

**You may view and retain a copy of this Agreement through our website at:**  
<http://www.firstbanknj.com/personal-banking/online-banking.html>

## FIRST BANK Mobile Deposit Agreement

This Agreement is an Addendum to the First Bank Mobile Banking Service Agreement (“Mobile Banking Agreement”) of which you accepted the terms and conditions when you enrolled in mobile banking services through First Bank’s Online Banking platform.

This Agreement contains the terms and conditions for the use of First Bank’s Mobile Deposit service via the First Bank Mobile Banking Application, known as “FB On the Go.” In this Agreement, the words “you,” “your,” or “user” mean the consumer that applied for and/or uses any of the Mobile Deposit Services (Service or Services) described herein. “You” and “Your” also includes any user you authorize to use the First Bank Mobile Deposit Service on your behalf. The words “First Bank,” “us,” and “we” mean First Bank.

### 1. Description of the Mobile Deposit Service

The Service enables eligible Online Banking customers to use the *FB On the Go* App to make certain deposits electronically by using a supported mobile device (as defined below in **Equipment**). The App allows customers to create an electronic image of a paper check or other paper source document payable only in U.S. Dollars (“Item”) by taking a photograph of the Item and transmitting it and related data to us. The service enables transmission of those electronic images and other information, including, without limitation, information captured from the magnetic ink character recognition (“MICR”) line, to us which creates an “Electronic Item” of the paper check. After the Electronic Item is reviewed and determined eligible for processing in accordance with this Agreement, we will:

- a. create a substitute check that we will present directly or indirectly to the 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 (each, the “Paying Bank”);
- b. include the Electronic Item in an electronic file for presentment directly or indirectly to the Paying Bank; or
- c. present or post any Electronic Item for which we are the Paying Bank.

In order to enroll in the Service, you must be designated as an authorized signer or owner of a First Bank account that is eligible for this Service and be approved by First Bank. You are solely responsible for information or data that is transmitted, supplied or key-entered by you. As conditions to First Bank’s provision of the Service, you shall (a) maintain your First Bank account in good standing, (b) subscribe to First Bank’s Online Banking Service, and (c) comply with such restrictions on the Service as we communicate to you from time to time.

### 2. Equipment

To use the Service, you must have a supported mobile wireless handheld device (e.g., iPhone®; Android® smartphone; iPad® or similar tablet computer; etc.) with a supported camera, Web Browser, and a supported operating system, (in each case, a “mobile device”), have a data plan for your mobile device, and download the *FB On the Go* App to your mobile device (collectively, after downloading the App, the “Mobile Device”). First Bank does not guarantee that your particular mobile device, mobile device camera, mobile device operating system or mobile carrier will be compatible with the Service.

### 3. Endorsements

Before you capture the electronic image of any item, you agree to restrictively endorse such item with your signature and write below your signature:

“For deposit only”

You agree to follow any and all other procedures and instructions for use of the Services as First Bank may establish from time to time.

### 4. Eligible Items.

You agree to deposit only checks as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). You agree that the image of the check transmitted to First Bank shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code.

You agree that you will use the services to deposit eligible Items as described below:

- Each image of a check transmitted is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
- The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
- You will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
- Other than the digital image of an original check that you remotely deposit through our Services, there are no other duplicate images of the original check.
- You have instituted procedures to ensure that each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check.
- You are authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
- You have not knowingly failed to communicate any material information to us.
- You have possession of each original check deposited using the Services, and no party will submit the original check for payment.
- Files and images transmitted to First Bank will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.

#### **5. Unacceptable Deposits**

You agree that you WILL NOT use the Services to electronically deposit any checks or other items that:

- Are made payable to any person or entity other than you, unless joint account holders;
- Containing alteration to any of the fields on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn;
- Are stamped with a "non-negotiable" watermark;
- Were previously converted to a substitute check, as defined in Reg. CC, or were otherwise cashed or deposited;
- Are drawn on a financial institution that is not part of the U.S. Federal Reserve Bank System;
- Are remotely created checks, as defined in Reg. CC;
- Are not payable in United States currency;
- Are postdated or dated more than 6 months prior to the date of deposit;
- Are a US Savings Bond, money order, cashier's check, or travelers check;
- Do not bear a signature of the person from whom the item is drawn or lack an issued date; or
- Are prohibited by First Bank's current procedures relating to the Service or which are otherwise not acceptable under the terms of your First Bank account.

