibit B SERVICE FEES SCHEDULE**

**Online Banking Fees**

ONLINE BANKING AND MOBILE BANKING ARE COMPLIMENTARY SERVICES OFFERED TO CUSTOMERS OF FIRST MINNETONKA CITY BANK.

FOR MOBILE BANKING AND ALERT NOTIFICATION THIRD PARTY MESSAGE AND DATA RATES MAY APPLY.

REFER TO YOUR "TRUTH IN SAVINGS" DISCLOSURE FOR OTHER FEES AND SERVICE CHARGES ASSOCIATED WITH YOUR DEPOSIT ACCOUNTS.

**Exhibit C BUSINESS DAYS**

The Bank's regular business days for processing transactions are Monday through Friday (except federal holidays) subject to the cut off times listed below:

For Online Banking	(Except Mobile Deposit)	5:00 PM Central Time
For Mobile Deposit		3:00 PM Central Time

Transactions conducted after these times will be recorded on the following business day. Transactions conducted after the Friday cut off, on Saturday, or Sunday will be recorded the following business day. Likewise, transactions conducted on federal holiday will be recorded as of the first business day following the holiday.

**Location, Services and Business Hours**

**Country Village**

11500 Highway 7  
Minnetonka, MN 55305  
Phone: 952-935-5995  
Fax: 952-935-1611

Commercial Loans

Consumer Loans

Mortgage Loans

Bookkeeping

New Accounts

Safe Deposit

Walk in and Drive up Tellers

**Glen Lake**

14550 Excelsior Blvd.  
Minnetonka, MN 55345





(iv) and make other banking transactions using compatible and supported mobile phones and/or other compatible and supported wireless devices, and ;  
(v) with the bank's approval, access Mobile Deposit to remotely deposit checks to your accounts at First Minnetonka City Bank .

Not all Mobile Banking Services are available on all types of mobile devices. See our Web site at [www.fmcbank.com](http://www.fmcbank.com) for the most up-to-date list of Services. We reserve the right to modify the scope of the Mobile Banking Services at any time. We reserve the right to refuse to make any transaction you request through Mobile Banking. You agree and understand that Mobile Banking may not be accessible or may have limited utility over some mobile networks, such as while roaming.

**D. Use of Mobile Banking Services.** Mobile Banking will not work unless you use it properly. You accept responsibility for making sure that you understand how to use Mobile Banking before using, and that you always use Mobile Banking in accordance with any online instructions that may be delivered to you. You also accept responsibility for making sure that you know how to properly use your Wireless Device and the Mobile Banking software ("Software").

From time to time we may change, upgrade, or add new features to Mobile Banking.

In the event of such changes, you are responsible for making sure that you understand how to use the updated or changed version of the Mobile Banking software. We will not be liable to you for any losses caused by your failure to properly use Mobile Banking, Mobile Deposit or your Wireless Device.

**E. Relationship to Other Agreements.** You agree that when you use Mobile Banking you will remain subject to the Terms and Conditions of all your existing agreements with us and our affiliates. You also agree that you will continue to be subject to the Terms and Conditions of your existing agreements with any unaffiliated service providers, including, but not limited to, your mobile service carrier or provider (e.g., AT&T, Verizon, Sprint, T-Mobile, Alltel, etc.), and that this Addendum does not amend or supersede any of those agreements. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (for example, your mobile service carrier or provider may impose data usage or text message charges for your use of or interaction with Mobile Banking, including while downloading the Software, receiving or sending Mobile Banking text messages, or other use of your Wireless Device when using the Software or other products and services provided by Mobile Banking), and you agree to be solely responsible for all such fees, limitations and restrictions. You agree that only your mobile service carrier or provider is responsible for its products and services, and that your mobile service carrier is not the provider of Mobile Banking. Accordingly, you agree to resolve any problems with your carrier or provider directly with your carrier or provider without involving us. You also agree that if you have any problems with Mobile Banking, you will contact us directly.

