



## Personal Online Banking Agreement

*This Agreement explains the terms and conditions regarding your use of our Online banking services ("Online Banking") and any related software ("Software"). You agree to the terms and conditions of this Online Personal Banking Agreement ("Agreement") as well as any related disclosures or online instructions and any applicable account agreements ("Account Agreement(s)") as well as any agreements for any additional services within the Online banking services suite between you and us governing your deposit and/or transaction accounts enrolled in Online Banking (your "Eligible Account(s)"), and any changes to these terms that are communicated to you from time to time.*

As used in this Agreement, the terms "you" and "your" refers to the banking customer agreeing to the terms and conditions in this Agreement and "we", "us" and "our" refer to First Foundation Bank. The term "Business Day" means every day on which we are open for purposes of carrying on substantially all of our business, except Saturdays, Sundays, and holidays observed by us.

### 1. Your Use of Online Banking.

Online Banking allows you to manage your Eligible Accounts using an approved personal computer or mobile device capable of accessing Online Banking (each a "Supported Device").

- a. **Eligibility.** Online Banking is offered to Owners and Authorized Representatives of eligible accounts. Without limiting the foregoing, Online Banking is not offered to minors. By using Online Banking, you represent that you meet these requirements. We may in our sole discretion offer Online Banking to non-individuals.
- b. **Enrollment.** You may not use Online Banking until accepting this Agreement. By clicking "I Agree" when you register for Online Banking, you agree to the terms and conditions of this Agreement and the E-Sign Consent located at the bottom of this Agreement.
- c. **Your Use of Online Banking.**
  - 1) You may only use Online Banking for Eligible Accounts.
  - 2) Online Banking can be accessed through our Online Banking website at [www.firstfoundationinc.com](http://www.firstfoundationinc.com) (the "Site").
  - 3) Online Banking services are provided solely for your convenience and are not in real time.
- d. **Passmark.** Passmark is comprised of an Extended Validation ("EV") certificate, security passphrase, security questions and device identification (together, "Passmark Information") used to authenticate access to Online Banking.
- e. **Credentials.** We will provide you with a personal identification number ("PIN") (together with Passmark Information and any other credentials provided, "Credentials"). Your PIN will give you access to your Eligible Accounts via the Site. Your PIN can be changed through the Site.
- f. **Security Procedures.** To access Online Banking, you must comply with security procedures as described in the "Security Procedures" section of this Agreement and with any other security procedures and policies we may establish from time to time (together these are referred to as "Security Procedures" or a "Security Procedure").
- g. **Necessary Hardware/Software.** Unless otherwise provided, you are responsible for providing the hardware and software necessary to access Online Banking and the Site, and you will bear all costs associated with the acquisition and maintenance of such hardware and software.
- h. **Supported Devices.**
  - 1) We do not guarantee functionality of Online Banking or the Site on any devices.
  - 2) You are responsible for maintaining all Supported Device(s) used in connection with Online Banking, and for conducting routine maintenance and applying upgrades as necessary to keep Supported Device(s) in good working order.
  - 3) You will ensure that Supported Device(s) used to access Online Banking are free from computer viruses and other malicious code and you will install adequate protection in such Supported Device(s).
  - 4) We will not be responsible or liable for any errors or failures from any malfunction of your Supported Device(s), any of your other hardware or software or software provided by us or one of our suppliers.
- i. **Compliance with Applicable Law.** You will comply with all applicable laws, rules and regulations in connection with your use of Online Banking, including (but not limited to) the Unlawful Internet Gambling Enforcement Act and sanctions and laws administered by the Office of Foreign Assets Control.
- j. **Communications.** You will ensure that each electronic communication submitted to us through Online Banking complies with this Agreement and all applicable law. You will not include any obscene, libelous, scandalous or defamatory content in any communications with us or our suppliers.

### 2. Availability of Online Banking.

- a. General Availability. You can usually access Online Banking through the Site seven (7) days a week, twenty-four (24) hours a day, and we will use reasonable efforts to make Online Banking available for your use on a continuous basis.
- b. Unavailability.
  - 1) At certain times, your access to Online Banking may be subject to delays, malfunctions or other inconveniences. Accessibility to Online Banking may be interrupted or delayed or Online Banking may be unavailable or malfunctioning because of conditions beyond our control, including outages in Internet or mobile services availability. Online Banking may also be unavailable for short periods of time for regular or emergency system maintenance.
  - 2) We cannot guarantee and are not responsible for the availability of Online Banking and we will not be liable for any delay or interruption in or any unavailability of Online Banking.
  - 3) When Online Banking is unavailable, it may be possible to conduct some Online Banking transactions by calling us at 888-405-4332.
- c. Our Discontinuance/Denial of Online Banking. We have the right to discontinue Online Banking at any time at our discretion. If we choose to discontinue Online Banking, we will provide you with reasonable notice in advance of that fact when possible. We also have the right to take actions to protect our systems and information, including denial of your access to Online Banking.

### 3. **Online Banking Services.**

Online Banking can be used to conduct any of the following financial services:

- a. Balance and Transaction Information. You may use Online Banking for informational purposes, including to obtain balance and transaction information on your Eligible Account(s) and to view digital images of cleared checks you've written. You may also use Online Banking to download information regarding your Eligible Account(s) into Quicken® and QuickBooks®.
  - 1) If you use Online Banking to access information regarding your Eligible Account(s), you authorize the disclosure of information related to your Eligible Account(s) through Online Banking.
  - 2) All account balances and transaction histories reflect activity through the close of the previous banking day.
  - 3) Any information provided through Online Banking, including information regarding your Eligible Account(s), is subject to verification by us. Eligible Account information accessed via Online Banking should not be considered an official record. If any information you obtain through Online Banking conflicts with our records, our records will control.
  - 4) Not all information regarding your Eligible Account(s) can be accessed through Online Banking, and account information accessed via Online Banking may not include all activity related to your Eligible Account(s) and may differ from other records provided to you due to reasons which may include (but are not limited to) deposits in progress, outstanding payments or charges.
  - 5) We will provide information accessible through Online Banking on a best efforts basis for your convenience, however, we will not be liable for: (a) any deficiencies in the accuracy, completeness, availability or timeliness of such information; (b) any errors or omissions in the delivery or transmission of such information; or (c) any investment or other decision made by you using this information.
- b. Intra-Bank Transfers. You may use Online Banking to make the following types of intra-bank transfers ("Intra-Bank Transfer(s)"):
  - 1) Transferring money between your Eligible Accounts.
  - 2) Transferring money to pay us for overdraft protection; and
  - 3) Transferring money to make loan payments for loans you have with us.
- c. External Transfers. External Transfers enables you to transfer funds between your Account(s) that you maintain with us on the one hand, and your Account(s) that are maintained by other financial institutions (External Accounts). You represent and warrant that you are either the sole owner or a joint owner of the Eligible Account and the External Account and that you have all necessary legal right, power and authority to transfer funds between the Eligible Account and the External Account. If you are a joint owner of the Eligible Account, External Account, or both, then you represent and warrant that (i) you have been authorized by all of the other joint owners to operate such Accounts without their consent (including without limitation to withdraw or deposit any amount of funds to such Accounts or to even withdraw all funds from such Accounts); and (ii) we may act on your instructions regarding such Accounts without liability to such other joint owners. Further, you represent and warrant that the External Account is located in the United States.
  - 1) When we receive an External Transfer instruction from you, you authorize us to (i) debit your Eligible Account and remit funds on your behalf to the External Account designated by you, or, as applicable, to (ii) credit your Eligible Account and remit funds on your behalf from the External Account designated by you. You also authorize us to reverse a transfer from the applicable Account if the debit is returned from the other account in the transaction for any reason, including but not limited to nonsufficient funds.
- d. Online Bill Pay. Our bill payment service ("Online Bill Pay"), which includes the "Popmoney" service, is an optional Online Banking service which allows you to schedule bill payments ("Bill Payments") through Online Banking.
  - 1) To use Online Bill Pay, you must enroll in Online Bill Pay through the Site and you must be approved by us for enrollment.
  - 2) To use Online Bill Pay, you must have an Eligible Account that is eligible for Online Bill Pay and approved by us. As part of the enrollment process, you will be required to designate such an Eligible Account from which any Bill Payments will be debited (your "Online Bill Pay Account").

