

## Mobile Services Agreement

Thank you for using the Mobile Money Services ("Services") and any related Software ("Software") provided by First National Bank of Kansas ("Financial Institution") combined with your handheld's text messaging capabilities. By participating in the Services or using the Software, you are agreeing to the following terms and conditions, in addition to any terms and conditions to which you have previously agreed with respect to the underlying electronic banking and bill pay services of which the Service is a part. Financial Institution in its discretion may modify these Terms and Conditions at any time. Standard messaging charges apply.

### Terms and Conditions:

a. **Program:** Financial Institution offers their customers mobile access to their account information (e.g., for checking balances and last transactions) over the Short Message Service (SMS), as well as the option to set up alerts for their accounts (e.g., low balance alerts). Enrollment requires identification of the user's banking relationship with Financial Institution as well as providing a mobile phone number. The mobile phone number's verification is done by the user receiving an SMS message with a verification code which they will have to enter on the website. Additionally, customers may select the type of alerts and other preferences which will determine, together with their account data, the frequency of alerts delivered to the customer. This program will be ongoing. Standard messaging charges apply. Customers will be allowed to opt out of this program at any time.

b. **Questions:** You can contact us at [teleweb@fnbofks.com](mailto:teleweb@fnbofks.com), 785-733-2564, or send a text message with the word "HELP" to this number: [99588]. We can answer any questions you have about the program.

c. **To stop the program:** To stop the messages from coming to your phone, you can opt out of the program via SMS. Just send a text that says "STOP" to this number: 99588. You'll receive a one-time opt-out confirmation text message. After that, you will not receive any future messages.

d. **The Services and/or Software may not be available at anytime for any reason outside of the reasonable control of Financial Institution or any service provider**

**Privacy and User Information:** You acknowledge that in connection with your use of the Services, Financial Institution and its affiliates and service providers, including Fiserv, Inc. and its affiliates, may receive and may share with one another names, domain names, addresses, passwords, telephone and device numbers, the content of messages, data files and other data and information provided by you or from other sources in connection with the Services or Software (collectively "User Information"). The Financial Institution and its affiliates and service providers will maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver the Services and as otherwise permitted by law, including compliance with court orders or lawful instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by you. The Financial Institution and its affiliates and service providers also reserve the right to monitor use of the Services and Software for purposes of verifying compliance with the law, these terms and conditions and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.

**Restrictions on Use:** You agree not to use the Services and Software in or for any illegal, fraudulent, unauthorized or improper manner or purpose and will only be used in compliance with all applicable laws, rules and regulations, including all applicable state, federal, and international Internet, data, telecommunications, telemarketing, "spam," and import/export laws and regulations, including the U.S. Export Administration Regulations. Without limiting the foregoing, you agree that you will not use the Services and Software to transmit or disseminate: (i) junk mail, spam, or unsolicited material to persons or entities that have not

agreed to receive such material or to whom you do not otherwise have a legal right to send such material; (ii) material that infringes or violates any third party's intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its clients or subscribers; (iii) material or data, that is illegal, or material or data, as determined by Financial Institution (in its sole discretion), that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm the reputation of Financial Institution or any third-party service provider involved in the provision of the Services; or (iv) material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g. racist organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any wireless carrier or copies or parodies the products or Services of any wireless carrier; (v) viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (vi) any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Financial Institution, any third-party service provider involved in providing the Services, or any other third party to liability; or (viii) any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of Fiserv or any third party. You agree that you will not attempt to: (i) access any Software or Services for which your use has not been authorized; or (ii) use or attempt to use a third party's account; or (iii) interfere in any manner the provision of the Services or Software, the security of the Services or Software, or other customers of the Services or Software, or otherwise abuse the Services or Software.

#### **FIRST NATIONAL BANK OF KANSAS MOBILE DEPOSIT SERVICE USER AGREEMENT**

This First National Bank of Kansas Mobile Deposit Service User Agreement (the "Agreement") is entered into by First National Bank of Kansas (the "Bank") and you, the Customer. The Agreement governs your use of the Mobile Deposit Service (the "Service"). By enrolling to use the Service, you agree to be bound by the terms and conditions contained in this Agreement. Please read this Agreement carefully and keep it for future reference. In addition to this Agreement, your Account is also governed by our Signature Card/ Deposit Agreement, Electronic Banking Terms and Conditions Agreement and Disclosures, including but not limited to the section entitled "Funds Availability Policy" (Together referred to as "the Deposit Agreement"). If the terms and conditions of this Agreement conflict with those of the above-mentioned agreements, the terms and conditions of this Agreement supersede the terms and conditions of the Deposit Agreement, only with respect to the deposits made through the Service. Deposits made through other channels continue to be governed by the Deposit Agreement.