## II. MOBILE BANKING SOFTWARE LICENSE AGREEMENT

**A. License.** Subject to any compliance with this Addendum, you are hereby granted a personal, limited, non-transferable, non-exclusive, non-sub licensable and non-assignable license ("License") to download, install and use the Software on your Wireless Device within the United States and its territories. In the event that you obtain a new or different Wireless Device, you may be required to download and install the Software to that new or different Wireless Device.

**B. License Restrictions/Revocation.** This License shall be revoked immediately upon any of the following conditions,

- (i) your termination of Mobile Banking;
- (ii) your deletion of the Software from your Wireless Device;
- (iii) your noncompliance with this Addendum; or

(iv) written notice to you at any time, with or without cause.

In the event this License is revoked for any of the foregoing reasons, you agree to promptly delete the Software from your Wireless Device and/or discontinue use. We and our service providers (which includes, without limitation, any provider of Software such as Fiserv) reserve all rights not granted to you in this Addendum.

**C. Software.** The Software shall be used solely in connection with Mobile Banking and may not be used by you for any other reason. You may not grant any sublicenses to the Software. You agree that you will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Software, (ii) copy or reproduce all or any part of the technology or Software, or (iii) interfere, or attempt to interfere with the technology or Software. The Software does not include various third party operating systems and applications that will be required to use the Software. You will be solely responsible for such third party software. You acknowledge that the Software contains trade secrets and other proprietary and confidential information, whether or not the Software contains any copyright or other proprietary notice. You agree to take commercially reasonable precautions to protect the confidentiality of the Software. You (a) will not print, copy, or duplicate any portion of the Software, (b) will not alter any copyright notices on the Software, (c) will not make the Software available in any form to anyone except your agents for purposes specifically related to your authorized use, (d) will take appropriate action with any persons permitted access to the Software to inform them of the confidential nature thereof and to obtain their compliance with the terms of this paragraph, (e) only will use the Software for your personal use and not for the benefit of any other person or entity, and (f) will comply with all of our procedures and requirements for use of the Software. The provisions of this paragraph will survive termination of this Agreement.

### III. YOUR OBLIGATIONS

When you use Mobile Banking to access accounts you designate during the registration process, you agree to the following:

**A. Account Ownership/Accurate Information.** You represent that you are the legal owner of the accounts and other financial information that may be accessed via Mobile Banking Services. You represent and agree that all information you provide to us in connection with Mobile Banking is accurate, current and complete, and that you have the right to provide such information. You also agree not to misrepresent your identify or your account information. You agree to keep your account information up to date and accurate. You agree that we and our service providers may send you, by SMS text message, e-mail, and other methods, communications relating to Mobile Banking (with an opportunity to opt-out), including without limitation welcome messages, information and requests for information relating to use of Mobile Banking Services and other Online Banking Services. You agree to use Mobile Banking carefully, to keep your password confidential and secure and not share it with others, to check your statements and transactions regularly, to report any errors to us promptly by calling us at (952) 935-8661 and to cancel immediately your participation in Mobile Banking if you observe any material errors in the Mobile Banking Services.

**B. Location-Based Information.** If you use any location-based feature for Mobile Banking you agree that your geographic location and other personal information may be accessed and disclosed through Mobile Banking. If you wish to revoke access to such information you may cease using location-based features of Mobile Banking.

**C. Export Control.** You acknowledge that the Software is subject to the United States (U.S.) government export control laws and regulations, which may restrict or prohibit the use, export, re-export, or transfer of the Software. You agree that you will not directly or indirectly use, export, re-export, or transfer the Software except in compliance with applicable U.S. export laws and regulations. Without limitation, you agree that you will not use Mobile Banking in any embargoed or sanctioned country.

**D. Proprietary Rights.** You are permitted to use content delivered to you through Mobile Banking Service only on Mobile Banking. You may not copy, reproduce, distribute, or create derivative works from this content. Further, you agree not to reverse engineer or reverse compile any Mobile Banking technology, including, but not limited to, any Software or other mobile phone applications associated with Mobile Banking.

