

First Bank & Trust Mobile Deposit Terms and Conditions

These Terms and Conditions (the "Agreement") govern your use of the First Bank & Trust iPhone/Android Mobile Banking Application (the "App") or a flatbed scanner to remotely Deposit Checks into your First Bank & Trust bank account (the "Service"). Your enrollment and use of the Service constitutes your acceptance of these Terms and Conditions. In this Agreement, "you" and "your" refer to the person who is using the App and the Service. "We", "our", and "us" refer to First Bank & Trust, the holder of your bank account.

Applicable Agreements. We offer the Service under these Terms and Conditions. Your Deposit Terms and Conditions (the "Account Agreement") governs the terms and conditions of your Account. In the event of conflict between this Agreement and any other agreement with us governing the Service, this Agreement shall prevail, unless otherwise provided herein.

Definitions. The following words or terms shall each have the meanings as provided below. Additional defined terms shall be provided throughout the Agreement.

- (a) **Account.** "Account" means your bank account with First Bank & Trust.
- (b) **Banking Day.** "Banking Day" means a day on which we are open to the public for carrying on the Service and substantially all of its business, but does not include Saturdays, Sundays or federal holidays.
- (c) **Check.** As used in this Agreement, the term "Check" shall have the meaning defined in Regulation CC of the Board of Governors of the Federal Reserve System ("Regulation CC").
- (d) **Deposit.** "Depositing," "Deposited," and "Deposit" mean the adding of funds to your Account.
- (e) **Electronic Item.** "Electronic Item" means an image of the front and back of a Check, all of the information from the Magnetic Ink Character Recognition ("MICR") line on the original Check and the enclosed amount and additional information about the original Check, including any associated electronic records derived from the original Check and any other information specified by us, in the format specified by us.
- (f) **Mobile Device.** "Mobile Device" means any device used to transmit an Electronic Item for Deposit, including your smart phone, flatbed scanner, and personal computer.

The Service. The Service is designed to allow you as an Online Banking customer with First Bank & Trust to Deposit funds to your Account using your smart phone or flatbed scanner by capturing images of the front and back of a Check and transmitting the Electronic Item to us for our review and processing. You shall capture from each original Check to be Deposited: (i) an image of the front and back of the original Check; (ii) all of the information in the MICR line on the original Check; and (iii) the amount of the Check. By requesting access to the Service, you authorize us to provide you with access to all of your eligible Accounts to participate in the Service. The following Account types are currently eligible for the Service: checking, savings, and money market accounts.

Endorsements and Procedures. You agree to endorse each original Check without any restrictions or conditions, in accordance with any applicable procedures we may designate from time to time. We shall, in our sole discretion, determine whether Electronic Items are accepted for processing or rejected. It is your responsibility to routinely review the email address listed as your Current Email Address in the Personal Settings of your Online Banking account for notices regarding whether Electronic Items have been accepted or rejected for processing. If you believe that Electronic Items have been sent to us, but you have not received a notice that the Electronic Item has been accepted for processing or rejected, it is your responsibility to contact us.

Disposal of Checks. You should securely store and maintain all original Checks for a period of ninety (90) days from date of the Deposit, or longer if requested by us. You should produce the original Check to us upon request. After the expiration of the ninety (90) day period you shall destroy the original Checks using a method of destruction that provides commercially reasonable assurance that any sensitive information contained in the Checks is protected from unauthorized disclosure or use.

Hardware/Software Requirements. In order to use the Service, you must obtain and maintain, at your expense, an electronic device capable of utilizing the App. You must also have the App downloaded onto your smart phone. In order to use the Service utilizing the App, you must be enrolled in Online Banking and Mobile Banking. Additional hardware and software may be specified by us from time to time. If you choose to use the flatbed scanner option, you are responsible for configuring the scanner to ensure functionality. In order to use the Service utilizing the flatbed scanner option, you must be enrolled in Online Banking. Please refer to the specific hardware/software requirements on the Mobile Deposit page of the First Bank & Trust website. The Mobile Deposit page can be located by going to www.bankeasy.com, hovering over "Products," then clicking "Personal Banking," then clicking "Mobile Banking," then clicking "Mobile Deposit."

Electronic Items That May Be Deposited. You hereby warrant that every Electronic Item shall have been captured by you from an original Check utilizing the App or flatbed scanner. If you send an Electronic Item to Deposit funds into your Account that was not captured from an original Check, you agree to indemnify, defend and hold us harmless against any financial loss, costs (including but not limited to attorneys' fees, costs of litigation and consequential losses, if any), claim, harm or damage that we

suffer as a result. In our discretion, we may terminate the Service immediately if you send an Electronic Item that was not captured from an original Check. We accept: (i) business Checks; (ii) government benefits (or compensation) Checks; (iii) federal or state tax refund Checks; and (iv) personal Checks.