#### **DEFINITIONS**

1. "You" and "your" means: (i) a person who has applied for the Mobile Deposit Service for personal use, or (ii) a small business entity (or its authorized representative, as applicable) that have applied for the Service for business use by that authorized representative.
2. "Bank," "we," "us" and "our" mean First National Bank of Kansas and its successors or assigns.

3. **“Account”** means your deposit account with us to which you are authorized to make a deposit using a Capture Device.
4. **“Capture Device”** means any device acceptable to us as we determine at any given time that provides for the capture of images from Items and for transmission through the clearing process.
5. **“Check 21”** means the Check Clearing for the 21st Century Act, as amended.
6. **“End User License Agreement”** means the agreement as set forth in Schedule A hereto governing the use of the application software you must download to your Capture Device in order to use the Service.
7. **“Image”** means the electronic image of the front and back of an Item, in addition to other required information, as specified by us, in the format we specify.
8. **“Image Replacement Document”** or **“IRD”** means a substitute check, as defined in Check 21.
9. **“Item”** is an original: check, cashier’s check, official check, United States Treasury check, or any other payment instrument, drawn on a financial institution within the United States and payable in United States currency that is payable to you. Items are deemed to be “items” under the Uniform Commercial Code and “checks” under Regulation CC.
10. **“User Guide”** means the application download instructions, device instructions and FAQs we provide to you on our Internet site from time to time, in addition to any help content contained within the software application that is downloaded to your Capture Device.

## **TERMS**

1. **Mobile Deposit Service.** Pursuant to the terms of this Agreement, you may use the Service to deposit Items to your Account by creating an Image of the Item using a Capture Device, and transmitting that Image to us for deposit. You may transmit Images to us only from a Capture Device located in the United States.
2. **Hardware and Software Requirements.** You agree to transmit an Image to us using only a Capture Device as we may have expressly authorized for your use to transmit Images. We may reject Images that you transmit to us with an unapproved Capture Device or by other means to which we have not given our consent.

Any Capture Device that you use to transmit Images to us pursuant to this Agreement must be approved by us. We may change the list of approved Capture Devices from time to time. You are responsible for the security of the Capture Device, and for allowing its use only by individuals authorized by you. You agree to implement and maintain specific internal security controls to protect the Capture Device and customer information. We may require that you implement and maintain additional specific controls, and we may notify you of those controls and amend them from time to time.

**You are responsible for all costs of using the Service and operating the Capture Device, including, but not limited to telephone and internet service charges. You are responsible for maintaining the system's capacity and connectivity required for use of the Service. We reserve the right to change the hardware and software minimum requirements at any time and for any reason without any notice to you.**

**3. Image Quality. You are responsible for the image quality of any Image that you transmit. If an Image that we receive from you or for deposit to your Account is not of sufficient quality to satisfy our image quality standards as we may establish them from time to time, we may reject the Image without prior notice to you. Each Image must include the front and back of the Item and the following information must be clearly readable: amount, payee name, drawer signature, date, check number, account number, routing and transit number, MICR (Magnetic Ink Character Recognition) line, and any endorsement or other information written on the check.**

**4. Processing Images. You authorize us to process any Image that you send us or convert an Image to an Image Replacement Document. You authorize us and any other bank to which an Image is sent to handle the Image or IRD. We reserve the right to reject and to refuse to process any Image you send to us for any reason or no reason, without prior notice to you. When using the Services, you may experience technical or other difficulties. We will attempt to post alerts on our website notify you of these interruptions in Service. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur.**

**5. Limits. We may establish limits on the dollar amount and/or number of Items or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.**

**6. Deposit of Other Items; Deposits when Service Not Available. You agree that you will not use the Service to deposit anything not meeting the definition of an Item. If you use the Service to transmit anything that is not an Item, or if for any reason we are not able to recognize as an Item, we may reject it without prior notice to you. You agree to make those deposits through other channels that we offer, such as at a branch, or bank by mail. You further agree to use such other channels when the Service may not be available.**

**7. Returned Items. You are solely responsible for any Item for which you have been given provisional credit, and any such Item that is returned or rejected may be charged to your Account. You acknowledge that all credits received for deposits made through the Service are provisional, subject to verification and final settlement. Any Item that we return to you will be returned in the form of an Image or an IRD.**

**8. Handling of Transmitted Items. You agree not to allow an Item to be deposited or presented for payment more than once, to the extent that it could result in the payment of the Item more than once. You will not allow the transmission of an Image of an Item that has**

already been presented to us or to any bank by any other means. You will not allow transmission of an Image of an Item that has already been transmitted through the Service. If an Image of an Item has been transmitted to us or to any other bank, you will not allow the Item to be subsequently presented by any other means. If any Item is presented or deposited more than once, whether by Image or by any other means, we may, at our discretion, reject it or return it and charge it against your Account without prior notice to you. For any Image which you have transmitted, you shall be responsible for preventing the transmission of another Image of the Item or presentment of the Item by any other means. You agree to retain the Item for a minimum of five (5) calendar days from the date of the Image transmission, and thereafter to destroy each Item of which you have transmitted an Image after fourteen (14) days.

**9. Cooperation with Investigations.** You agree to cooperate with us in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, upon request and without further cost, any originals or copies of Items in your possession and your records relating to Items and transmissions.

**10. Payment Processing.**

**a. Item Processing.** At our sole discretion, we may process the Images you send to us electronically through other banks, or we may create Image Replacement Documents that will be processed through traditional check processing methods. If you send us Images that are incomplete, that fail to satisfy our image quality requirements, or otherwise do not allow us to meet the requirements of Check 21 or any image exchange agreement that would cover our further electronic transmission of Images that you send us, or we are otherwise unable to process Images that you send us, we may charge the Images back to your account. You agree to be bound by any clearinghouse agreements, operating circulars, and image exchange agreements to which we are a party.

**b. Transmission of Items.** The Images you send us are not considered received by us until you receive a message from us acknowledging that we have accepted your deposit. However, the confirmation that we send you does not mean that the transmission was complete or error free. As stated in Section 4 of this Agreement, we may refuse to process any Image you send to us for any reason or no reason whatsoever with no liability to you for our decision.

**c. Funds Availability.** If you make a deposit via Mobile Deposit before 4:00 p.m. on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit via Mobile Deposit after 4:00 p.m. or on a day that we are not open, we will consider that the deposit was made on the next business day that we are open. Funds deposited through Mobile Deposit will be available the business day after the deposit was made. Funds from Items deposited through the Service will be made available to you pursuant to our Funds Availability Policy. See the section entitled "Funds Availability Policy" in your Deposit Agreement.

**11. Fees.** You are responsible for paying the fees for use of the Service as the Bank may charge them from time to time. The Bank may change the fees for use of the Service at any

time pursuant to the section titled "Amendment" below. You authorize the Bank to deduct any such fees from any account in your name.

Use of the service after notice of the fee change shall be deemed to be acceptance on your part of the new terms.

**12. Representations and Warranties.** You make the following representations and warranties to us:

- a. You and any user you authorize will use the Service only for lawful purposes and in compliance with all applicable rules and regulations and with our reasonable instructions, rules, policies, specifications, and operating procedures and will not violate any law of any country or the intellectual property rights of any third party.
- b. You will use the Service to transmit and deposit Images of Items only.
- c. You will transmit only Images of Items acceptable for deposit through the Service and will handle Items as agreed herein.
- d. You are a person authorized to enforce each Item or are authorized to obtain payment of each Item on behalf of a person entitled to enforce an Item.
- e. Items have not been altered.
- f. Each Item bears all required and authorized endorsements.
- g. All of the warranties set forth in Section 4-207 of the Uniform Commercial Code as adopted in the State of Kansas, in addition to any other warranties made by us to any third party under any applicable law.
- h. All Images accurately and legibly represent all of the information on the front and back of the Item.
- i. You will not use the Service to transmit or deposit any Item, (i) payable to any person or entity other than you, (ii) drawn on your own account, (iii) which you know or should know to be fraudulent, altered, unauthorized, or missing a necessary endorsement, (iv) that is a substitute check or image replacement document, (v) that is drawn on an institution located outside of the United States, or (vi) that is created by you purportedly on behalf of the maker, such as a remotely created check.
- j. No depository bank, drawee, drawer, or endorser will receive presentment or return of, or otherwise be charged for, a substitute check, the original check, or a paper or electronic representation of a substitute check or the original check such that that person will be asked to make a payment based on a check that it already has paid.
- k. You will use the Service as required by the User Guide.

**l. Your understanding that acceptance of the End User License Agreement is required for use of the Service.**

**m. You, if acting on behalf of a small business entity, are fully authorized to execute this Agreement.**

**13. Indemnification and Limitations on Liability.** In addition to the indemnifications and limitations on liability contained in the Mobile Banking Terms and Conditions and any other Disclosures made by us to you, you hereby indemnify and hold us harmless for any claim, cost, loss or damage caused directly or indirectly by your failure to comply with the terms of this Agreement or by your breach of any representation or warranty contained herein.

**FIRST NATIONAL BANK OF KANSAS SHALL NOT BE LIABLE FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND ITS LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF YOUR ACTUAL DAMAGES OR THE TOTAL IN FEES YOU PAID FOR THE USE OF THE SERVICE DURING THE SIX MONTH PERIOD PRIOR TO THE SUPPOSED ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FIRST NATIONAL BANK OF KANSAS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. YOU ACKNOWLEDGE THAT THE SERVICE IS PROVIDED BY FIRST NATIONAL BANK OF KANSAS ON AN "AS IS" BASIS, AND THAT YOU USE IT AT YOUR SOLE RISK. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FIRST NATIONAL BANK OF KANSAS MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**14. Intellectual Property.** This Agreement does not transfer to you any ownership or proprietary rights in the Service, the Capture Device or any associated software or any part thereof. We or our agents retain all intellectual property rights, title and interest in and to the Service, Capture Device and any associated software. Neither you nor any user you authorize will:

**a. sell, lease, distribute, license or sublicense the Service;**

**b. modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Service or any part of it in any way for any reason;**

**c. provide, disclose, divulge or make available to or permit use of the Service by any third party;**

**d. copy or reproduce all or any part of the Service; or**

**e. interfere, or attempt to interfere, with the Service in any way.**

**15. Termination.** If Customer wants to terminate his or her access to the Service, he or she may call First National Bank of Kansas at 785-733-2564. First National Bank of Kansas reserves the right to terminate or suspend the Service, at any time with or without cause and

without prior written notice. Notwithstanding termination, any Image transmitted through the Service shall be subject to this Agreement.

**16. Amendment.** From time to time the Financial Institution may amend any of the terms and conditions contained in the Agreement, including without limitation, any cut-off time, any business day, and any part of the Schedules attached hereto. Such amendments shall become effective upon receipt of notice (unless such notice is specifically waived) by the Customer or such later date as may be stated in the Financial Institution's notice to the Customer. If you do not agree with the change you may discontinue using the Service. However, if you continue to use the Service, that shall be deemed your acceptance of and agreement, its terms, and to the change.

**17. Governing Law.** This Agreement, and your rights and our obligations under this Agreement, are governed by and interpreted according to federal law and the law of the State of Kansas. If state and federal law are inconsistent, or if the state law is preempted by the federal law, federal law governs.

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

**19. Entire Agreement.** This agreement, your Signature Card/Deposit Agreement, initial account disclosures, The Mobile Banking Terms and Conditions, any disclosures that modify this agreement, the Fiserv terms and conditions, First National Bank of Kansas Funds Availability Policy and the End User License Agreement shall be considered the entire agreement between the parties. No other terms, promises or warranties have been made or suggested. Use of the service shall be an acceptance of all of the relevant terms on your part. In no event shall First National Bank of Kansas marketing materials, user's guide, and website, other correspondence with you or discussions with you modify this agreement unless such modification is in the form of a disclosure and such modification clearly states it is meant to change the material terms of this agreement.

## SCHEDULE A

### END USER LICENSE AGREEMENT

First National Bank of Kansas ("Application Provider") is willing to license the Mobile Deposit Application ("Application"), to you ONLY IF YOU ACCEPT ALL OF THE TERMS IN THIS END USER LICENSE AGREEMENT ("License"). Application Provider is not willing to make the Application available under any other terms or subject to any conditions.

**BEFORE YOU CHOOSE THE "I AGREE" BUTTON BELOW, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS LICENSE. BY CHOOSING THE "I AGREE" BUTTON YOU ARE:**

**(1) CONSENTING TO BE BOUND BY THIS LICENSE.**

**IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE, OR DO NOT REPRESENT THE FOREGOING, CHOOSE THE "DECLINE" BUTTON, IN WHICH CASE YOU WILL NOT AND MAY NOT RECEIVE, INSTALL OR USE THE APPLICATION.**

**Any use of the Application other than pursuant to the terms of this License is a violation of United States and international copyright laws and conventions.**

**1. Grant of License:** Application Provider hereby grants you a limited, non-exclusive, non-transferable license to install the Application on your mobile device for your personal or small business use. You may not (and shall not permit any third party to): (i) copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Application, any updates, or any part thereof; (ii) rent, lease, lend, sell, redistribute or sublicense the Application; or (iii) otherwise exercise any other right to the Application not expressly granted in this License. The terms of this License will govern any upgrades provided by Application Provider that replace and/or supplement the original Application.

**2. Ownership of Application:** This License does not convey to you an interest in or to the Application, but only a limited right of use revocable in accordance with the terms of this License. The Application is NOT sold to you, and all rights not expressly granted herein are reserved to Application Provider and its licensors. Application Provider and its licensor own all right, title and interest in and to the Application. No license or other right in or to the Application is granted to you except for the rights specifically set forth in this License. You hereby agree to abide by United States copyright law and all other applicable laws of the United States and other nations and by any applicable international treaties.

**3. Consent to Use of Data:** You agree that Application Provider may collect and use technical data and related information, including but not limited to technical information about your device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Application. Application Provider may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

**4. Termination:** This License is valid until terminated by you or Application Provider. Application Provider may terminate the License at any time or for any reason. Your rights under this License will terminate immediately if you breach any term of this License. Upon termination of this License, you shall immediately cease all use of the Application and destroy all copies, full or partial, of the Application.

**5. No Warranty:** YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLICATION IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION AND ANY SERVICES PERFORMED OR PROVIDED BY THE APPLICATION ("SERVICES") ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLICATION PROVIDER HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLICATION PROVIDER DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLICATION, WHICH THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE APPLICATION WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLICATION OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE APPLICATION OR SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLICATION PROVIDER OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE APPLICATION OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

**6. Limitation of Liability:** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL APPLICATION PROVIDER BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLICATION PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

**7. Export Controls:** You may not use or otherwise export or re-export the Application except as authorized by United States law and the laws of the jurisdiction in which the Application was obtained. In particular, but without limitation, the Application may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the United States Department of

Commerce Denied Person's List or Entity List. By using the Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

8. **United States Government End Users:** The Application is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all United States Government End Users acquire the Application with only those rights set forth herein.

9. **Governing Law:** The laws of the State of Kansas govern this License and your use of the Application. Your use of the Application may also be subject to other local, state, national or international laws.

#### **Touch ID™ for Mobile Banking.**

Touch ID is an optional fingerprint sign-in method for First National Bank of Kansas Mobile Banking that is currently available for most Apple® devices that have a fingerprint scanner. To use Touch ID, you will need to save your fingerprint by going to "Settings > Touch ID & Passcode" on your Apple device to complete the setup (for more help with fingerprint scanning, contact Apple support at [apple.com/support](http://apple.com/support)). Fingerprints are stored on your device only and First National Bank of Kansas never sees or stores your fingerprint information. You acknowledge that by enabling Touch ID, you will allow anyone who has a fingerprint stored on your device access to your personal and payment account information within First National Bank of Kansas Mobile Banking. First National Bank of Kansas reserves the right to suspend or disable this feature at any time. Touch ID can only be associated with one Mobile Banking username at a time on a device. If your device doesn't recognize your fingerprint, you can sign in using your password. To use Touch ID for Mobile Banking on multiple devices, you will need to set it up for each device. You can enable or disable Touch ID anytime from the Services menu within First National Bank of Kansas Mobile Banking.

Apple and Touch ID are trademarks of Apple Inc. Currently; fingerprint sign-in for First National Bank of Kansas Mobile Banking is only available on compatible iOS devices.

#### **Card Controls Additional Terms**

The following supplemental Terms of Use ("Supplement") applies to the card controls feature ("Card Controls") within the Mobile Banking mobile application ("Mobile Banking App"), notwithstanding anything in the Agreement to the contrary. The Supplement only applies to Card Controls. If Card Controls are not available to you, then this Supplement does not apply. To the extent there is any conflict between the terms of the Agreement and this Supplement with respect to Card Controls, and then the terms in this Supplement shall apply.

1. The Card Controls feature is only available for debit cards issued by First National Bank of Kansas that you register within the Mobile Banking App.

2. The Card Controls alerts and controls you set through use of the Mobile Banking App may continue to apply, even if you delete the Mobile Banking App or remove it from your

mobile device. Please contact First National Bank of Kansas to discontinue the alerts and controls.

3. Certain Card Control functionality within the Mobile Banking App may not be available for all transactions. Controls and alerts based on the location of the mobile device where the Mobile Banking App is installed or the location of the merchant where the card is being attempted for use may not apply appropriately to card-not-present transactions or transactions where the actual location of the merchant differs from the merchant's registered address.

4. Card Controls may enable access to First National Bank of Kansas and third parties' services and web sites, including GPS locator websites, such as Google's. Use of such services may require Internet access and that you accept additional terms and conditions applicable thereto.

5. To the extent this Mobile Banking App allows you to access third party services, First National Bank of Kansas, and those third parties, as applicable, reserve the right to change, suspend, remove, or disable access to any of those services at any time without notice. In no event will we be liable for the removal of or disabling of access to any such services. We may also impose limits on the use of or access to certain services, in any case and without notice or liability.

6. THE MOBILE BANKING APP, THE SERVICES AND RELATED DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF OUR SERVICE, AND OPERATION OF THE MOBILE BANKING APP OR THE SERVICES MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF OUR CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU TO THE EXTENT THEY ARE PROHIBITED BY STATE LAW.

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**EMPLOYEES OR CONTRACTORS OF ANY OF THESE BE LIABLE FOR ANY CLAIM, ARISING FROM OR RELATED TO THE MOBILE BANKING APP, THE SERVICES OR THE WEBSITE THROUGH WHICH THE APP OR THE SERVICES IS OFFERED, THAT YOU DO NOT STATE IN WRITING IN A COMPLAINT FILED IN A COURT OR ARBITRATION PROCEEDING WITHIN TWO (2) YEARS OF THE DATE THAT THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THESE LIMITATIONS WILL APPLY TO ALL CAUSES OF ACTION, WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. OUR AGGREGATE LIABILITY AND THE AGGREGATE LIABILITY OF OUR AFFILIATES AND LICENSORS AND CONTRACTORS AND THE EMPLOYEES AND CONTRACTORS OF EACH OF THESE, TO YOU AND ANY THIRD PARTY FOR ANY AND ALL CLAIMS OR OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT OUT OF POCKET DAMAGES UP TO A MAXIMUM OF \$500 (FIVE HUNDRED DOLLARS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

**8. Unless our account agreement with you states otherwise, this Agreement shall be governed by and construed in accordance with the laws of the State in which you reside, without regard to its conflicts of laws provisions. To the extent that the terms of this Agreement conflict with applicable state or federal law, such state or federal law shall replace such conflicting terms only to the extent required by law. Unless expressly stated otherwise, all other terms of this Agreement shall remain in full force and effect.**

#### **First National Bank of Kansas Alerts Terms and Conditions**

**The following Alerts terms and conditions ("Alerts Terms of Use") only apply to the Alerts feature (as defined below). If Alerts are not available to you, then this Alerts Terms of Use does not apply. To the extent there is any conflict between the terms of the Agreement and this Alerts Terms of Use with respect to Alerts, and then the terms in this Alerts Terms of Use shall apply.**

**Alerts: Your enrollment in First National Bank of Kansas Online Banking and/or Mobile Banking (the "Service") includes enrollment to receive transaction alerts and notifications ("Alerts"). Alerts are electronic notices from us that contain transactional information about your First National Bank of Kansas account(s). Alerts are provided within the following categories:**

- Mandatory Alerts provide you with important account notifications, such as information about changes to your Online Banking password, PIN, or login information. You do not have the option to suppress these Mandatory Alerts.**
- Account Alerts provide you with notification of important account activities or when certain changes are made to your Service accounts. These Alerts are automatically activated for you. Although you may suppress these Account Alerts, we strongly recommend that you do not do so because they provide important information related to your Service accounts.**
- Additional Alerts must be activated by you to be enabled. These Additional Alerts can be accessed from the more menus within First National Bank of Kansas Mobile Banking.**

**Account Alerts and Additional Alerts must be managed and/or added online through the Service. You cannot maintain all Alerts through your mobile device. We may add new Alerts from time to time, or cancel old Alerts. We usually notify you when we cancel Alerts,**

but are not obligated to do so. First National Bank of Kansas reserves the right to terminate its Alerts service at any time without prior notice to you.

**Methods of Delivery:** We may provide Alerts through one or more channels (“EndPoints”): (a) a mobile device, by text message; (b) a mobile device, by push notification; (c) an email account, by an e-mail message; or (d) your First National Bank of Kansas Online Banking message in-box, by an e-mail message. You agree to receive Alerts through these EndPoints, and it is your responsibility to determine that each of the service providers for the EndPoints described in (a) through (c) above supports the email, push notification, and text message Alerts provided through the Alerts service. Please be advised that text or data charges or rates may be imposed by your EndPoint service provider. Alert frequency varies by account and preferences. You agree to provide us a valid mobile phone number or email address so that we may send you Alerts. If your email address or your mobile device’s number changes, you are responsible for informing us of that change. Your Alerts will be updated to reflect the changes that you communicate to us with regard to your primary and secondary email addresses or mobile device number.

**Alerts via Text Message:** To stop Alerts via text message, text “STOPS” to 99588 at any time. Alerts sent to your primary email address will be unaffected by this action. To restore Alerts on your mobile phone, just visit the Alerts tab in First National Bank of Kansas Online Banking and click the box next to your mobile number for the Alerts you’d like to receive again. For help with SMS text alerts, text “HELP” to 99588. In case of questions please contact customer service at 785-733-2564. Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless, MetroPCS.

**Limitations:** First National Bank of Kansas provides Alerts as a convenience to you for information purposes only. An Alert does not constitute a bank record for the deposit or credit account to which it pertains. We strive to provide Alerts in a timely manner with accurate information. However, you acknowledge and agree that your receipt of any Alerts may be delayed or prevented by factor(s) affecting your mobile phone service provider, internet service provider(s) and other factors outside First National Bank of Kansas’ control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold First National Bank of Kansas, its directors, officers, employees, agents and service providers liable for losses or damages, including attorneys’ fees, that may arise, directly or indirectly, in whole or in part, from (a) a non-delivery, delayed delivery, or the misdirected delivery of an Alert; (b) inaccurate or incomplete content in an Alert; or (c) your reliance on or use of the information provided in an Alert for any purpose.

**Alert Information:** As Alerts delivered via SMS, email and push notifications are not encrypted, we will never include your passcode or full account number. You acknowledge and agree that Alerts may not be encrypted and may include your name and some information about your accounts, and anyone with access to your Alerts will be able to view the contents of these messages.

[http://www.fnbofks.com/privacy\\_policy.html](http://www.fnbofks.com/privacy_policy.html)

**Privacy and User Information – Data Analytics:** You acknowledge that in connection with your use of Mobile Banking, First National Bank of Kansas and its affiliates and service providers, including Fiserv, Inc. and its affiliates, may receive data about your usage of the service (such as session length, number of transactions and geolocation), and other data and information provided by you or from other sources in connection with Mobile Banking or the Software. First National Bank of Kansas and its affiliates and service providers will

**maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver Mobile Banking, perform analytics to improve the service, and as otherwise permitted by law, including compliance with court orders or lawful instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by you.**

#### **Fingerprint Login for Mobile Banking**

**Fingerprint Login is an optional fingerprint sign-in method for First National Bank of Kansas Mobile Banking that may be available for certain Android® mobile devices that have a built-in fingerprint scanner. To use Fingerprint Login, you will need to first save your fingerprint on your mobile device (for more help with fingerprint scanning, contact the manufacturer that supports your mobile device). Fingerprints are stored on your device only and First National Bank of Kansas never sees or stores your fingerprint information. You acknowledge that by enabling Fingerprint Login, you will allow anyone who has a fingerprint stored on your device access to your personal and payment account information within First National Bank of Kansas Mobile Banking. First National Bank of Kansas reserves the right to suspend or disable this feature at any time. Fingerprint Login can only be associated with one Mobile Banking username at a time on a device. If your device does not recognize your fingerprint, you can sign in using your standard login credentials (e.g. password). To use Fingerprint Login for Mobile Banking on multiple devices, you will need to set it up for each device. You can enable or disable Fingerprint Login anytime within First National Bank of Kansas Mobile Banking.**

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