**E. User Conduct.** You agree not to use Mobile Banking Services or the content or information delivered through Mobile Banking in any way that would: (a) infringe any third-party copyright, patents, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the Software; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of Mobile Banking to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to Mobile Banking; (i) interfere with or disrupt the use of Mobile Banking by any other user; or (j) use Mobile Banking in such a manner as to gain unauthorized entry or access to the computer systems of others.

**F. No Commercial Use or Re-Sale.** You agree that the Mobile Banking Services are for personal use only. You agree not to resell or make commercial use of Mobile Banking.

**G. Indemnification.** You agree to indemnify, defend, and hold us and our affiliates and service providers harmless from and against any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable attorneys' fees) caused by or arising from your use of Mobile Banking, your violation of this Addendum, your violation of applicable federal, state or local law, regulation or ordinance, or your infringement (or infringement by any other user of your account) of any intellectual property or other right of anyone.

#### **IV. CHARGES FOR THE SERVICE**

You agree to pay for Mobile Banking in accordance with our current fee schedule and as amended from time to time. We will advise you of any fee changes prior to implementing them. You authorize us to automatically charge your account for all such fees incurred in connection with Mobile Banking. In the future, we may add to or enhance the features of Mobile Banking. By using such added or enhanced features, you agree to pay for them in accordance with our Schedule of Fees.

#### **V. ADDITIONAL PROVISIONS**

##### **A. Mobile Banking Services Limitations.**

1. Neither we, nor any of our service providers, including Fiserv, 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.
2. Neither we, nor any of our service providers, including Fiserv, assume responsibility for any disclosure of account information to third parties, the timeliness, deletion, misdelivery or failure to store any user data, communications, or personalization settings in connection with your use of Mobile Banking.
3. Neither we, nor any of our service providers, including Fiserv, assume responsibility for the operation, security, functionality or availability of any wireless device or mobile network that you utilize to access Mobile Banking.
4. 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.

5. Information about activity is synchronized between the Mobile Banking software and our website. Transfer and payment information available via the Mobile Banking software may differ from the information that is available directly through our website. Information available directly through our website may not be available via the Mobile Banking software, may be described using different terminology, or may be more current than the information available via the Mobile Banking software, including but not limited to account balance information. The method of entering instructions via the Mobile Banking software also may differ from the method of entering instructions through our website. We are not responsible for such differences, whether or not attributable to your use of the Mobile Banking software. 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.

**B. Changes or Cancellation.** You may cancel your participation in Mobile Banking by calling us at (952) 935-8661. We reserve the right to change or cancel Mobile Banking at any time without notice. We may also suspend your access to Mobile Banking at any time without notice and for any reason including but not limited to, your non-use of Mobile Banking Services. You agree that we will not be liable to you or any third party for any modification or discontinuance of Mobile Banking.

**C. Use of Data.** We, and our service providers, will use information you provide for purposes of providing the 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).

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

#### **E. Limitations and Warranty Disclaimers.**

WE AND OUR SERVICE PROVIDERS DISCLAIM ALL WARRANTIES RELATING TO THE MOBILE BANKING SERVICES OR OTHERWISE IN CONNECTION WITH THIS ADDENDUM, 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 OR, HAVE REASON TO KNOW OF, THE POSSIBILITY OF SUCH DAMAGES. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE BANKING REGULATIONS, UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF US OR OUR SERVICE PROVIDERS TO YOU IN CONNECTION WITH THE MOBILE BANKING SERVICES OR OTHERWISE UNDER THIS ADDENDUM EXCEED \$5,000.

#### **VI SPECIAL MOBILE DEPOSIT TERMS AND CONDITIONS**

The following additional terms and conditions are specifically applicable to Mobile Deposit offered by First Minnetonka City Bank. By enrolling to use Mobile Deposit, you agree to be bound by the terms and conditions contained in this Agreement:

**1. Definitions.** The following specific terms as used in this agreement shall be defined as follows:

- a.** *Deposit Account Terms and Conditions:* The First Minnetonka City Bank account "Terms and Conditions" associated with your account, provided to you at the time the account was opened or as may have been subsequently amended.