Prohibited Items. You agree and warrant that you will not use the Service to transmit the following:

- a) any original Check, the Deposit of which is prohibited by our then-current procedures pertaining to the Service or is in violation of any applicable law, regulation or rule;
- b) any original Check that you know or suspect or should suspect is fraudulent or otherwise not authorized by the owner of the account on which the original Check is drawn;
- c) substitute Checks or image replacement documents that are derived from or that purport to be substitute Checks;
- d) any Check that is drawn on or is payable by or at a financial institution that is located outside of the contiguous United States, Alaska, Hawaii, the District of Columbia, Puerto Rico or the U.S. Virgin Islands;
- e) any Check not payable in United States currency;
- f) any Check that is payable jointly;
- g) any Check drawn on the same Account in which it is being Deposited;
- h) any Check that is not permitted as a permissible Deposit;
- i) any Check that that has been previously submitted through the Service or through a remote deposit capture service offered at any other financial institution;
- j) any Check that is dated more than six (6) months before the date of Deposit;
- k) any Check that is post-dated, displays a future date;
- l) any "remotely created check," as that term is defined in Regulation CC, that is, any Check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the Check is drawn;
- m) any Check drawn against a line of credit;
- n) any Check that is incomplete; or
- o) any Check not payable to you and endorsed by you.

Image Quality. The image of an Electronic Item transmitted to us using the Service must be legible, as we will determine in our sole discretion. Without limiting the foregoing, the image quality of Electronic Items must meet all standards for image quality established by the American National Standards Institute ("ANSI"), Board of Governors of the Federal Reserve System or any other applicable regulatory agency, the Federal Reserve Banks and any clearinghouse or association. You may not store or retain a back-up copy of the Electronic Item.

Security Requirements. You are strictly responsible for the establishment and maintenance of all appropriate and commercially reasonable security procedures to safeguard against unauthorized transmissions and unauthorized access to the original Checks, Electronic Items, and the App or flatbed scanner.

Availability of Deposits. You agree that Electronic Items transmitted using the Service are not subject to the funds availability requirements of Regulation CC.

We will consider Electronic Items we receive after 5:00 PM U.S. Central Time to have been received on the following business day.

Deposit Limits. We may establish limits on the dollar amount and/or number of Electronic Items 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 any time in the future.

Fees. Each Deposit transaction completed using the Service is subject to a \$0.50 per Electronic Item fee for Deposits utilizing the App and a \$0.50 per Deposit fee for Deposits utilizing a flatbed scanner, which fee will be deducted from your Account after we have received and approved each Deposit.

Exceptions; Returned Checks.

- (a) On each Banking Day, we will review the Electronic Items you have submitted through the App or flatbed scanner utilizing automated procedures, human review, or a combination of methods. In the event we determine that any of the Electronic Items are ineligible for use in connection with a Deposit through the Service, we will notify you of each exception by email correspondence.
- (b) If items that are presented for Deposit into your Account pursuant to this Agreement are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank for any reason, including, but not limited to, issues relating to the quality of the image, you understand and agree that

an original Check will not be returned to you but that we may charge back the amount of the original Check and provide you with an image of the original Check, a paper reproduction of the original Check or a substitute Check. Unless otherwise instructed by us, you shall not attempt to Deposit or otherwise negotiate an original Check that has been converted to an Electronic Item and transmitted for Deposit if it has been charged back to you.

- (c) If your use of the Service causes the risk identification triggers or other benchmarks (related to, for example, return rates, rejection rates and dollar and item count volumes), which are set by us in our sole discretion, to be met or exceeded, as applicable, we may, in our sole discretion, immediately terminate the Service or impose such limitations and restrictions on the Service as we deem appropriate.

Errors. Any Deposit made through this Service will be reflected on your monthly periodic statement. You agree to notify us of any suspected errors regarding Electronic Items Deposited through the Service immediately and in no event later than 60 days after the date of the monthly periodic statement reflecting the error is sent to you. If you do not notify us within 60 days, of any Deposit(s) in question we will deem the Deposit(s) and amount(s) to be correct and you are prohibited from bringing a claim against us for such alleged error.

Errors in Transmission; Unauthorized Use of App/Flatbed Scanner. By using the Service, you accept the risk that an Electronic Item may be intercepted or misdirected during transmission. We will not be responsible or liable to you or others for any such intercepted or misdirected Electronic Items or information disclosed through such errors. You shall be solely responsible for the protection of your Mobile Device and for any unauthorized use of your Mobile Device to access the Service and transmit Electronic Items to us for Deposit through the Service. You will be responsible for maintaining appropriate security credentials with respect to your Mobile Device and agree that you will exercise reasonable efforts to maintain the privacy of such security measures. You agree to notify us immediately in the event you become aware of any loss, theft, or unauthorized use of the Service through your Mobile Device.

Collection of Checks. The manner in which Electronic Items are cleared, presented for payment, and collected shall be in our sole discretion, pursuant to the South Dakota Uniform Commercial Code Articles 3 and 4, Regulation CC, applicable clearinghouse rules and any applicable agreements we may enter into from time to time.

Your Representations and Warranties. You represent and warrant to us and agree that:

- a) You shall transmit only Electronic Images to us to Deposit to your Account that comply with the provisions of this Agreement;
- b) Each Electronic Image transmitted by you to us contains an accurate representation of the front and back of the original Check;
- c) All information submitted by you to us is complete and accurate and complies with the provisions of this Agreement;
- d) All signatures on the original Check are authentic and authorized;
- e) Each Check is authentic and has not been altered;
- f) Each Electronic Image transmitted to us is an accurate, authentic replica of an original Check, and has not been altered;
- g) You are entitled to enforce each Check;
- h) You shall not knowingly or unknowingly transmit or cause to be transmitted to us any computer virus or any malicious code;
- i) You will not transmit a duplicate Electronic Item to us or any other person for collection or presentment; or Deposit or otherwise negotiate the original of any Check from which an Electronic Item has been created;
- j) No subsequent transferee of the electronic Check, including but not limited to us, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay an original Check from which an electronic Check was created or to pay a duplicate of an Electronic Item, or otherwise sustain a loss as a result of your use of the Service; and
- k) You shall perform your obligations under this Agreement in accordance with, and shall not perform any acts or omissions that would cause us to violate, any applicable rules (including but not limited to applicable rules of trade associations, clearinghouses and payment processors), requirements, laws, regulations, sanctions, executive orders or regulatory guidelines.

Indemnity. You shall indemnify, defend, and hold us, our employees and agents, parent companies and affiliates harmless from and against any and all claims, damages, losses, demands, liabilities and expenses (including reasonable attorneys' fees and litigation expenses) arising directly or indirectly from:

- a) Your failure to satisfy your obligations under this Agreement;
- b) Your breach of any warranties and representations in this Agreement and/or any provision in this Agreement;

- c) The dishonor or otherwise return unpaid by the drawer bank, or return by a clearing agent, for any reason, of any Check;
- d) Your failure to maintain the security of your Mobile Device;
- e) Our actions as a “Reconverting Bank” under Regulation CC (12 CFR 229.1 et seq.) in connection with the creation of a substitute Check using an Electronic Item you submit through the Service;
- f) Your negligent or intentional act or omission in utilizing the Service, including, but not limited to, (i) the submission of two Electronic Items from the same original Check, or (ii) calculation or numerical errors made during the submission of Electronic Items through the App;
- g) Your violation of any applicable law, statute, or regulation relating to your use of the Service; or
- h) Our presentment of the Electronic Item for payment.

Business Accounts. For business Accounts using the Service, we are not responsible for any loss, injury or damage, whether direct, indirect, special, consequential, exemplary, economic or otherwise, caused by the Service or the use of the Service except as otherwise expressly provided for in this Agreement or by applicable law. By using the Service to access your business Accounts, you are responsible for any unauthorized use of the Service and any loss or damages incurred due to the unauthorized access to your business Accounts.

If your Deposit activity through the Service exceeds the limits we may establish on the dollar amount and/or number of Electronic Items from time to time, we reserve the right to disable your access to the Service and provide you with information on other business banking electronic deposit options that may be available to you.

If any person authorized access through the Service to conduct transactions on any business Account is no longer authorized, it is your responsibility to notify us. We shall not be liable or responsible to you for any transactions conducted on a business Account by any person whose authority to conduct transactions is no longer in effect until we are expressly notified.

Ownership and License. You agree that we retain all ownership and proprietary rights in the Service, associated content, technology, website and App. Your use of the Service is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Service. Without limiting the restriction of the foregoing, you may not use the Service: (i) in any anti-competitive manner; (ii) for any purpose that would be contrary to our business interests; or (iii) to our actual or potential economic disadvantage, in any aspect. You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide the Service.

DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT: (i) THE SERVICE WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iii) THE RESULTS OBTAINED USING THE SERVICE WILL BE ACCURATE OR RELIABLE; AND (iv) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED.

LIMITATION OF LIABILITY. YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE OR THE TERMINATION OF THE USE OF THIS SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.

Third-Party Service Provider. Electronic Items and other related information may be processed on behalf of us through any agent or third-party service provider (“Service Provider”) of us. Performance of services through a Service Provider does not affect any obligation or performance thereof which you have under this Terms and Conditions.

Amendments/Termination. We reserve the right to change any of the terms and conditions of this Agreement and other disclosures or requirements by providing advance notice as may be required by law for any change that is adverse to you. If the change is made for security purposes, we may implement the change without prior notice. By continuing to use the Service after the effective date of any change, you agree to be bound by any such changes. We may cancel or suspend the Service or this Agreement at any time. You may cancel this Service by contacting us and requesting the cancellation from a bank employee authorized to perform the cancellation. Your termination of this Agreement will not affect any of our rights or your obligations arising under the Agreement prior to termination.

Survival. Any provision of this Terms and Conditions that by its very nature or context is intended to survive any termination, cancellation or expiration thereof, shall so survive termination of this Agreement.

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 Deposited through the Service in your possession and your records relating to such items and transmissions.

Entire Agreement. This Agreement sets forth the entire understanding and agreement between you and us, whether written or oral, with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings or agreements with respect to such subject matter.