Nothing in this Agreement shall be construed as requiring First Bank to accept any item for deposit unless the check and its electronic submission meet the requirements of this Agreement, even if First Bank had accepted that type of item previously, nor shall First Bank be required to identify or reject any checks.

#### **6. Changes to the Service**

We may need to change the scope of our Services from time to time. We will attempt to provide prior notice of such changes. First Bank reserves the right to change, suspend or discontinue the Service, in whole or in part, or your use of the Service, in whole or in part, at any time with or without prior notice to you. You may reject changes by

discontinuing use of the Service. Your continued use of the Service after notification of any such change to the Service shall constitute your acceptance, receipt of notification of, and agreement to such changes.

**7. Deposit Limits.**

We reserve the right to impose limits on the amount(s) and/or number of deposits that you transmit using the Services and to modify such limits from time to time.

**8. Charges for Use of the Services.**

You may be charged a fee or fees for the Service. If such fees are charged, they will be disclosed to you at the time of enrollment (or re-enrollment) and made a part of the First Bank Fee Schedule that applies to your deposit account. You will be given advance notification related to the imposition or change to any future fees and will have the opportunity to reject any such fee(s) by discontinued use of the Service.

**9. Processing Your Electronic Items**

If you transmit your Electronic Item to First Bank prior to 6:00pm Eastern Standard Time on any Business Day, we will review and process your Electronic Item(s) on that Business Day. If you transmit your Electronic Item(s) after 6:00pm Eastern Standard Time or any non-Business Day, we shall review and process your Electronic Item(s) on the next Business Day. A "Business Day" is every day except Saturdays, Sundays and state and federal holidays. Your Electronic Item(s) is deemed to have been transmitted to First Bank when the Service generates a confirmation message. We are not responsible for any Electronic Item that we do not receive. We reserve the right to reject any item transmitted through the Service, at our discretion, without liability to you. We are not liable for any service or late charges levied against you due to the rejection of any item. You are responsible for any loss or for any overdraft or other applicable fees to your account due to an item being returned.

**10. Availability of Funds**

First Bank will make funds available for checks and items transmitted, accepted, and successfully processed through the Service according to First Bank's standard funds availability schedule for your First Bank deposit account used in conjunction with the Service. First Bank, in its sole discretion, may modify funds availability, as it deems relevant.

**11. Item Processing**

If the Electronic Item transmitted to us does not comply with our processing requirements for content and/or format, we may, in our sole discretion:

- a. further transmit the Electronic Item in the form received by you;
- b. repair or attempt to repair the Electronic Item and then further transmit it;
- c. return the data and Electronic Item to you unprocessed and charge back your account.

The Electronic Item or any substitute check, as defined by federal law, will become the legal representation of the Item for all purposes, including return items processing. We will use commercially reasonable efforts to review each Electronic Item and have the right to reject any Electronic Item that we in our sole discretion determine to be ineligible for the Service. We are not responsible for Electronic Items:

- a. that were previously processed or that we do not receive
- b. that may fail during transmission
- c. that are illegible or contains MICR data that is not machine-readable
- d. that are drawn on banks located outside the United States

If you wish to deposit any Electronic Item in your account that is not eligible for the Service, you shall do so only by depositing the original paper check.

**12. Receipt of Items.**

You understand and agree that receipt of an image does not occur until you are notified of receipt of the image via onscreen messaging and/or email notification. We are not responsible for any image that we do not receive. We reserve the right to reject any item transmitted through the Service, at our discretion, without liability to you. We are not liable for any service or late charges levied against you due to the rejection of any item. You are responsible for any loss or overdraft plus any applicable fees to your Account due to an item being returned.

**13. Rejection of Deposit.**

We reserve the right to reject any item transmitted through the Service, at our discretion, without liability to you. We are not liable for any service or late charges levied against you due to the rejection of any item. You are responsible for any loss or overdraft plus any applicable fees to your Account due to an item being returned.

**14. Items Returned Unpaid.**

A notice will be sent to you in the event items are returned unpaid. With respect to any item that you transmit for remote deposit that is credited to your Account, in the event such item is dishonored, you authorize First Bank to debit the amount of such item from the Account.