- b. *Drawn on:* When this or a similar phrase is used with reference to an account, it refers to an account owned by the “payor” holding the funds represented by the check.
- c. *Drawee:* The financial institution holding the account that a check is “drawn on”.
- d. *Endorsement:* the “payees” signature(s) and other required information on the back of the check
- e. *Payee:* The person to whom a check or draft is made payable.
- f. *Payor:* The person who signs the check and orders payment.
- g. *Eligible Account:* A personal savings or checking account at First Minnetonka City Bank owned by a consumer and used only for consumer purposes.
- h. *Eligible check:* A negotiable payment order as defined under the UCC which:
  - i. is drawn on a domestic financial institution,
  - ii. lists you as payee,
  - iii. does not list any other payees (unless also listed jointly on your account),
  - iv. is not stale dated (more than 6 months old) or post dated (dated after the date of deposit.),
  - v. has not been previously negotiated,
  - vi. has not been previously presented or submitted for payment or credit to First Minnetonka City Bank or any other financial institution including the institution holding the account that the check is drawn on,
  - vii. does not contain evidence of alteration, or forged signature or for which you know or have reason to suspect is fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
  - viii. is not known or suspected to be subject to a Stop Payment or drawn on an account with insufficient funds, and
  - ix. does not exceed your per item or daily deposit limit.

**2. Description of Mobile Deposit Service.** Mobile Deposit is offered as a special function offered through Mobile Banking; It allows you to deposit eligible checks into certain eligible First Minnetonka City Bank accounts with your mobile device camera using the Mobile Application or “Mobile App”. To use Mobile Deposit, you must be a First Minnetonka City Bank eligible account holder and have agreed to the Online Banking and Mobile Banking User Agreements. You may transmit deposits to us electronically only from a mobile capture device located in the United States.

**3. Equipment.** To use Mobile Deposit, you must have a supported mobile device, such as a smart phone that is compatible with Mobile Deposit, with a camera and a supported operating system, have a data plan for your mobile device, and download the App to your mobile device. We do not guarantee that all mobile devices and operating systems are compatible with Mobile Deposit.

**4. Eligible Items.** You agree to use First Minnetonka City Bank’s Mobile Deposit to scan and submit only eligible checks for deposit and agree that we will only accept eligible checks for credit to your account. First Minnetonka City Bank reserves the right to reject any item that does not qualify as an eligible check.

**5. Requirements.** Each image must provide all the information that is contained on the front and back of the original check at the time it is presented to you by the payor including but not limited to the following

information: Information about the payor and the financial institution on which the check is drawn that is preprinted on the original check; the numerical encoded information at the bottom of the check; the payor's signature(s); and all required endorsements applied to the back of the original check.

Endorsements must be made on the back of the check within 1 1/4 inches from the top edge. Your endorsement must include your signature and the words "FOR MOBILE DEPOSIT ONLY" Any loss we incur from a delay or processing error resulting from irregular endorsement or other markings by you will be your responsibility.

If the check is made payable to you and another payee, both of you must endorse the check, and it may only be deposited in a First Minnetonka City Bank account jointly owned by both payees. We may not accept checks with multiple endorsements for deposit unless we can verify each endorsement.

**6. Image Quality.** The check images transmitted to us must be legible and meet the standards established by the American National Standards Institute, The Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association. Items with poor image quality may delay the deposit process, and you may be instructed to deposit the check using other methods. You agree that we shall not be liable for any damages resulting from items with poor image quality, including those related to rejection of, or the delayed or improper crediting of such a check, or from any inaccurate information you supply regarding the check or item.

**7. Receipt of Deposits.** All images processed through Mobile Deposit and accepted by us will be treated as "deposits" under your current Account Terms and Conditions and will be subject to all the terms included therein. When we receive an image we will notify you only if an image is rejected. We reserve the right to reject any check transmitted through the Service, at our discretion, without liability to you. Reasons for rejecting a check may include but not be limited to the following: incomplete or missing endorsement; illegible or poor image quality; altered check; duplicate check; resubmission of a check previously returned to us unpaid by the drawee for any reason or item(s) in excess of the deposit limits. First Minnetonka City Bank is not responsible for processing or transmission errors that may occur, or for deposited items that we do not receive. Following receipt, we may process the image by preparing a "substitute check" or using the image to clear the item.