- 3) You may use Online Bill Pay to make Bill Payments to any merchant, financial organization or individual with a U.S. address.
  - 4) Once you are enrolled in Online Bill Pay, you may do the following through the Site: (i) schedule one time and recurring Bill Payments; (ii) set automatic Bill Payment for eligible electronic bills you have sent directly to your Online Bill Pay Account; (iii) set preapproved payment limits for recurring bills; (iv) review your pending and paid Bill Payments; and (v) generate reports designed to track your spending from month-to-month.
  - 5) We may at our option complete Bill Payments by electronic funds transfer or by issuing a paper check drawn upon your Eligible Account.
  - 6) You are responsible for scheduling Bill Payments on-time and for any fees charged to you by third parties as a result of your failure to do so.
  - 7) Online Bill Pay is subject to additional terms and conditions (including those for Popmoney). You must agree to these terms and conditions in order to complete your enrollment in Online Bill Pay and before you may use Online Bill Pay.
- b. **Mobile Banking.** The “Mobile Banking” service is an optional Online Banking service which allows you mobile access to your Eligible Account information through Short Message Service (“SMS”), mobile application (“App”) and mobile web browser; and provides you the option of setting up alerts for your Eligible Account(s).
- 1) To use Mobile Banking, you must enroll in Mobile Banking through the Site and you must be approved by us for enrollment.
  - 2) Additional terms and conditions for Mobile Banking are located in Section 29 at the end of this Agreement.
- c. **Mobile Capture Service.** Our “Mobile Capture” service is an optional Online Banking service which allows you to use the Mobile Application and certain hardware (such as a smartphone or other mobile device) approved by us to deposit certain payment instruments.
- 1) When you are enrolled in Mobile Banking, you will automatically be enrolled in Mobile Capture.
  - 2) Additional terms and conditions for Mobile Capture are located in Sections 29 and 30 at the end of this Agreement.

#### 4. **Transactions; Transaction Requests.**

- a. **Transaction Requests.**
- 1) “Transaction Requests” means any transaction or transfer (each a “Transaction”) initiated using Online Banking. Transaction Requests include, but are not limited to, Intra-Bank Transfers and Bill Payments.
  - 2) We will only process a Transaction Request that: (i) is actually received by us; (ii) identifies the Eligible Account from which it is to be paid; (iii) does not exceed the funds available for withdrawal from the applicable Eligible Account (“Available Funds”), as determined in accordance with the applicable Account Agreement and our funds availability policy; (iv) does not involve funds subject to a hold dispute or legal process preventing their withdrawal; (v) does not exceed any transaction limits applicable to your Eligible Account(s) or other restrictions or limitations established by us; (vi) is authorized by you and satisfies applicable Security Procedures; (vii) is accepted by us; and (viii) complies with any other written instructions, requirements and restrictions set forth in this Agreement, your Application or otherwise provided to you in writing by us. We may refuse to honor any Transaction Request which does not comply with any of these requirements.
  - 3) You authorize us to charge your Eligible Account(s) in the amount directed by a Transaction Request(s).
  - 4) We assume no liability except as otherwise set forth in this Agreement for accepting incoming Transaction Requests.
- b. **Our Reliance on Transaction Requests.** If a Transaction Request received by us was transmitted or authorized by you, it will be effective as your Transaction Request whether or not we complied with applicable Security Procedures with respect to that Transaction Request and whether or not that Transaction Request was erroneous in any respect or that error would have been detected if we had complied with applicable Security Procedures.
- c. **Executing Transaction Requests.** Unless otherwise provided by this Agreement:
- 1) We will process Transaction Requests issued in your name using Online Banking in the amount described in the Transaction Request and from or to your Eligible Account(s), all as described in each Transaction Request.
  - 2) We will execute Transaction Requests on the day that a Transaction Request is received, provided that the Transaction Request is received by the applicable cutoff time and provided the day of receipt is a business day for us (and for the Federal Reserve Bank, if applicable).
  - 3) In attempting to execute any Transaction Request(s), we will use reasonable efforts to utilize the means of transmission specified in the Transaction Request (if any), but in no way will we be limited to such means of transmission.
- d. **Time or Receipt of Transaction Requests.**
- 1) The applicable cutoff times for receiving certain Transaction Requests are indicated in this Agreement, your Application, notice(s) issued by us or on the Site page used for making such Transaction Requests.
  - 2) All Transactions initiated by a Transaction Request prior to the applicable cutoff time on a Business Day will be posted to your applicable Eligible Account on the same Business Day they were initiated.
  - 3) All Transactions initiated by a Transaction Request after the applicable cutoff time or not on a Business Day will be posted to your applicable Eligible Account on the following Business Day.
  - 4) We have the right to change cutoff times or other deadlines at any time at our discretion.
- e. **Cancelling Transactions.**
- 1) You may be able to cancel certain preauthorized and future-dated Intra-Bank Transfers or Bill Payments provided that we have not already processed them. To cancel, you must submit a cancellation request through the Site or the Online Bill Pay

application, and we must receive this request at least one business day before the transaction(s) in question are scheduled to be processed.

- 2) Except as otherwise provided, you cannot cancel any other Intra-Bank Transfers or Bill Payments. Other Transactions may only be cancelled as provided in the terms and conditions specific to the associated service.
- f. Stop Payment
- 1) Online Banking can be used for stopping certain payments (“Online Stop-Payment”). This feature is accessible in the “Stop Payment” menu of the Site and allows you to securely forward Online Stop-Payment requests to us for processing.
  - 2) You authorize us to accept Online Stop-Payment sent through the Site.
  - 3) Online Stop-Payment can only be used to stop payment on checks that you have written from your Eligible Account(s), and cannot be used to cancel any other Transfers.
  - 4) You and we agree to abide by the rules and regulations as outlined in the provisions of the Uniform Commercial Code as in effect in the State of California (the “UCC”) governing stop-payment orders.
  - 5) Online Stop-Payment order requests will generally be processed within one (1) to two (2) Business Days.
  - 6) Online Stop-Payment orders are effective for 180 days after the date received and will automatically expire after that period unless renewed by you in writing.
  - 7) There is typically a fee associated with Online Stop-Payment. Please refer to the Client Service Fee Schedule for additional information.
  - 8) We will not process a Stop Payment relating to an item that was processed by us prior to your submission of a Stop Payment order request or relating to a check that has already been cleared.
  - 9) We do not check for previously cleared checks that match a Stop Payment order request submitted by you. You are responsible for viewing your Eligible Account history for checks that have already been cleared prior to your submission of a Stop Payment order.
  - 10) We will not be liable under any circumstances for payment of an item where an Online Stop Payment order is not effective, where payment is made on an item processed on the same Business Day that the Online Stop Payment order on that item is received by us, or where exact information regarding the amount and number of the item is not provided. If we pay such an item, we will not be liable if other items drawn by you are returned for insufficient funds resulting from such payment.
- g. Notice of Transactions and Rejections. Unless otherwise provided in this Agreement:
- 1) We will not notify you when we process a Transaction Request.
  - 2) We will notify you if we cannot execute a Transfer Request due to a funds transfer system problem beyond our reasonable control.
  - 3) You agree that notification of a Transaction, either in the form of an advice or a Statement, will be effective and sufficient if mailed by us to your mailing address listed in the account records for the Eligible Account(s) involved in the Transaction.
- h. Accuracy of Transaction Requests. We are not responsible for the detection of errors contained in any Transaction Request and are entitled to rely on any information contained in any Transaction Request. You must ensure the accuracy and completeness of Transfer Requests provided to us. Unless otherwise provided, we will not be liable for any losses arising, directly or indirectly, from any ambiguity in instructions given to us in connection with any Transaction Request.
- i. Discrepancies.
- 1) If a Transaction Request identifies any bank by both name and an identifying number and the number identifies a bank different from the bank identified by name, any bank (including us) may rely solely on the identifying bank number, even if it identifies a bank different from the named bank.
  - 2) If a Transaction Request identifies a payee or the owner of an account to be debited by both name and an identifying or bank account number, and the name and number identify different persons, the Transaction Request may be made solely on the basis of the account number, even if it identifies a person different from the named payee.
  - 3) We will not be responsible for any delay arising out of our or any bank’s attempt to reconcile inconsistencies between names and account numbers or to resolve other irregularities.
- j. Transaction Limits.
- 1) Unless otherwise provided, the transaction limits established by your Account Agreement(s) or otherwise applicable to your Eligible Account(s) are applicable to Transactions using such Eligible Account(s).
  - 2) This Agreement, your Application or notices issued by us to you in writing may provide for more restrictive transaction limits for certain types of Transactions. In such case, these transaction limits (whether established by us or you) will apply.
- k. Overdrafts. The provisions regarding overdrafts established by your Account Agreement(s) or otherwise applicable to your Eligible Account(s) are applicable to Transactions using such Eligible Account(s).

## 5. **Statements and Communications.**

- a. Generally. In accordance with this Agreement and any other applicable agreements between you and us, we will from time to time provide to you: (a) statements relating to your Eligible Account(s) (“Statements”) and (b) disclosures, notices, messages and other information or data relating to your Eligible Account(s) or Online Banking (collectively, (“Communication(s)”).
- b. Electronic Statements and Communications. You may elect to receive your Statements and certain Communications electronically through our “e-Statement Service.” To enroll in the e-Statement Service, you must enroll through the Site or contact us at 888-

**6. Fees and Charges for Online Banking.**

- a. Online Banking. You agree to pay for Online Banking in accordance with the Client Service Fee Schedule, as amended from time to time. To obtain a copy of the Client Service Fee Schedule, please contact your local branch. We will provide you with written notice at least thirty (30) days in advance of any increase of fees unless there are increases in governmental or access fees charged to us, in which case such fees will be immediately passed onto you at cost without notice.
- b. Account Fees. Any other fees associated with your Eligible Account(s) will continue to apply.
- c. Payment Method. You agree to pay all fees and charges associated with your use of Online Banking and authorize us to deduct such fees from your Eligible Account(s) for these amounts and any additional charges that may be incurred by you. Fees for services may also be charged indirectly upon you and applied to account analysis earnings credits.
- d. Additional Charges. There may be a charge for additional transactions and other optional services.

**7. Third Parties.**

- a. Unaffiliated Service Providers. We cannot guarantee and are not responsible for any services provided by unaffiliated service providers. We are not a party to, and we have no duty, liability or responsibility with respect to or in connection with any of your agreements with unaffiliated service providers or in connection with any device, hardware, software or any other product or service you purchase from others relating to your use of Online Banking. You are responsible for any charges imposed by any unaffiliated service provided in connection with your use of Online Banking.
- b. Third Party Sites.
  - 1) Information that we publish on the Internet may contain links to other sites and third parties may establish links to our site. We make no representations about any other web site that you may access to, from or through any of our sites. Unless expressly stated in writing, we do not endorse the products or services offered by any company or person linked to this site nor are we responsible for any software or the content of any information published on the site of any third party.
  - 2) Neither we nor our suppliers warrant the adequacy, accuracy or completeness of any information provided as a part of Online Banking contained in any third party sites linked to or from the Site or any of our other websites.

**8. Electronic Mail.**

Sending E-mail is a good way to communicate with us regarding your accounts or Online Banking. However, your e-mail is actually sent via your own software and, as a result, is not secure. You should not include confidential information, such as account numbers and balances in any e-mail to us. You cannot use e-mail to initiate Transactions, and all Transactions must be initiated using the appropriate functions within the Site. We will not be liable for any errors, omissions, claims, or problems of any kind involving your e-mail.

**9. Risks of Using Online Banking; Disclaimers of Liability.**

- a. Unauthorized Tracking/Malicious Code. The hardware and software that you use may be subject to unauthorized tracking or other manipulation by "spyware" or other malicious code.
  - 1) We will use reasonable efforts to secure Online Banking to prevent the introduction of any virus or other malicious code. However, no security system is failsafe, and despite our efforts the security of Online Banking or your hardware or software could be compromised or malicious code could be introduced by third parties.
  - 2) We are not responsible for advising you of the existence or potential effect of malicious code, and your use of your hardware and software is at your own risk. Unless otherwise provided by this Agreement, we will not be responsible or liable for any security breaches and are not responsible for the acts of third parties.
  - 3) We will provide you with notice of any security breach of which we become aware as required by applicable law.
- b. Viruses and Other Malicious Code.
  - 1) You should routinely scan your computer and diskettes using reliable virus protection product to detect and remove viruses and other malicious code. If undetected and unrepaired, a virus or malicious code can corrupt and destroy your programs, files and hardware, or be used to provide a third party unauthorized access to your accounts.
  - 2) You should take precautions when downloading files from sites to protect your computer software and data from viruses and other malicious code.
  - 3) We are not responsible for any virus or other malicious code that you may encounter using the Online Banking.
- c. Unauthorized Interception/Access.
  - 1) Communications you send to us or receive from us may be subject to unauthorized interception or access by third parties.
  - 2) We will use commercially reasonable efforts to prevent the unauthorized interception of such communications, however, we do not guarantee that inquiries or transaction activity will be completely secure and communications you send to us or receive from us may not be encrypted.
  - 3) Unless otherwise provided by this Agreement, you assume all risk that any communications sent or received by you using Online Banking or stored on any of your devices may be intercepted or accessed by unauthorized third parties.

4) We will provide you with notice of any unauthorized interception or access of communications of which we become aware as required by applicable law.

## 10. Security & Protecting Your Account.

- a. Securing Online Banking Service. We are strongly committed to protecting the security and confidentiality of your information. In addition to Security Procedures, we use several techniques to help secure Online Banking, including the following:
- 1) You can only access Online Banking with browsers that have a high security standard.
  - 2) You must have a valid Online Banking ID and PIN to logon to the Site.
  - 3) We have established procedural, physical and electronic safeguards to prevent the compromise or unauthorized disclosure of confidential information that meets the objectives of the guidelines issued under the Gramm- Leach- Bliley Act.
  - 4) We restrict access to confidential information to those employees and persons with a need to know confidential information in order to perform their obligations under this Agreement, and we instruct such employees and persons that they must adhere to these "Security & Protecting Your Account" provisions.
  - 5) We will comply with all current and future regulations with regard to the non- public personal information.
  - 6) We require third party vendors retained or hired to assist in performing duties under this Agreement that they similarly protect and restrict the use of confidential information.
- b. Your Responsibility for Security. You agree to take every precaution to ensure the safety, security and integrity of your Eligible Account(s) and Transactions when using Online Banking. You agree to use available security measures (including applicable Security Procedures) to minimize the risk of fraud.
- c. Supported Device(s) and Systems.
- 1) You will establish and maintain reasonable security and control of your Supported Device(s) and related systems.
  - 2) You will lock Supported Device(s) during times Supported Device(s) are not being used.
  - 3) You will not leave any Supported Device(s) or other devices with access to Online Banking unattended while logged into Online Banking.
  - 4) You will ensure that Supported Device(s) are free from viruses and other malicious code.
  - 5) You will maintain, update and upgrade your Internet browser software and other systems on a regular basis.
- d. Credentials.
- 1) You will maintain the confidentiality of all Credentials, security devices and related instructions provided by us in connection with Security Procedures and account data.
  - 2) You will memorize your PIN and other access information capable of being memorized and will not write it down.
  - 3) You will not provide any Credentials or access information to any unauthorized persons. If you provide any Credentials or access information to any unauthorized person, you assume all risk of loss in doing so.
- e. Review of Account(s) and Statements. You will review transactions and balances on all of your Eligible Account(s) on a regular basis and immediately examine all Statements we provide to you.
- f. Notification to Us. You must immediately notify us in the event that: (i) you become aware of any unauthorized or erroneous Transactions; (ii) any Credentials or security devices or related instructions provided by us in connection with Security Procedures have been used or accessed by unauthorized persons; (iii) any of your Supported Device(s) used to access Online Banking are lost or stolen or if you become aware of any unauthorized use of your Supported Device(s); or (iv) you become aware of any other security breach involving your Supported Device(s), Credentials or your Eligible Account(s).

## 11. Security Procedures.

- a. Verification. You agree that the authenticity of Online Banking transactions will be verified as being issued by you using one or more of the Security Procedures listed below and any Security Procedures that we establish from time to time. We have the right to deny access to Online Banking without prior notice if we are unable to confirm (to our satisfaction) authority to access Online Banking or if we believe it is necessary for security reasons.
- b. Purpose. Security Procedures are intended to verify the authenticity of Transaction Requests. No Security Procedure is intended to detect errors in the transmission or content of any Transaction Request, and you acknowledge that you and we have not agreed to any procedures for the detection of such errors. The Security Procedures are in addition to and do not limit or otherwise revoke or affect any separate authority for any User to issue Transaction Requests in your name.
- c. General Security Procedures. You agree to the following Security Procedures which are applicable to all Online Banking services:
- 1) Credentials.
    - i. You should change your PIN regularly. We may also require you to change your PIN at any time.
    - ii. We will never ask for your PIN or any other Credentials and our employees do not need and should not ask for your PIN or any other Credentials. You agree not to respond to any requests purporting to be from us for your PIN or any other Credentials under any circumstances.
    - iii. If you request the immediate termination or deactivation of any Credential, we will use reasonable efforts to terminate or deactivate the Credential(s) as soon as reasonably possible.
    - iv. Credentials that are not used for ninety (90) consecutive days will be automatically deactivated by us.

- 2) Alerts and Notifications. You will receive alerts and notifications as provided below: i. *Bill Pay*.
- A. You will receive automatic Bill Pay alerts when Bill Pay payees are added, changed or deleted for your Account(s).
  - B. If selected as an option by you, we will send you notifications when your bills are due according to the due date information you have provided to us and when Bill Payments are sent.
  - C. We may, but are not required to, send you alerts via email regarding Bill Pay transactions we deem to be potentially suspicious or abnormal.
- ii. *Other Transactions*.
- A. Your enrollment in First Foundation Bank 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 Foundation Bank account(s). Alerts are provided within the following categories:
    - B. 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.
    - C. Account Alerts provide you with notification of important account activities or when certain changes are made to your Service accounts, such as scheduled payments made, scheduled payments cancelled and mobile deposits. 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.
    - D. Additional Alerts must be activated by you to be enabled. These Additional Alerts can be accessed from the Alerts menu within First Foundation Bank Online Banking and Alerts menu within First Foundation Bank Mobile Banking.
    - E. 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 Foundation Bank reserves the right to terminate its Alerts service at any time without prior notice to you.
    - F. 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 Foundation Bank 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.
    - G. Alerts via Text Message. To stop Alerts via text message, text "STOP" to 96924 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 Foundation Bank 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 96924. In case of questions please contact customer service at 888-405-4332. Our participating carriers include (but are not limited to) AT&T, SprintPCS, T-Mobile®, U.S. Cellular®, Verizon Wireless, MetroPCS.  
Limitations. First Foundation Bank 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 Foundation Bank's control. We neither guarantee the delivery nor the accuracy of the contents of each Alert. You agree to not hold First Foundation Bank, 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.
    - H. 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.

3) Callback. Unless otherwise provided, we may, but are not required, to make a telephonic callback (“Callback”) to you for Transfer Request or Transaction.

- c. Service-Specific Security Procedures. For certain Online Banking services, we may provide you with security methods for you to use when initiating Transaction Requests through such services. These security methods will be detailed on the Site page related to such services.
- d. Additional Security Procedures. We may, at our option, offer you additional Security Procedures to enhance the security of your Eligible Account(s) and Online Banking. We have the right to implement additional verification and identification steps, factors or procedures that we deem necessary or appropriate in our discretion. These may be implemented as an amendment to the Security Procedures selected by you or as an additional Security Procedure available to you.

## 12. Intellectual Property.

- a. Technology.
  - 1) “Technology” means our or our subcontractor’s applications and processes designed to facilitate Online Banking. This Agreement does not transfer to Client any ownership or proprietary rights in the Technology or any work or any part thereof, and all right, title and interest in and to the Technology will remain solely with FFB or its subcontractors.
  - 2) Technology may include but is not limited to Client service support, reports, software, software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof developed or provided by FFB or its subcontractors and used in the provision of Online Banking.
  - 3) You are not purchasing title to any Technology.
  - 4) If you are approved to use Online Banking, you will have a license to use Technology during the term of this Agreement. Technology licenses cannot be transferred to any other person.
  - 5) You will not copy Technology or use Technology independently of Online Banking.
- b. Software. Any software provided by us or our subcontractors pursuant to Online Banking will be considered “Software” as defined in the Software License Agreement between you and us.
- c. Trademarks. You are not acquiring any right, title, or interest in the name, service marks or trademarks (“Trademarks”) of us or any of our affiliates. Upon termination of this Agreement, all use of Trademarks by you must cease, except as may be otherwise expressly authorized in writing.
- d. Third Party Software or Systems.
  - 1) Any software provided by us for use with the Online Banking includes software owned and copyrighted by third parties and will be sub-licensed to you by us, subject to the terms, conditions and limitations of our license from such third parties.
  - 2) Use of any software or systems made available to you by our third party vendors or service providers will be subject to the license terms, conditions and requirements established by those third parties from time to time.
  - 3) No third party will provide any support services, upgrades or technical assistance in connection with Software owned by it.

## 13. Privacy.

- a. Your Privacy. Protecting your privacy is very important to us. Please review our Privacy Policy in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your information. Our privacy policy can be viewed at [www.firstfoundationinc.com/](http://www.firstfoundationinc.com/)
- b. Privacy of Others. If you receive information about another person through Online Banking, you agree to keep the information confidential and only use it in connection with Online Banking.
- c. Disclosure of Information with Affiliates. If you are currently or become a registered user of another of any optional Online Banking service offered by us, your Online Banking setup or customer profile information, including but not limited to your name, email address and bank account information, may be shared by and with our affiliates in connection with providing such services.

## 14. Notices to Us

Except as otherwise stated below, notice to us concerning the Site or Online Banking must be sent by postal mail to:

First Foundation Bank  
Online Banking 18101  
Von Karman Ave. Irvine,  
CA 92612

We may also be reached at 888-405-4332 for questions and other purposes concerning Online Banking, but such telephone calls will not constitute legal notices under this Agreement.

## 15. Errors, Questions, and Complaints.

In case of errors or questions about your Transactions, you should as soon as possible contact us at the address or phone number provided in Section 14 of this Agreement titled “Notices to Us.”

If you think your transaction history is incorrect or you need more information about a Transaction listed in the transaction history, we must hear from you no later than sixty (60) days after the Transaction in which the problem or error appears is first posted in the transaction history. You must: (i) tell us your name and Account number; (ii) describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and (iii) tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send your complaint in writing within ten (10) Business Days after your verbal notification. We will tell you the results of our investigation within ten (10) Business Days after we hear from you, and will correct any error promptly. However, if we require more time to confirm the nature of your complaint or question, we reserve the right to take up to forty-five (45) days to complete our investigation. If we decide to do this, we will provisionally credit your Eligible Transaction Account within ten (10) Business Days for the amount you think is in error. If we ask you to submit your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not provisionally credit your Eligible Transaction Account. If it is determined there was no error we will mail you a written explanation within three (3) Business Days after completion of our investigation. You may ask for copies of documents used in our investigation. We may revoke any provisional credit provided to you if we find an error did not occur.

#### **16. Your Liability for Unauthorized Transfers or Payments.**

Notify us IMMEDIATELY if you believe any of your Credentials or access information have been lost or stolen. Telephoning is the best way of notifying us of a loss or theft.

If you tell us within two (2) Business Days after you discover your Credentials or other access information been lost or stolen, you can lose no more than \$50.00 should someone use your Credentials or other access information without your permission. If you do not tell us within two (2) Business Days after you learn of such loss or theft, and we can prove that we could have prevented the unauthorized use of your Credentials or other access information if you had told us, you could lose as much as \$500.00.

You must promptly examine all Statements immediately after you receive them. Notify us IMMEDIATELY if any Statement you receive shows transfers that you did not authorize. If you do not tell us within sixty (60) days after the Statement was sent to you, you may not get back any of the money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the time periods.

#### **17. Our Liability for Failure to Make Transfers or Payments.**

We are responsible for completing transfers and payments on time according to your properly entered and transmitted instructions. If we do not complete a transfer or payment to or from your Account(s) on time or in the correct amount according to our agreement with you, we will be liable to you for your direct losses or damages. However, we will not be liable in the following circumstances:

- (i) if, through no fault of ours, you do not have enough money in your account to complete a transaction;
- (ii) a legal order prohibits withdrawals from your account;
- (iii) your account is closed or has been frozen;
- (iv) a transaction would cause your balance to go over the credit limit for any credit arrangement set up to cover overdrafts;
- (v) you, or anyone you allow, commits fraud or violates any law or regulation in connection with Online Banking;
- (vi) Online Banking, the Site or any electronic terminal, telecommunication device or part of the electronic fund transfer system or any Supported Device was not working properly and you knew about the breakdown when starting the payment or transfer or, in the case of a recurring payment or transfer, at the time such payment or transfer should have occurred; (vii) you did not provide us with complete and correct payment or transfer information so that we could complete the transaction;
- (viii) you did not properly follow the instructions for use of Online Banking;
- (ix) you do not authorize a bill payment soon enough for payment to be made to the payee by the time it is due;
- (x) we make a timely bill payment but the merchant nevertheless does not credit your payment promptly after receipt;
- (xi) we have reason to believe that a transaction is unauthorized;
- (xii) you attempt to complete an impermissible transaction;
- (xiii) circumstances beyond our control (including, but not limited to, fire, flood or improper transmission or handling by a third party) prevent or delay the transfer or bill payment, despite reasonable precautions taken by us; or (xiv) you or we have terminated this Agreement or closed your account.

There may be other exceptions not specifically mentioned here.

#### **18. Additional Disclaimers of Liability.**

- a. **Inability to Perform.** Except as otherwise provided by applicable law or this Agreement, we will not be liable for our inability to perform our obligations under this Agreement if we have taken reasonable precautions and exercised the diligence required by the circumstances when our inability to perform is the result of causes beyond our control. Causes beyond our control include, among others, any act of God, accident, equipment failure, system failure, labor dispute or the failure of any third party to provide any electronic or telecommunication service used in connection with any Online Banking.
- b. **Other Disclaimers of Liability.** We will not be liable for any losses or damages caused by: (i) your failure to follow Security Procedures; (ii) your misconduct, errors or negligence; (iii) an act or failure to act of any person not directly within our control; (iv) your failure to report unauthorized access of your Eligible Account(s) promptly; (v) input errors; (vi) your failure to provide updated and accurate contact information; and (vii) any misuse of Online Banking.

## 19. Limitation of Liability.

Unless provided otherwise by this Agreement, we will only be liable for your actual damages to the extent we fail to exercise ordinary care in performing our obligations under this Agreement, and then only to the extent such damages are recoverable under applicable law. We will be deemed to have exercised ordinary care if our actions or failure to act have been in conformity with our prescribed Security Procedures and other procedures, and these procedures do not vary unreasonably from general banking practices and are not specifically disapproved by applicable law.

IN NO EVENT WILL WE OR OUR AFFILIATES OR LICENSORS OR CONTRACTORS OR THE EMPLOYEES OR CONTRACTORS OF ANY OF THESE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF GOODWILL OR LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF ONLINE BANKING OR THE PORTION OF THE SITE THROUGH WHICH ONLINE BANKING IS OFFERED, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND NOTICE WAS GIVE REGARDING THEM.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE PRECEDING LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## 20. Exclusions of Warranties.

ONLINE BANKING, THE SITE 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.

WE DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF ONLINE BANKING, AND OPERATION OF OUR SITE 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. THIS SECTION GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

## 21. Release.

You release us and our Affiliates and licensors and contractors and the employees and contractors of each of these, from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with any dispute that may arise between you and one or more other users of the Site or Online Banking. In addition, you waive California Civil Code §1542, which states that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor.

## 22. Indemnification.

Except to the extent that we are otherwise liable under this Agreement, you agree to indemnify, defend and hold harmless us and our officers, employees, directors, suppliers and agents, in their individual capacities or otherwise, from and against any third party claims, liability, damages or costs (including reasonable attorneys' fees) arising from (a) your negligence; (b) any claim by a third party ("Claim") alleging that a Transaction Request or other activity violates the rights of any third party, or violates any law, rule, regulation, ordinance, court order or other mandate or prohibition; except to the extent the Claim is caused directly by our failure to act in accordance with your instructions as provided by this Agreement; (c) your failure to comply with the terms of this Agreement; (d) your violation of any applicable law, rule or regulation, including those of foreign countries; (e) your violation of any rights of a third party; or (f) your use of Online Banking.

## 23. Termination.

- a. Right to Terminate. Either you or we may terminate this Agreement and Online Banking at any time by giving notice of termination to the other party. We reserve the right to terminate this Agreement as to all such prior versions of Online Banking and/or related applications and material, and limit access to only the more recent revisions, updates, upgrades or enhancements of Online Banking.
- b. Effect on Transactions.
  - 1) If you terminate Online Banking, you authorize us to continue making Transactions that you previously authorized and continue to charge all applicable fees until we have had a reasonable opportunity to act on your termination notice.
  - 2) Once we have acted upon your termination notice, we will make no further Transactions from your Account(s), including any Transactions you may have previously authorized.
  - 3) If we terminate your Online Banking, we will not be liable for any losses related to Transactions not made due to termination.
- c. Maintenance of Accounts and Reserve Risk Amount. Upon termination of this Agreement, your Eligible Account(s), including any Reserve Risk Amount, will be maintained according to this Agreement for a period of 90 days to ensure there are sufficient

**24. Amendment/Change in Terms.**

- a. **Our Right to Amend.** We have the right to amend or change this Agreement or otherwise modify the terms of use for Online Banking services from time to time. This includes adding new or different terms or modifying or removing terms (together these are referred to as “Changes” or a “Change”).
- b. **Notice.**
  - 1) We may notify you of Change(s) in any of the following ways: (i) sending written notice to you at your mailing address; (ii) including a message with your Statement; or (iii) by posting Change(s) or a revised version of this Agreement on the Site.
  - 2) Notice of any Change(s) will be given to you at least fifteen (15) days before the effective date of the Change(s) apply(ies). The Electronic Funds Transfer Act (“EFTA”) requires at least twenty-one (21) days’ notice for certain changes. If EFTA applies to a Change, we will provide at least twenty-one (21) days’ notice. If any other applicable federal or state law requires a longer notice period, we will comply with that requirement.
  - 3) Notice of any Change(s) will be deemed to have been given to and received by you on the third business day after the notice of the Change(s) was provided or made available to you.
- c. **Your Consent.** Your continued use of Online Banking after the effective date of any Change will constitute your acceptance of any such Change. As part of any Change(s), you may be required to affirmatively accept a revised Agreement in order to continue using Online Banking.
- d. **Application of Change(s).** Unless otherwise provided by applicable law, Change(s) to this Agreement will apply only to Transactions that occur, or claims that arise, after the Change(s) become effective.

**25. Restrictions on Use; Our Remedies.**

- a. **Restrictions on Use.**
  - 1) You will only use Online Banking, Software or the content or information delivered through Online Banking 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.
  - 2) You will not use Online Banking, Software or the content or information delivered through Online Banking to conduct any business or activity or solicit the performance of any activity for any illegal, fraudulent, unauthorized or improper manner or purpose.
  - 3) Without limiting the foregoing, you agree that you will not use Online Banking or 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 us (in our 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 us or any third-party service provider involved in the provision of Online Banking; 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 service 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 us, any third-party service provider involved in providing Online 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 any third party.
  - 4) You agree that you will not attempt to: (i) access any Software or Online Banking 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 Online Banking or Software, the security of Online Banking or Software, or other customers of Online Banking or Software, or otherwise abuse Online Banking or Software.
- b. **Our Remedies.** If we have reason to believe that you have engaged in any of the prohibited or unauthorized activities described in this Agreement or have otherwise breached your obligations under this Agreement, we may: (i) terminate, suspend or limit your access to or use of the Site or Online Banking; (ii) notify law enforcement, regulatory authorities, impacted third parties, and others as we deem appropriate; (iii) refuse to provide our services to you in the future; and (iv) take legal action against you.
  - 1) In addition, we, in our sole discretion, reserve the right to terminate this Agreement, your access to the Site and/or your use of Online Banking for any reason or no reason and at any time.

- 2) Due to the likelihood of irreparable injury, we will also be entitled to an injunction prohibiting any breach of this Agreement by you.
- 3) The remedies contained in this Subsection 27(b) are cumulative and are in addition to the other rights and remedies available to us under this Agreement, by law or otherwise.

## 26. International Use.

If you choose to access Online Banking from locations outside the United States, you do so at your own risk and you will be responsible for compliance with local laws, rules and regulations that may be applicable pursuant to such use.

## 27. Disputes.

- a. **Consent to Jurisdiction.** You agree that any claim or dispute you may have against us not subject to Arbitration must be resolved by a court located in Orange County, California. You agree to submit to the personal jurisdiction of such courts for the purpose of litigating all claims or disputes unless said claim is submitted to arbitration.
- b. **WAIVER.** YOU AND WE AGREE TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY DISPUTE OR CLAIM ARISING UNDER THIS AGREEMENT BETWEEN OR AMONG YOU AND US OR OUR AFFILIATES.
- c. **ARBITRATION.** FOR ANY CLAIM (EXCLUDING CLAIMS FOR INJUNCTIVE RELIEF OR OTHER EQUITABLE RELIEF) ARISING UNDER OR CONNECTED WITH THIS AGREEMENT, WHERE THE TOTAL AMOUNT OF THE AWARD SOUGHT IS LESS THAN \$10,000.00 USD, THE PARTY REQUESTING RELIEF MAY ELECT TO RESOLVE THE DISPUTE THROUGH BINDING ARBITRATION.
- 1) If a party elects arbitration, that party will initiate such arbitration through Judicial Arbitration and Mediation Services (“JAMS”), the American Arbitration Association (“AAA”), or an established alternative dispute resolution (ADR) administrator mutually agreed upon by the parties.
  - 2) By agreeing to arbitrate any claim, you are GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this Agreement. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a FAIR HEARING, but the arbitration procedures are SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrator decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.
  - 3) You and we agree that that the following rules will apply: (a) arbitration proceedings will take place within the judicial district that includes your billing address at the time an arbitration claim is filed; (b) upon mutual agreement of the parties, the arbitration may be conducted telephonically, online and/or be solely based on written submissions; (c) upon mutual agreement of the parties, the arbitration will not involve any personal appearance by the parties, their representatives or witnesses; (d) discovery will not be permitted; and (e) any award in such arbitration will be final and binding upon the parties may be submitted to any court of competent jurisdiction for confirmation.
  - 4) You and we acknowledge that remedies available under federal, state and local laws remain available through arbitration.
  - 5) NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION, OR PRIVATE ATTORNEY GENERAL ACTION, OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH A CLAIM OF ANOTHER PERSON WILL BE ALLOWABLE IN ARBITRATION.
  - 6) You may opt out of this arbitration provision within sixty (60) days of the date of this Agreement.
  - 7) FOR MORE DETAILS, including details on the arbitration process and procedures, related costs, how you may exercise the option to submit disputes to arbitration, or how to access arbitration rules, contact us at 888-405-4332.

## 28. Additional Terms.

- a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law’s provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- b. **Contact Information.** You will ensure that any contact information provided to us is current and accurate, and you must notify us immediately of any change to any such contact information.
- c. **Assignment.** You may not transfer or assign any of your rights or obligations you have under this Agreement without our prior written consent, which we may withhold in our sole discretion. We reserve the right to transfer or assign this Agreement or any of our rights or obligations under this Agreement at any time to any party. We may also assign or delegate certain of our rights and responsibilities under this Agreement to Affiliates, independent contractors or other third parties.
- d. **Entire Agreement.** This Agreement constitutes the entire understanding between us with respect to the subject matter of this Agreement, Online Banking and the Site, and supersedes any proposal or prior agreement, oral or written, and any other communications between us.
- e. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be struck only to the extent it is invalid or unenforceable. Unless expressly stated otherwise, all other terms of this Agreement will remain in full force and effect.

- f. Conflict. If there is a conflict between the terms of this Agreement and something stated by an employee or contractor of ours (including but not limited to our customer care personnel), the terms of this Agreement will prevail.
- g. Captions. The captions of sections hereof are for convenience only and will not control or affect the meaning or construction of any of the provisions of this Agreement.
- h. Survival. Any terms of this Agreement which by their nature should survive, will survive the termination of this Agreement.
- i. Waiver. We will not be deemed to have waived any of our rights or remedies under this Agreement unless such waiver is in writing and signed by one of our authorized representatives. No delay or omission on our part to exercise any rights or remedies will operate as a waiver of such rights or remedies or any other rights or remedies. A waiver by us on any one occasion will not be considered to be a waiver on any future occasions.
- j. Third Party Beneficiary. You agree that our service providers may rely upon your agreements and representations in this Agreement, and such service providers are third party beneficiaries to this Agreement, with the power to enforce its provisions against you.
- k. Recording. We may record any Transaction Requests initiated by telephone or electronically, and may retain such recordings for up to ninety (90) days. The decision to record any telephone conversation will be solely within our discretion, and we assume no liability for failure to do so. You acknowledge and agree such telephone conversations may be monitored and recorded.
- l. Construction. This Agreement will be construed equally against the parties regardless of who is more responsible for its preparation. If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected will be curtailed only to the extent necessary to bring it within the requirements of that law.

#### **29. Mobile Banking Additional Terms and Conditions.**

- a. Mobile Capture Terms and Conditions. This Section 29 provides additional terms and conditions which are applicable to your use of Mobile Banking.
- b. Alerts. Mobile Banking allows you to receive alerts sent via SMS message ("Mobile Alerts") to your mobile device. Through the Site, you may select the type of Mobile Alerts you receive for your Eligible Account(s) (e.g., low balance alerts) and other preferences which will determine, together with your Eligible Account data, the frequency of Mobile Alerts delivered to you.
- c. Conditions for Your Use of Mobile Banking.
  - 1) Your mobile phone number must be verified in order for you to use Mobile Banking. As part of this verification process, we will send an SMS message with a verification code to your mobile phone number. You must then enter this verification code on the Site.
  - 2) You must download the Mobile Banking application (the "Mobile Application") onto a Supported Device to use Mobile Banking.
- d. Privacy and User Information. You acknowledge that in connection with your use of Mobile Banking, we and our 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 Mobile Banking or related software (collectively "User Information"). We and our 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. We and our affiliates and service providers also reserve the right to monitor use of Mobile Banking or related 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.
- e. Questions. If you have questions regarding Mobile Banking, you can contact us at "www.firstfoundationinc.com/" or 888405-4332, or send a text message with the word "HELP" to this number: [72080].
- f. Stopping Messages. To stop the SMS messages from being sent to your phone as part of Mobile Banking, you can opt out of the program by sending an SMS message that says "STOP" to this number: 72080. You will receive a one-time opt-out confirmation text message. After that, you will not receive any future messages.

#### **30. Mobile Capture Additional Terms and Conditions.**

- a. Mobile Capture Terms and Conditions. Mobile Capture is a part of Mobile Banking, and all terms and conditions applicable to Mobile Banking provided in Section 29 are applicable to Mobile Capture. This Section 30 provides additional terms and conditions which are applicable to your use of Mobile Capture.
- b. Items and Images. Mobile Capture can be used to deposit certain "Items" through the transmission of "Images."

- 1) "Item" includes a check, a substitute check, a purported substitute check, a draft, demand draft, preauthorized draft, image replacement document, money order, cashier's check or traveler's check. A "Paper Item" is an Item that is in paper form.
- 2) An "Image" is an electronic image of a Paper Item, including the front and back of the Paper Item.
- c. **Mobile Capture Fees.** Mobile Capture is provided at no charge to you. Any applicable fees for Mobile Capture may be charged by us in the future as provided by this Agreement.
- d. **Mobile Account.** To use Mobile Capture, you must have an Eligible Account that is eligible for Mobile Capture and approved by us. As part of the enrollment process, you will be required to designate such an Eligible Account to which Items processed with Mobile Capture are deposited and from which any fees for Mobile Capture will be debited (your "Mobile Account"). If the Mobile Account is closed, or if the Mobile Account does not have sufficient available funds to cover any applicable fees, you authorize us to charge any such fees to any other deposit account you maintain with us.
- e. **Other Conditions for Your Use of Mobile Capture.**
  - 1) You must comply with such restrictions on Mobile Capture as we may communicate to you from time to time. 2) In using Mobile Capture, you must use the type of hardware that we designate.
- f. **Submitting Electronic Items.** To submit an Item through Mobile Capture, you must create an Image of a Paper Item and transmit this Image and other information captured from the Paper Item, including (without limitation) information captured from the magnetic ink character recognition ("MICR") line of a Paper Item (this Image and this information constituting an "Electronic Item"). You must then submit this Electronic Item to us for review and processing.
  - 1) You must use hardware approved by us to create Images of Paper Items that you wish to deposit to your Eligible Account by means of Mobile Capture and to transmit your Electronic Items to us.
  - 2) The following items may not be deposited through Mobile Capture: international checks, remotely created checks (whether in paper form or electronically created), checks drawn against a line of credit, or cash. Except as noted in the preceding sentence, only checks, money orders, cashier's checks, or traveler's checks, drawn on or payable at or through a U.S. bank, can be transmitted through the Mobile Capture.
  - 3) Only Items that are made payable to, and indorsed by you, may be transmitted through Mobile Capture.
- g. **Receiving Electronic Items.** After we receive your transmission of each Electronic Item, we will review each Electronic Item. For each Electronic Item that we determine is eligible for processing as described below, we will do one of the following:
  - 1) Create a substitute check that we will present directly or indirectly to the bank (the "Paying Bank") (a) on which the original Paper Item to which the Electronic Item relates is drawn, or (b) at or through which the Paper Item is payable.
  - 2) Include the Electronic Item in an electronic file for presentment directly or indirectly to the Paying Bank. 3) Present or post any Electronic Item for which we are the Paying Bank.
- h. **Processing Electronic Items.**
  - 1) If you transmit your Electronic Item(s) to FFB before the applicable cutoff time on a Business Day, we will review and process your Electronic Item(s) on that Business Day. If you transmit your Electronic Item(s) to us after the applicable cutoff time or not on a Business Day, we will review and process your Electronic Item(s) on the next Business Day.
  - 2) Your Electronic Item(s) will be deemed to have been received by us when the Mobile Capture service generates a confirmation message.
- i. **Exception Items.**
  - 1) Each Business Day on which we review and process your Electronic Item(s), we will use commercially reasonable efforts to review each Electronic Item and to reject any Electronic Item that we in our sole discretion determine to be ineligible for Mobile Capture (each, an "Exception Item").
  - 2) "Exception Item" includes, without limitation, an Electronic Item that (a) is illegible or contains MICR data that is not machine-readable, (b) was previously processed as an Electronic Item, or (c) is drawn on banks located outside the United States and is not payable at or through a bank located within the United States.
  - 3) We will notify you of each Exception Item through Online Banking, or other communication channels at our discretion.
  - 4) If you wish to attempt to deposit any Exception Item to your Account, you will do so only by depositing the original Paper Item on which the Exception Item is based or as otherwise agreed between us.
  - 5) Even if we do not initially identify an Electronic Item as an Exception Item when we review and process the Electronic Item to which the Exception Item relates, the Electronic Item, substitute check, or the purported substitute check created by us from it may nevertheless be returned to us because, among other reasons, the Paying Bank determines that such Item is illegible or missing an image. Our failure to identify an Exception Item will not preclude or limit your obligations to us under the "Limits" section of these additional terms and conditions.
- j. **Deposit of Electronic Items.** Subject to our right to identify and reject Exception Items, we will be deemed to have accepted each Electronic Item that is not an Exception Item for deposit to your applicable Eligible Account on the Business Day that we process the Electronic Item, provided its transmission to us is prior to the Cut-Off Time. In addition, an Electronic Item will be deemed to have been deposited at the office where the Eligible Account is maintained.
- k. **Security Procedures.** Any individual authorized by FFB to access Mobile Capture (a "User") will do so by entering a user name and a password, or other unique identifier that may be required (collectively referred to herein as "Security Credentials").
- l. **Limits.** You understand and agree that your Mobile Capture deposits cannot exceed the applicable limitations on frequency and dollar amounts of mobile deposits as set forth by us.

- 1) The default limitations are as follows: \$5,000 for either a single deposit (“Maximum Standard Single Deposit”) or aggregated daily deposits (“Maximum Standard Daily Deposit”).
  - 2) Alternative limits for Maximum Standard Single Deposit and Maximum Standard Daily Deposit may apply if approved under our underwriting guidelines.
  - 3) The limitations are subject to change by us. Any changes from time to time to the limitations will be subject to the “Change in Terms” clause defined within this Disclosure and Agreement.
- m. Your Warranties to Us. You represent and warrant to us that:
- 1) You will use Mobile Capture only for Paper Items that are payable to, and indorsed by, you.
  - 2) You will properly secure all hardware you use in connection with Mobile Capture (including, but not limited to, securing the hardware with Security Credentials to prevent unauthorized use).
  - 3) You will maintain control over and be responsible for secure retention, storage, and destruction of original Paper Items for which you have created an Electronic Item. After transmitting the Electronic Item to us, you will retain the original Paper Items for a minimum of five (5) calendar days, but no longer than fourteen (14) calendar days, from the transmission date (“Retention Period”). You will retain and store the original Paper Items in a secure and locked container that is only accessible by persons needing access to such Paper Items. During the Retention Period and upon our request, you agree to provide us with the original Paper Item(s). Once the Retention Period has expired, you will securely and irretrievably destroy original Paper Items from which you have previously created and submitted to us an Electronic Item.
  - 4) You will not submit any duplicate Electronic Items to us.
  - 5) You will not deposit to your Account or otherwise negotiate any original Paper Item from which you have previously created and submitted to us an Electronic Item, unless we have notified you that the Electronic Item is an Exception Item.
  - 6) You will transmit to us only Electronic Items that are suitable for processing, including, but not limited to, Electronic Items that are legible and contain machine-readable MICR data.
  - 7) You will review and verify for accuracy the information contained in an Electronic Item before you transmit this Electronic Item to us.
  - 8) You will only transmit Electronic Item(s) that are drawn on or payable at or through banks located within the United States.
  - 9) You will not store or make a back-up copy of the Electronic Item(s).
- n. Risks of Using Mobile Capture.

FAILURE TO PROTECT YOUR HARDWARE AND SECURITY CREDENTIALS USED FOR MOBILE CAPTURE MAY ALLOW AN UNAUTHORIZED PARTY TO ACCESS MOBILE CAPTURE AND TRANSMIT AN ELECTRONIC ITEM FOR DEPOSIT. ALL USES OF MOBILE CAPTURE THROUGH YOUR SECURITY CREDENTIALS WILL BE DEEMED TO BE USES AUTHORIZED BY YOU AND BE BINDING UPON YOU.

YOU AGREE TO (i) EXERCISE RESPONSIBLE BEHAVIOR WHEN USING MOBILE CAPTURE, (ii) FOLLOW THE INSTRUCTIONS AND RECOMMENDATIONS THAT WE PROVIDE TO YOU WITH RESPECT TO MOBILE CAPTURE AND (iii) USE MAXIMUM CAUTION IN PROTECTING YOUR HARDWARE AND SECURITY CREDENTIALS FROM UNAUTHORIZED ACCESS.

- o. Termination. In the event your use of Mobile Capture is terminated, we may require you to return any hardware that we provided to you free of charge in connection with providing Mobile Capture.
- p. Right to Audit. We may periodically audit and verify your compliance with Mobile Capture terms and conditions. You agree to cooperate and provide information or documents, at your expense, as may be reasonably requested by us in the course of such audits.
- q. Additional Indemnification. The general indemnification provision in the Agreement will also apply to the following:
- 1) Any negligent or intentional act or omission by you in the performance of your obligations pursuant to your use of Mobile Capture, including, but not limited to: (i) duplicate scanning of the same original Paper Item; (ii) transmission of duplicate Electronic Items; (iii) calculation errors of deposit totals; and (iv) numerical errors on deposit data entry.
  - 2) Us acting as a “reconverting bank” under the Check Clearing for the 21st Century Act through the creation of “substitute checks” or purported substitute checks using an Electronic Item or an illegible Electronic Item.
  - 3) Our presenting to a Paying Bank an Electronic Item for payment.
  - 4) Your failure to (i) securely maintain your hardware or the original Paper Items or (ii) properly and timely dispose of original Paper Items in accordance with this Agreement.

#### **E-Sign Consent**

Please read this E-Sign Consent carefully and retain a copy for your records. This E-Sign Consent applies to all required initial disclosures and agreements, as well as any subsequent or amended disclosures or agreements, related to your enrollment in Personal Online Banking and will be effective until expressly withdrawn by you.

The federal Electronic Signatures in Global and National Commerce Act (“E SIGN Act”) allows us to provide certain records to you electronically and to use electronic signatures if you consent. Before you use Personal Online Banking (as defined below) or elect to receive any electronic records, you must review and consent to the terms outlined in this “E SIGN Consent.”

1. **Electronic Signatures.** You consent to us using and obtaining electronic signatures from you. The term “electronic signature” means an electronic sound, symbol or process associated with a record and used by you with the intent to sign a document or record of a transaction or agreement.
2. **Electronic Records.** By agreeing to the terms of this E-Sign Consent, you are consenting to receive disclosures, notices and terms and conditions related to your Account(s) electronically (collectively, “Electronic Records”).
3. **Initial Documents.** The Agreement required in connection with enrollment in Personal Online Banking will be provided to you electronically following your acceptance of this this E-Sign Consent. You understand that the Agreement will not be mailed to you, unless you specifically request it. To request a paper copy of any Initial Document, contact us at 888-405-4332. Upon request, paper copies of the Agreement will be mailed to you at no charge.
4. **Electronic Statements and Communications.** You may elect to receive electronic Statements and Communications by enrolling in our electronic document service (“e-Statement Service”). To enroll in the e-Statement Service, you must agree to the Personal Services Agreement and complete the Personal Services Agreement Signature Form. The Personal Services Agreement contains additional terms and conditions related to your receipt of electronic Statements and Communications.
5. **Withdrawal of Consent.**
  - a. **Initial Documents.** To withdraw your consent to receive the Agreement electronically, you must exit the session prior to agreeing to the Agreement and this E-Sign Consent by clicking the “I Agree” box at the bottom of this page. If you exit the session prior to clicking the “I Agree” box, you will not be enrolled in Personal Online Banking.
  - b. **Validity.** Withdrawal of your consent to receive Electronic Records will not affect the validity of any Electronic Records provided or made available to you before the effective date of your withdrawal.
  - c. **Other Electronic Records.** For Electronic Records other than the Agreement, you may withdraw your election to receive Electronic Records by calling us at 888-405-4332. If you withdraw your consent to receive Electronic Records related to Personal Online Banking, we have the right to terminate your access to Personal Online Banking; otherwise we will provide paper copies of Electronic Records related to Personal Online Banking to you to at your Mailing Address.
6. **Hardware and Software Requirements.** To receive or access Electronic Records, you will need: (a) a connection to the Internet; (b) a version of an Internet browser supported by the Site; (c) an active email account; (d) a program that accurately reads and displays portable document format (PDF) files; and (e) a computer and an operating system capable of supporting all of these. You will also need a printer if you wish to print out and retain records on paper and electronic storage if you wish to retain records in electronic form. We may also impose certain other hardware or software requirements for accessing Electronic Records and may change or modify these requirements from time to time. You confirm that your computer or electronic device meets the specifications and requirements listed above, and permit you to access and retain the Initial Documents and other Electronic Records electronically.
7. **Your Consent.** YOU INDICATE YOUR CONSENT TO USE ELECTRONIC SIGNATURES AND RECEIVE ELECTRONIC RECORDS BY CLICKING THE “I AGREE” BOX AT THE BOTTOM OF THIS PAGE. YOU ALSO AGREE THAT WE DO NOT NEED TO PROVIDE YOU WITH A PAPER COPY OF THE INITIAL DOCUMENTS OR OTHER ELECTRONIC RECORDS UNLESS SPECIFICALLY REQUESTED BY YOU.

(End of Agreement)