**15. Disposal of Transmitted Item.**

Upon receipt of a confirmation from First Bank that we have received the image of an item, you agree to retain and safeguard the paper check for a period of at least 30 days after you have transmitted the Electronic Item. After 30 days have passed and you have verified the funds associated with the Electronic Item have been added to your balance, you agree to prominently mark the paper check as "VOID" and properly dispose of the paper check to ensure that it is not represented for payment. Before disposing and if requested by the Bank, you agree to promptly provide paper checks to First Bank in order to aid in the clearing and collection process, resolve claims by third parties with respect to any item, or support First Bank audits.

**16. Periodic Statement.**

Any remote deposits made through the Services will be reflected on your monthly account statement. You are required to notify First Bank of any error relating to images transmitted using the Services by no later than 30 days after you receive the monthly periodic statement that includes any transaction alleged as erroneous. You are responsible for any errors that you fail to bring to our attention within such time period.

**17. Termination of the Services.**

You may, by written request to First Bank, terminate at any time the Services provided for in this Disclosure. In the event of termination of the Services, you will remain liable for all transactions performed on your Account. First Bank retains the right, at its sole discretion, to terminate the Services for any reason including misuse as outlined within this Agreement.

**18. Relationship to Other Disclosures.**

The information in this Agreement applies only to the Services described herein. Provisions in other disclosure documents, including without limitation, the Online Banking Agreement, the Mobile Banking Service Agreement and your Deposit Account Agreement as may be revised from time to time, remain effective for all other aspects of the Account.

**19. Governing Law.**

You understand and agree that this Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. You also agree to submit to the personal jurisdiction of the courts of the state of New Jersey. Venue for all legal action will be in a court of competent jurisdiction in Trenton, Mercer County, New Jersey.

**20. Waiver.**

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

**21. Accountholder's Indemnification Obligation.**

You understand and agree to indemnify First Bank and hold us harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from the use of the Services and/or breach of this Agreement. In addition to the indemnities contained in the Online Banking Agreement, you agree to indemnify us for any loss or expense (including attorneys' fees and expenses of litigation) resulting from:

- a. Any material breach in a representation, warranty, covenant, or obligation made by you pursuant to this Agreement or the Online Banking Agreement;
- b. Any claim pertaining to any warranty or indemnity that we make with respect to an Electronic item under the Check Clearing for the 21<sup>st</sup> Century Act, Federal Reserve Board Regulations CC and J and all other laws, regulations and industry and clearing house rules applicable to Items.

You understand and agree that this paragraph shall survive termination of this Agreement.

## **22. Disclaimer of Warranties.**

Unless otherwise required by law, we make no representations or warranties, whether express, implied or statutory regarding or relating to any of the software, capture devices or other hardware and/or access to or use of them or the related materials and the Service. We specifically disclaim any and all implied warranties of merchantability and fitness for a particular purpose and non-infringement. We and our third party service providers also do not guarantee that your access to the Service will be uninterrupted, error-free or secure. YOU AGREE YOUR USE OF THE SERVICES 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 THE SERVICES (i) WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED. First Bank is not responsible for any loss, injury or damages, whether direct, indirect, special or consequential, caused by the Internet Provider, any related software, including that of third parties or First Bank's use of any of them or arising in any way from the installation, use, or maintenance of YOUR mobile device hardware, software or other equipment.

## **23. Limitation of Liability.**

UNLESS OTHERWISE REQUIRED BY LAW, YOU AGREE THAT IN NO EVENT WILL WE OR ANY OF OUR OFFICERS, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, FILES, PROFIT, OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE OF GOODS FOR THE MOBILE DEPOSIT SERVICE), INDIRECT, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE MOBILE DEPOSIT SERVICE EVEN IF YOU, BANK, OR BANK'S SERVICE PROVIDER HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ALLOWED BY LAW, THE AGGREGATE LIABILITY OF BANK AND OUR THIRD PARTY SERVICE PROVIDERS UNDER THIS AGREEMENT SHALL NOT EXCEED ONE THOUSAND DOLLARS. WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN OR MALFUNCTIONS OF YOUR MOBILE DEVICE HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY US TO YOU IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM YOU TO US OR FROM US TO YOU. FIRST BANK SHALL NOT BE RESPONSIBLE FOR NOTIFYING YOU OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF YOUR MOBILE DEVICE HARDWARE OR SOFTWARE.