**8. Deposit Limits.** The total amount of any check or group of checks deposited on any business day may not exceed \$1,500. This limit may change from time to time without notice. Checks transmitted that exceed your limits may result in a rejection of the deposit.

**9. Cut-Off Times for Deposits.** Deposits sent using Mobile Deposit may be "submitted" any time of day, weekend, or holiday. However, deposits received by us after the daily cut-off time for electronic deposits will be deposited the next business day, provided that the deposit meets all requirements. Deposits submitted on holidays or weekends will also be deposited the next business day, provided it meets all requirements. The daily cut-off time for these electronic deposits is 3:00 P.M. Central Time and is subject to change without notice to you.

**10. Returned Items.** All deposits accepted by First Minnetonka City Bank through Mobile Deposit are provisional. If an original check deposited using Mobile Deposit is dishonored, rejected or otherwise returned unpaid by the drawee for any reason, including without limitation issues related to the quality of the image that you have transmitted to us, we will charge the deposit back to your account at First Minnetonka City Bank. As with any returned item, you will be responsible for reimbursing us for any loss, cost, damage or expense caused by or related to the processing of the returned item. You may not attempt to resubmit or otherwise negotiate an original check through Mobile Banking if it has previously been charged back to your account. If a check deposited to your account is returned to us, we reserve the right of "offset" by debiting the account to which it was originally deposited, or by debiting any other account you may have with First Minnetonka City Bank. You will be responsible for any overdraft, returned item, NSF or other account fees that may result from a charge back.

**11. Availability of Funds Deposited.** Funds deposited using Mobile Deposit will generally be made available on the first business day following the date deposited, as determined by the specified Cut-Off times described above. In certain situations, the bank may place a case by case or exception hold on specific items deposited using Mobile Deposit. In the event a longer hold is placed on an item deposited through Mobile Deposit, you will receive a notice describing the reason for the hold and letting you know when the funds will be made available. See the Bank's Funds Availability Policy for additional details.

**12. Errors.** You must notify us of any errors, or suspected errors, related to the items deposited through Mobile Deposit as soon as possible after they occur, and in no event later than 60 days after the related account statement is sent. You can contact us by calling 1(888) 935-8191 or by visiting a branch. Unless you notify us within 60 days after the account statement containing the deposits made through Mobile Deposit is deemed correct, you cannot bring a claim against us for any alleged errors.

**13. Destruction of Original Check.** Upon confirming that you received full credit for the check deposited, you must destroy the check by shredding or other means, or clearly mark "VOID" or "Electronically Deposited" on the front and back of the check. This prevents the check from being presented for deposit another time. You agree never to re-present to us or any other party a check or item that has been deposited through the Service. You will be liable for checks that are presented and/or deposited more than once.

**14. Fees.** Depending on the type of account(s) you have with First Minnetonka City Bank, there may be a fee to use Mobile Deposit. If applicable, you agree to pay the fee for the Service as set forth in our fee schedule and as may be changed from time to time. Internet data usage rates may apply from your Internet service provider or mobile carrier.

**15. Indemnity.** You warrant to First Minnetonka City Bank that:

- a. You will only transmit eligible checks and items that you are entitled to, and ensure that all checks and items include all required signatures.
- b. Images will meet First Minnetonka City Bank's image quality standards.
- c. You will not transmit an image or images of the same check or item to us more than once and will not deposit or negotiate, or seek to deposit or negotiate, such check or item with any other party.
- d. You will not deposit or re-present the original check for deposit.
- e. All information you provide to us is accurate and true, and that all transmitted images accurately reflect the front and back of the check.
- f. You will comply with this Agreement and all applicable rules, laws and regulations.
- g. You will use the Mobile Deposit only for your own deposits.

You agree to indemnify and hold harmless First Minnetonka City Bank from any loss for breach of this warranty provision or the terms of this Agreement.

