

# Terms and Conditions

## General

1. **Acceptance of Terms and Conditions.** The following terms and conditions set forth the agreements and understandings between Bruning State Bank and its customers regarding several services offered by Bruning State Bank, namely: (a) Online Banking and Online

Bill Payment; (b) Mobile Banking; and (c) Mobile Deposit. By executing an Application Form for one or more of these services and/or by using any of these services, you agree to all of the terms and conditions contained herein. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AND KEEP A COPY FOR YOUR RECORDS.

2. **Certain Defined Terms.** The following capitalized terms shall have the following meanings:

a. "Agreement" means these Terms and Conditions, including the Online Banking and Online Bill Payment Agreement, the Mobile Banking Service Agreement and the Mobile Deposit Service Agreement, as the same may be amended by the Bank from time to time.

b. "Bank," "we," "us" and "our" mean Bruning State Bank and its successors and assigns.

c. "Customer," "you" and "your" mean any customer of the Bank who utilizes any of the services described in this Agreement.

d. "Services" means the Online Banking Services, Mobile Banking Services and Mobile Deposit Service, as defined and described below.

3. **Other Defined Terms.** Other capitalized terms used in this Agreement shall have the meanings given to them elsewhere in this Agreement.

## Online Banking and Online Bill Payment Agreement

1. **The Online Banking Service.** The Bank offers its Customers access to certain Online Banking and Online Bill Payment services ("Online Banking Services"), as described from time to time in information distributed by Bank to its Customers. In consideration of such access, the Customer agrees as follows: You may use a Personal Computer ("PC") through an Internet connection to obtain account balances and transaction information. You may also use your PC to obtain statements on your accounts and to transfer money between your accounts. However, transfers from your savings and Money Market accounts are considered pre-authorized transfers, and preauthorized transfers are limited to six (6) per monthly statement cycle by federal regulations. In addition, you may use your PC to electronically direct us to make payments from your account to third parties ("Payees") that you have selected to receive payment through the Online Banking Service. You may make payments through the Online Banking Service to any business professional, merchant, family member, or friend. The "Bill Payment Account" means your designated bill payment checking account at Bank from which we make bill payments on your behalf pursuant to the Agreement. By subscribing to the Online Banking Service or using the Online Banking Service to make any payments to a third party, you agree to the terms of the Agreement.

2. **Your Merchant List.** You may include all utility companies, merchants, financial institutions, insurance companies, individuals, etc. whom you wish to pay through the Online Banking Service. Include a complete mailing address and telephone number for each and your account number with each payee. We reserve the right to decline to make payments to certain persons and entities.

3. **Your Password.** Each individual who has access to the Online Banking Service, including each individual named on joint accounts, must designate a password and a user code. Your password must be a minimum of 6 characters, which must consist of at least one (1) letter and one (1) numeric character. The letters are case sensitive. For example, if you enter your password as: 1234abc you cannot use

1234ABC. It is recommended that you change your password periodically to enhance security.

4. **Scheduling Payments.** You may choose to add Bill Payment and use your PC to electronically schedule payments with the Online Banking 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 (Checking Plus), if any, or other line of credit.

5. **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 Online Banking 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 Bill Payment 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 direct 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 Bill Payment 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 prior to the date your payment is due, excluding any applicable grace periods (the "Due Date"). Payments and transfers must be scheduled by the normal cut-off time of 2 p.m. (Central Standard Time) on any business day in order for the payment to be initiated for that business day.

6. **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 payment on-line and we have a reasonable opportunity to react.

7. **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 under applicable law for some of your losses or damages, subject to all of the limitations on liability contained in this Agreement. However, there are some exceptions. We will not be liable for instance:

a. if, through no fault of ours, you do not have enough money in your Bill Payment Account to make the transfer;

b. if the money in your Bill Payment Account is subject to legal process or other encumbrances restricting transfer;

c. if the transfer would go over the credit limit on your overdraft line (if any);

d. if the system was not working properly when you started the transfer;

e. if circumstances beyond our control (such as fire or flood or systems failure) prevent the transfer, despite reasonable precautions that we have taken; or

f. if the payee mishandles or delays handling payments sent by us.

8. **Canceling Payment.** You may use your PC to cancel a payment up to 6 p.m. (CST) on the business day your payment is scheduled to be initiated ("Transaction Date"). There is no fee for canceling a payment Online. Other requests must be made at least one (1) day

prior to scheduled payment date. A payment that has been sent may be recalled for a fee of \$20 per item, but the Bank will not guarantee the ability to recall an item.

**9. Statements.** All payments, transfers, and/or fees made with the Online Banking 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 Online Banking Service during that month.

**10. Fees.** Fees for the Online Banking Services shall be payable in accordance with a schedule of charges as established and amended by Bank from time to time. Charges shall be automatically deducted from customer's account, and Bank shall provide to Customer monthly notice of such debit(s) on your statement.

**11. Equipment.** You are solely responsible for the equipment (including your personal computer and software) you use to access the Online Banking Services. We are not responsible for errors or delays or your inability to access the Online Banking Services caused by your equipment. We are not responsible for the cost of upgrading your equipment to stay current with the Online Banking Services nor are we responsible, under any circumstances, for any damage to your equipment or the data resident thereon. We also are not responsible for any loss, injury, or damage, whether direct, indirect, special or consequential, caused by the Online Banking Services or the use thereof or arising in any way out of the installation, operation, or maintenance of your PC equipment.

**12. Business Days/Hours of Operation.** Our business hours are 8 a.m. to 5 p.m. (CST), Monday through Friday, except bank holidays. Although payments and transfers can be completed only on business days, the Bank will seek to make the Online Banking Service available 24 hours a day, seven days a week, except during maintenance periods.

**13. Notice of Your Rights and Liabilities.** Security of your transactions is important to us. Use of the Online Banking Services may therefore require a PIN or password. If you lose or forget your PIN or password, please call (402) 353-2555 during normal business hours listed above. We may accept as authentic any instructions given to us through the use of your password or PIN. You agree to keep your

PIN and password secret and to notify us immediately if your PIN or password is lost or stolen or if you believe someone else has discovered your PIN or password. You agree that if you give your PIN or password to someone else, you are authorizing them to act on your behalf, and we may accept any instructions they give us to make transfers or otherwise use the Online Banking Services. Online Banking Services enables you to change your password; we recommend that you do so regularly. Subject to all of the limitations on liability contained in this Agreement, we may be liable for certain security breaches to the extent required by applicable law and regulation.

We do not assume any other liability or otherwise guarantee the security of information in transit to or from our facilities. Please note that we reserve the right to (1) monitor and/or record all communications and activity related to the Online Banking Services; and (2) require verification of all requested transfers in the manner we deem appropriate before making the transfer (which may include written verification by you.) You agree that our records will be final and conclusive as to all questions concerning whether or not your PIN or password was used in connection with a particular transaction. If any unauthorized use of your PIN or password occurs, you agree to (1) cooperate with us and appropriate law enforcement authorities in identifying and prosecuting the perpetrator; and (2) provide reasonable assistance requested by us in recovering any unauthorized transfer of funds.

**14. Lost or Stolen PIN.** Tell us AT ONCE if you believe your PIN or password has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum line of credit). If you tell us within two (2) business days, you can lose no more than \$50. If you do NOT tell us within two (2) business days after you learn of the loss or theft of your PIN or password, and we can prove we could have stopped someone from using your PIN or password without your permission if you had told us, you could lose as much as \$500. Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within sixty (60) days after the statement was mailed to you, you may not get back any money you lost after the

60 days, if we can prove that we could have prevented someone from taking the money if you had told us in time. If you believe your PIN or password has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call (402) 353-2555 during normal business hours listed above. WE CANNOT ACCEPT NOTIFICATION OF LOST OR STOLEN PINS OR PASSWORDS OR UNAUTHORIZED TRANSFERS VIA E-MAIL.

**15. Errors and Questions.** In case of errors or questions about your electronic transactions, telephone us at (402) 353-2555, 8 a.m.-5 p.m. (CST), Monday through Friday, or write us at: Bruning State Bank, Attention: Electronic Banking Department, Post Office Box 100, Bruning NE 68322-0100, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transaction listed on the statement or receipt. We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared. You will need to:

- a. tell us your name and Account number (if any);
- b. describe the error or the transaction you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information; and
- c. tell us the dollar amount of the suspected error.

If you tell us verbally, we may require you to send us your complaint or question in writing within ten (10) business days following the date you notified us. We will determine whether an error occurred within ten (10) business days (twenty [20] business days if the notice of error involves an electronic fund transfer to or from the account within thirty [30] days after the first deposit to the account was made) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days (twenty [20] business days if the notice of error involves an electronic fund transfer to or from the account within thirty [30] days after the first deposit to the account was made) for the amount you think is in error, so that you will have 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, we may not credit your account. If we determine there was no error, we will reverse the previously credited amount, if any, and we will send you a written explanation within three (3) business days after we finish our investigation. You may ask for copies of the documents we used in our investigation.

**16. Disclosure of Account Information to Third Parties.** We may disclose information to third parties about your account or the transactions you make:

- a. where it is necessary for completing transactions or resolving errors involving the Online Banking Services; or
- b. in order to verify the existence and condition of your account for a third party, such as a credit bureau or a merchant; or

- c. in order to comply with government agency rules, court orders, or other applicable law; or
- d. 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
- e. if you give us your permission.

17. **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.

18. **Termination of Online Banking Services.** We reserve the right to terminate the Online Banking Services, in whole or in part, at any time, with or without cause, and without prior written notice. In that event, or in the event that you give us a termination notice, we may (but are not obligated to) immediately 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 Online Banking 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. Termination of the Online Banking Services does not affect your obligations under this Agreement with respect to occurrences before termination.

19. **No Unauthorized Use.** By accessing the Online Banking 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 Online Banking Services, and all persons are hereby notified that use of the Online Banking 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 of 1986.

20. **Responsibility for Customer Hardware and Software.** You are responsible for ensuring that there are adequate software and hardware security measures in place on your computers to prevent initiation of fraudulent payments through the Online Banking Services. Such security measures include but are not limited to anti-virus, spyware, malware, key logger detection software, firewalls, and any other "crimeware" protection programs.

21. **Security Procedures.** By using the Online Banking Services, you acknowledge and agree that this Agreement sets forth security procedures for electronic banking transactions that are commercially reasonable. You agree to be bound by instructions, whether authorized or unauthorized, which the Bank implements in compliance with these procedures, unless you have given us prior notice of possible unauthorized use (and the Bank has had a reasonable opportunity to act on such notice). If any instruction initiated through use of the Online Banking Services and accepted by the Bank in compliance with these security procedures contains any error, to the full extent allowed by law you shall be liable for, and shall indemnify the Bank against any claims, losses and expenses the Bank may incur that arise from or relate to the erroneous instructions. The Bank's records demonstrating compliance with these security procedures will be deemed conclusive proof that any payment order received by the Bank was authorized and that you are bound by those instructions.

22. **Fee Schedule.** Access to Bruning State Bank's Online Banking is free. Customers may inquire into their accounts, make transfers, and look at statements and check images for free. Bruning State Bank's bill payment service is also free.

## Mobile Banking Service Agreement

Terms and Conditions: Bruning State Bank. Thank you for using Bruning State Bank Mobile Banking combined with your handheld's text messaging capabilities. Message & Data rates may apply. For help, text "HELP" to 96924. To cancel, text "STOP" to 96924 at any time.

In case of questions please contact customer service at 800-403-5889 or visit [www.bruningbank.com/contact](http://www.bruningbank.com/contact).

### Terms and Conditions

Program: Bruning State Bank offers their customers mobile access to their account information (e.g., for checking balances and last transactions) over 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 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. Message & Data rates may apply. Customers will be allowed to opt out of this program at any time. Questions: You can contact us at 800-403-5889, or send a text message with the word "HELP" to this number: 96924. We can answer any questions you have about the program. 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: 96924. You'll receive a one-time opt-out confirmation text message. After that, you will not receive any future messages.

Terms & Conditions: By participating in Mobile Banking, you are agreeing to the terms and conditions presented here.

Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless Mobile Banking and any software you may obtain from Mobile Banking ("Software") may not be available at any time for any reason outside of the reasonable control of {name of Financial Institution} or any service provider.

Privacy and User Information. You acknowledge that in connection with your use of Mobile Banking, Bruning State Bank and its affiliates and service providers, including Fiserv, Inc. and its affiliates, may receive 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 Mobile Banking or the Software (collectively "User Information"). Bruning State Bank 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 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. Bruning State Bank and its affiliates and service providers also reserve the right to monitor use of Mobile Banking and the 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 Mobile Banking or the 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 Mobile Banking or the 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 {name of 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 {name of Financial Institution} or any third-party service provider involved in the provision of Mobile Banking; (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, cancel bots, 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 {name of Financial Institution}, any third-party service provider involved in providing Mobile Banking, 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: (a) access any software or services for which your use has not been authorized; or (b) use or attempt to use a third party's account; or (c) interfere in any manner with the provision of Mobile Banking or the Software, the security of Mobile Banking or the Software, or other customers of Mobile Banking or the Software; or (d) otherwise abuse Mobile Banking or the Software.

Use of Google Maps: You agree to abide by the Google terms and conditions of use found at

[http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html) and the Google Legal Notices found at [http://www.maps.google.com/help/legal\\_notices\\_maps.html](http://www.maps.google.com/help/legal_notices_maps.html), or other URLs as may be updated by Google.

## Mobile Deposit Service Agreement

**1. Mobile Deposit Service Generally; Other Agreements.** The Bank offers its Customers access to a Mobile Deposit Service (the "Mobile Deposit Service"). By using the Mobile Deposit Service, you are agreeing to be bound by the terms and conditions contained in this Agreement. 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.

**2. Additional Defined Terms.** The following capitalized terms shall have the following meanings:

- a. "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.
- b. "Check 21" means the Check Clearing for the 21st Century Act, as amended.
- c. "Deposit Account" means your deposit account with us to which you are authorized to make a deposit using a Capture Device.
- d. "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 Mobile Deposit Service.
- e. "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.
- f. "Image Replacement Document" or "IRD" means a substitute check, as defined in Check 21.
- g. "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.
- h. "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.

**3. Mobile Deposits.** Pursuant to the terms of this Agreement, you may use the Mobile Deposit Service to deposit Items to your Deposit 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.

**4. 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 Mobile Deposit 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 Mobile Deposit 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.

**5. 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 Deposit 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.

**6. 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 Mobile Deposit Service, you may experience technical or other difficulties. We will attempt to post alerts on our website notify you of these interruptions in the Mobile Deposit Service. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur.

**7. 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.

**8. Deposit of Other Items; Deposits when Service Not Available.** You agree that you will not use the Mobile Deposit Service to deposit anything not meeting the definition of an Item. If you use the Mobile Deposit 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, ATM, or bank by mail. You further agree to use such other channels when the Mobile Deposit Service may not be available.

**9. 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 Deposit Account. You acknowledge that all credits received for deposits made through the Mobile Deposit 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.

**10. 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 Mobile Deposit 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 Deposit 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 presentation 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.

**11. 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.

**12. 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 6 above, 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 the Mobile Deposit Service before 5:00 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 the Mobile Deposit Service after 5:00 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 Mobile Deposit Service will be made available to you pursuant to our Funds Availability Policy. See the section entitled "Funds Availability Policy" in your Deposit Agreement.

**13. Fees.** You are responsible for paying the fees for use of the Mobile Deposit Service as the Bank may charge them from time to time. The Bank may change the fees for use of the Mobile Deposit 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 Mobile Deposit Service after notice of the fee change shall be deemed to be acceptance on your part of the new terms.

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

a. You and any user you authorize will use the Mobile Deposit 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 Mobile Deposit Service to transmit and deposit Images of Items only.

c. You will transmit only Images of Items acceptable for deposit through the Mobile Deposit 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 Nebraska, 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 Mobile Deposit 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 depositary 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 Mobile Deposit Service as required by the User Guide.
- l. Your understanding that acceptance of the End User License Agreement is required for use of the Mobile Deposit Service.

**15. Intellectual Property.** This Agreement does not transfer to you any ownership or proprietary rights in the Mobile Deposit 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 Mobile Deposit 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 Mobile Deposit 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 Mobile Deposit Service by any third party;
- d. copy or reproduce all or any part of the Mobile Deposit Service; or
- e. interfere, or attempt to interfere, with the Mobile Deposit Service in any way.

**16. Termination of Mobile Deposit Service.** If Customer wants to terminate his or her access to the Mobile Deposit Service, he or she may call the Bank at 402-353-2555 or 800-403-5889. The Bank reserves the right to terminate or suspend the Mobile Deposit Service, at any time with or without cause and without prior written notice. Notwithstanding termination, any Image transmitted through the Mobile

Deposit Service shall be subject to this Agreement.

## **Miscellaneous Agreements**

**1. Indemnification and Limitations on Liability.** In addition to the indemnifications and limitations on liability contained above and any other Disclosures made by us to you, you hereby agree to 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, warranty or covenant contained herein. YOU AGREE THAT, IN CONNECTION WITH THE SERVICES DESCRIBED IN THIS AGREEMENT, THE BANK SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY THE BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BANK'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF YOUR ACTUAL DAMAGES OR THE TOTAL IN FEES YOU PAID FOR THE USE OF THE SERVICES DURING THE SIX MONTH PERIOD PRIOR TO THE SUPPOSED ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE BANK SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. YOU ACKNOWLEDGE THAT THE SERVICES ARE PROVIDED BY THE BANK ON AN "AS IS" BASIS, AND THAT YOU USE THE SERVICES AT YOUR SOLE RISK. EXCEPT AS

EXPRESSLY SET FORTH IN THIS AGREEMENT, THE BANK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**2. Notice.** Except as otherwise provided in this Agreement, written notice from Bank will be sent to Customer at Customer's address as it appears on Bank's records at the time of such notice and will be effective when received or five (5) days after being mailed by U.S. mail, whichever is earlier. Except as otherwise provided in this Agreement, any written notice Customer is required to provide to Bank must be signed by Customer or an Authorized Representative and delivered or sent to Bank by first class United States mail at: Bruning State Bank, Attention: Electronic Banking Department, Post Office Box 100, Bruning, NE 68322-0100. Notices to Bank shall be effective when actually received by Bank and after Bank has had a reasonable time to act upon such notice.

**3. Term and Termination.** This Agreement will begin on the date set forth above and shall continue until terminated by either party. Bank reserves the right to terminate or suspend this Agreement and/or any of the Services at any time, with or without cause, and without prior notice to Customer. Termination of this Agreement will not affect the parties' respective rights and obligations with respect to transactions executed prior to the date of termination.

**4. Amendment.** From time to time, the Bank 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 Bank's notice to the Customer. If you do not agree with the change, you may discontinue using the Services. However, if you continue to use any of the Services, that shall be deemed your acceptance of the agreement, its terms, and to the change.

**5. Assignment.** You may not transfer or assign your rights or duties under this Agreement.

**6. 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 Nebraska, without regard to any conflicts of law principles. If state and federal law are inconsistent, or if the state law is preempted by the federal law, federal law governs.

**7. 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.

**8. Entire Agreement.** This Agreement, your Signature Card/Deposit Agreement, initial account disclosures, any disclosures that modify this agreement, the Fiserv terms and conditions, the Bank's 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 Services shall be an acceptance of all of the relevant terms on your part. In no event shall the Bank's marketing materials, user's guide, 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.