## **24. Accountholder's Warranties.**

You warrant to First Bank that: (i) you will only transmit eligible items, (ii) images will meet the image quality standards, and (iii) you will not transmit duplicate items. You also represent and warrant to First Bank that:

- a. You will comply with all laws and regulations applicable to you in your use of the Service and not use the Service for any purpose prohibited by foreign exchange regulations, postal regulations or any other treaty, statute, regulation or authority;
- b. All information you provide to First Bank is accurate and true;
- c. You will comply with this Agreement and all applicable rules, laws and regulations; and
- d. You will ensure your mobile device remains securely within your possession until the deposit has been completed or deleted. You agree that First Bank is not responsible for any deposit information left on your mobile device and/or not transmitted or deleted from your mobile device.

#### **25. Force majeure.**

We shall not be responsible for any liability, loss or damage resulting from our failure to perform any Service or to perform any other obligations under this Agreement which is caused by an act of God, fire, floods, adverse weather or atmospheric conditions or other catastrophes; war, sabotage, riots, acts of public enemy, or acts of governmental authority or the Board of Governors of the Federal Reserve; labor difficulties, equipment or computer failure or destruction or the unavailability, interruption, or malfunction of communications facilities or utilities; delays or failure to act by you or third parties and their personnel; criminal acts; or generally any cause reasonably beyond our control.

#### **26. Ownership and License.**

You agree that First Bank retains all ownership and proprietary rights in the Service, associated content, technology, and website(s). Your use of the Service is subject to and conditioned upon your compliance with this Agreement. Without limiting the effect of the foregoing, you further acknowledge and agree that a third party provider or licensor to First Bank ("Licensor") is the owner of all right, title and interest in and to the downloaded software comprising the App to be used for access to the check deposit Service from First Bank and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software"). Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of the Agreement. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright. Your use of the Service is subject to and conditioned upon your compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Service. You may not use the Service (i) for any purpose which would be contrary to First Bank's business interest, or (ii) to First Bank's actual or potential economic disadvantage in any aspect. You may use the Service only for personal use in accordance with this Agreement. 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.

#### **27. Security of Your Mobile Device and Account Information.**

You are responsible for maintaining the confidentiality and security of your Mobile Device, access number(s), password(s), security question(s) and answer(s), account number(s), login information, and any other security or access information, used by you to access the Mobile Deposit Service (collectively "Access Information"). You are also responsible for preventing unauthorized access to or use of the information, files or data that you store, transmit or use in or with the Mobile Deposit Service (collectively, "Account Information"). You agree not to supply your Access Information to anyone. You will be responsible for all electronic communications, including image transmissions, email and other data (collectively, "Communications") entered using the Access Information. Any Communications received through the use of the Access Information will be deemed to be sent or authorized by you. You agree to notify First Bank immediately if you become aware of any loss, theft or unauthorized use of

any Access Information, including your Mobile Device. First Bank reserves the right to deny you access to the Mobile Deposit Service (or any part thereof) if First Bank believes that any loss, theft or unauthorized use of Access Information has occurred.

**28. Miscellaneous.**

- a. **Transactions Covered by Regulation E.** A mobile deposit transaction into a consumer account is an “electronic fund transfer” under Federal Reserve Regulation E. For specific terms and conditions relating to electronic funds transfers, please refer to the Electronic Funds Transfer Disclosure provided to you at the time you opened your account(s).
- b. **Headings.** Headings and captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain, or modify this Agreement or its interpretation, construction or meaning.
- c. **Severability.** The holding of any provision of this Agreement as invalid, illegal or unenforceable, in whole or in part, shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
- d. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the successors, heirs, trustees, and permitted assigns of the parties hereto.
- e. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof. All contemporaneous agreements or understandings concerning the subject matter hereof, whether oral or written, are merged into this Agreement.
- f. **Transfers and Assignments.** You cannot transfer or assign any rights or obligations under this Agreement without First Bank’s written consent. We may assign our rights and delegate our duties under this Agreement to a company affiliated with First Bank or to any other party.