**16. Security of Your Mobile Device.** You are responsible for (i) maintaining the confidentiality and security of your Mobile Devices, access number(s), password(s), security question(s) and answer(s), account number (s), login information, and any other security or access information, used by you to access Mobile Deposit, and (ii) preventing unauthorized access to or use of the information, files or data that you store, transmit or use in or with Mobile Deposit. You agree not to supply your Access Information to anyone and to immediately notify us if you become aware of any loss, theft or unauthorized use of your Mobile Devices



or any Security Information used by you to access Mobile Deposit. We reserve the right to deny you access to Mobile Deposit if we believe that any loss, theft or unauthorized use of access information has occurred.

**17. Limitations.** When using Mobile Deposit, you may experience technical or other difficulties that are outside the control of First Minnetonka City Bank. We are not responsible for damages that you may incur as a result of these difficulties or unavailability of Mobile Deposit.

**18. Changes to the Service.** We reserve the right to terminate, modify, add and remove features from Mobile Deposit at any time in our sole discretion. You may reject changes by discontinuing use of Mobile Deposit. Your continued use of Mobile Deposit will constitute your acceptance of and agreement to such changes. Maintenance to Mobile Deposit may be performed from time-to-time resulting in interrupted service, delays or errors in Mobile Deposit and we shall have no liability for any such interruptions, delays or errors.

**19. Termination.** We may turn off Mobile Deposit service to you if we suspect fraud, if you misuse Mobile Deposit, have excessive overdrafts or returned items or for other reasons at our sole discretion.

**20. Ownership and License.** You agree that First Minnetonka City Bank and its Third Party Service Providers, including Fiserv Solutions, Inc., retain all ownership and proprietary rights in Mobile Deposit, associated content, technology, and website(s). You agree not to copy, disassemble, decompile, or otherwise reverse engineer any part of Mobile Deposit, including the App. You may use Mobile Deposit only for your own benefit. You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide Mobile Deposit service. In the event that you attempt to use, copy, license, sublicense, sell or otherwise convey or to disclose the App or any other part of the Mobile Deposit service, in any manner contrary to the terms of this Addendum, we shall have, in addition to any other remedies available to us, the right to injunctive relief enjoining such actions.

**21. Third Party Beneficiary.** You agree that our Third Party Service Providers, including Fiserv Solutions, Inc., may rely upon the provisions of this Agreement, including its disclaimer of warranties and any limitations of liability and that such Third Party Service Providers are, for the purpose of this Agreement, third party beneficiaries to this Agreement with the power to enforce this Agreement.

**22. Liability.** WE ARE ONLY RESPONSIBLE FOR PERFORMING MOBILE DEPOSIT AS EXPRESSLY STATED IN THIS ADDENDUM. THERE IS NO GUARANTEE THAT ACCESS TO MOBILE DEPOSIT WILL BE AVAILABLE AT ALL TIMES AND WE SHALL NOT BE LIABLE IF YOU ARE UNABLE TO ACCESS MOBILE DEPOSIT. MOBILE DEPOSIT IS PROVIDED "AS IS" AND, EXCEPT AS PROHIBITED BY LAW, WE AND OUR THIRD PARTY SERVICE PROVIDERS DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING MOBILE DEPOSIT SERVICE, APP, EQUIPMENT OR SOFTWARE, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF ANY PARTIES' PROPRIETARY RIGHTS. IN NO CASE SHALL FIRST MINNETONKA CITY BANK OR ANY OF OUR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY LOSS OF DATA, PROFIT, GOODWILL, OR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE SUFFERED BY YOU ARISING OUT OF OR RELATED TO THIS ADDENDUM, THE APP, THE SOFTWARE, THE EQUIPMENT OR THE MOBILE DEPOSIT SERVICE WHETHER OR NOT SUCH CLAIM FOR DAMAGES IS BASED ON TORT OR CONTRACT OR WHETHER WE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES, EXCEPT AS MAY BE REQUIRED BY LAW. IN STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INDIRECT SPECIAL OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, FIRST MINNETONKA CITY BANK AND OUR THIRD PARTY SERVICE PROVIDERS' LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW.