

## **Mobile Deposit Disclosure and Agreement**

### **Farmers & Merchants State Bank of Springfield**

In this Disclosure and Agreement, the words “I,” “me,” “my,” “us” and “our” mean the (consumer or business) that applied for and/or uses any of the Mobile Deposit Services (the “Services”) described in this Disclosure and Agreement. The words “you,” “your,” and “yours” mean Farmers & Merchants State Bank of Springfield (“F&M Bank”). My application for use of the Mobile Deposit Services (the “Services”), your notification of approval of my application, and my F&M Bank Deposit Account Agreement are hereby incorporated into and made a part of this Disclosure and Agreement. In the event of a discrepancy or contradiction in terms between this Disclosure and Agreement, my application, your approval, or the F&M Bank Deposit Account Agreement, this Disclosure and Agreement will control.

#### **Use of the Services -**

Following accessibility to my use of the Services, I am authorized by you to remotely deposit paper checks I receive to my account with you (the “Account”) by electronically transmitting a digital image of the paper checks to you for deposit. My use of the Services constitutes my acceptance of the terms and conditions of this Disclosure and Agreement. I agree to comply with the hardware and software requirements as specified on your website.

Upon receipt of the digital image, you will review the image for acceptability. I understand that, in the event I receive a notification from you confirming receipt of an image, such notification does not mean that the image contains no errors or that you are responsible for any information I transmit to you. You are not liable for any image that you do not receive. Following receipt of the image, you may process the image by preparing a “substitute check” or clearing the item as an image. Notwithstanding anything to the contrary, you reserve the right, within your sole and absolute discretion, to accept or reject any item for remote deposit into my Account. I understand and agree that F&M Bank may not notify me of an accepted deposit and that I have the capability to receive notification if I set up an eAlert within Online Banking. I understand that any amount credited to my Account for items deposited using the Services is a provisional credit and I agree to indemnify you against any loss you suffer because of your acceptance of the remotely deposited check. In addition I agree that I will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Service, (ii) copy or reproduce all or any part of the technology or Service; or (iii) interfere, or attempt to interfere, with the technology or Service.

#### **Unavailability of Services-**

I understand and agree that the Services may at times be temporarily unavailable due to system maintenance or technical difficulties including those of the Internet service provider and Internet software. In the event that the Services are unavailable, I acknowledge that I can deposit an original check at your branches or by mailing the original check to you at 101 N Marshall Avenue, Springfield, MN. It is my sole responsibility to verify that items deposited using the Services have been received and accepted for deposit by you. However, you will send notification of items that are rejected by the next business day following rejection. I understand your preferred method for this notification will be email. In addition, I understand that you may add, delete or change the feature or functionality of the Service, at any time, at your discretion.

#### **Compliance with Law, Rules and Regulations**

I agree to comply with all existing and future operating procedures used by F&M Bank for processing of transactions. I further agree to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts and ACH transactions, including, but not limited to, all rules and procedural guidelines established by the Federal Trade Commission (“FTC”), the Board of Governors of the Federal Reserve, and any other clearinghouse or other organization in which F&M Bank is a customer or to which rules F&M Bank has

agreed to be bound. These procedures, rules, and regulations (collectively the “Rules”) and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control. I also agree that I will not engage in any activity directly or indirectly related to the use of the product or service that is illegal or fraudulent.

### **Check Requirements-**

Each image must provide all information on the front and back of the original check at the time presented to you by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the original check, MICR information, signature(s), any required identification written on the front of the original check and any endorsements applied to the back of the original check. The image quality must 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.

Endorsements must be made on the back of the check within 1½ inches from the top edge, although we may accept endorsements outside this space. Your endorsement must include your signature and indicate it is being made by mobile deposit. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility. We have the right to decline a mobile deposit that doesn’t meet our mobile deposit check endorsement standards.

A check payable to two payees must be endorsed by both payees. If the check is payable to you or your joint owner, either of you can endorse it. If the check is made payable to you and your joint owner, both of you must endorse the check.

### **Rejection of Deposit-**

You are not liable for any service or late charges levied against me due to your rejection of any item. In all cases, I am responsible for any loss or overdraft plus any applicable fees to your Account due to an item being returned.

### **Items Returned Unpaid-**

With respect to any item that I transmit to you for remote deposit that you credit to my Account, in the event such item is dishonored, I authorize you to debit the amount of such item from the Account. Check images that are returned for image quality adjustments will have to be submitted in paper to F&M Bank upon receipt of notice of such, to be physically reprocessed; they may not be re-scanned.

### **Fees-**

I agree to pay the fee for the Service that is listed in your Fee Schedule for the Service. I also understand that you may add, increase, alter, or otherwise change the fee and other amounts for the Services from time to time and that you will be in compliance with all notification rules. I authorize you to deduct these charges directly from my deposit account.

### **Email Address-**

I agree to notify you immediately if I change my email address, as this is the email address where you will send me notification of receipt of remote deposit items.

### **Availability of Funds-**

Mobile Deposits accepted before close of business on a business day (3 p.m. CST) will be credited to your account within 24 hours of receipt. Deposits accepted after close of business, and deposits accepted on holidays or on days that are not business days, will be considered made on the next business day and

will be credited to your account within 24 hours of the following business day. You understand and authorize that we may make deposits available sooner and you understand that we may delay availability longer. If longer delays apply, we will contact you.

**Business Days:** For purposes of determining the availability of your Mobile Deposit, every day is a business day except Saturdays, Sundays, and federal holidays.

#### **Internal Controls and Audit-**

I understand and agree to adhere to the internal controls as described in this agreement and further detailed within this section. Furthermore, I agree to comply with the Audit requirements prescribed within this Agreement.

#### **Accountholder's Warranties-**

I make the following warranties and representations with respect to each image of an original check I transmit to you utilizing the Services:

1. Each image of a check transmitted to you is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
2. The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
3. I will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
4. Other than the digital image of an original check that I remotely deposit through your Services, there are no other duplicate images of the original check.
5. I have instituted procedures to ensure that each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check.
6. I am authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
7. I have not knowingly failed to communicate any material information to you and will provide you all reasonable assistance with any questions related to my deposits.
8. I have possession of each original check deposited using the Services and no party will submit the original check for payment.
9. Files and images transmitted to you will contain no viruses or any other disabling features that may have an adverse impact on your network, data, or related systems.
10. I am not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed by me to F&M Bank. I am not in the business of cashing checks.

#### **Limitations on Frequency and Dollar Amount-**

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.

### **Unacceptable Deposits-**

I understand and agree that I am not permitted to deposit the following items using the Services:

1. Any item drawn on my account and/or made payable to cash
2. Any non-negotiable item
3. Any item that contains evidence of alteration to the information on the check
4. International Checks
5. Any item that is incomplete
6. Any item that is stale dated (over six months old) or post dated (for a date in the future)
7. Any third party check, i.e., any item that is made payable to another party and then endorsed to me by such party.
8. Savings Bonds
9. Postal Money Orders and Money Grams

### **Storage of Original Checks-**

I must securely store each original check. If I am using the Service to deposit items into an account to which I am a party I understand this means the original check(s) that I deposit using the Services, must be accessible for a period of 90 days after transmission and final credit is given in my account. After such period expires, all checks must be destroyed in a manner that will assure that the check cannot be reconstituted after 90 days. I understand and agree that I am responsible for any loss caused by my failure to secure or destroy the original checks.

### **Periodic Statement-**

Any remote deposits made through the Services will be reflected on my monthly account statement. I understand and agree that I am required to notify you of any error relating to images transmitted using the Services within 60 days for consumer accounts and within 10 days for business accounts after I receive the monthly periodic statement that includes any transaction I allege is erroneous. I am responsible for any errors that I fail to bring to your attention within such time period.

### **Accountholder's Indemnification Obligation-**

I indemnify you and hold you harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from my use of the Services and/or breach of this Disclosure and Agreement. I understand and agree that this requirement shall survive the termination of this Agreement.

### **Securing Images on Mobile Devices-**

When using Mobile Deposit Services, I understand that check images captured using my mobile device are stored on the device only until the associated deposit has been successfully submitted. I agree to promptly complete each deposit. In the event that I am unable to promptly complete my deposit, I agree to ensure that my mobile device remains securely in my possession until the deposit has been completed or to delete the associated images from the application.

### **In Case of Errors-**

In the event that I believe there has been an error with respect to any original check or image thereof transmitted to you for deposit or a breach of this Agreement, I will immediately contact you regarding such error or breach as set forth below.

Telephone: (507) 723-4800

### **Limitations of Liability-**

(a) ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, F&M BANK SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND F&M BANK'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) CUSTOMER'S ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY CUSTOMER TO F&M BANK FOR SERVICE. IN NO EVENT SHALL F&M BANK OR ANY PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSSES OR INJURIES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR COST OF COVER) ARISING OUT OF, OR RELATED TO, THE USE BY CUSTOMER OF SERVICE OR ANY SERVICE OR THE FAILURE OF F&M BANK OR ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER EVEN IF F&M BANK OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.

(b) CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER'S USE OF SERVICE SHALL BE AT CUSTOMER'S SOLE RISK, AND THAT SERVICE IS PROVIDED BY F&M BANK ON AN "AS IS" BASIS.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, F&M BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO CUSTOMER OR TO ANY OTHER PERSON, AS TO SERVICE OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY, AND F&M BANK HEREBY DISCLAIMS ANY AND ALL OF THE SAME. CUSTOMER AGREES THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY F&M BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR SERVICE TO BE PERFORMED PURSUANT HERETO.

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

(e) F&M BANK MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO CUSTOMER OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH SERVICE, INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S COMPUTER SYSTEMS OR RELATED EQUIPMENT, CUSTOMER'S SOFTWARE, OR CUSTOMER'S INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF F&M BANK'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT CUSTOMER USES, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(f) F&M BANK SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, CUSTOMER'S COMPUTER HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY F&M BANK TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM CUSTOMER TO F&M BANK, FROM F&M BANK TO CUSTOMER, FROM CUSTOMER TO ANY PROCESSOR, FROM ANY PROCESSOR TO F&M BANK, OR OTHERWISE. F&M BANK SHALL NOT BE RESPONSIBLE FOR NOTIFYING CUSTOMER OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF CUSTOMER'S COMPUTER HARDWARE OR SOFTWARE.

#### **Change in Terms-**

I agree to review the Disclosure and Agreement from time to time as posted on your website at fmb-ebank.com. I also agree that you may change the terms of this Disclosure and Agreement at any time without prior notice. My use of the Services constitutes my acceptance of any change.

#### **Termination of the Services-**

I may, by written request, terminate the Services provided for in this Disclosure and Agreement. At your sole discretion, you may revoke my privilege of using the Services at any time. In the event of termination of the Services, I will remain liable for all transactions performed on my Account.

#### **Relationship to Other Disclosures-**

The information in these Disclosures applies only to the Services described herein. Provisions in other disclosure documents, as may be revised from time to time, remain effective for all other aspects of the Account.

#### **Governing Law-**

I understand and agree that this Disclosure and Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Minnesota, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. I also agree to submit to the personal jurisdiction of the courts of the State of Minnesota.

#### **Attorneys' Fees-**

In the event of any arbitration or other adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

**Changes in Financial Circumstances-**

You must inform us immediately of any material change in your financial circumstances or in any of the information provided in your Application for any Remote Banking services. You agree to provide us any financial information we reasonably request during the term of this Agreement. You authorize us to review your history from time to time.

**Confidentiality-**

I acknowledge and agree that confidential data relating to your Services, marketing, strategies, business operations and business systems (collectively, "Confidential Information") may come into your possession in connection with this Disclosure and Agreement. I understand and agree that I am prohibited from disclosing and agree to maintain the confidentiality of your Confidential Information.

**Waiver-**

The failure of either party to seek a redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms or of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

**Relationship-**

This Disclosure and Agreement does not create, and shall not be construed to create, any joint venture or partnership between the parties. No officer, employee, agent, servant, or independent contractor of either party shall at any time be deemed to be an employee, servant, agent, or contractor of the other party for any purpose whatsoever.