

Mobile Banking Agreement

This Agreement contains the terms and conditions governing the use of the Florida Community Bank Mobile Banking Services, including Mobile Deposit ("Service"). Other agreements you have entered into with Florida Community Bank ("FCB" or "Bank"), including the terms and conditions governing your deposit account, Consumer Electronic Banking Service, and all other deposit account related agreements, are hereby incorporated, by reference, and made a part of this Agreement. Some mobile Banking services are provided through third party vendors.

SECTION 1 - GENERAL

1. Acceptance of this Agreement. The Bank reserves the right to change this Agreement, in its sole discretion, at any time. The Bank will notify you of any material change to the Agreement as may be required by law. The Bank reserves the right to notify you by email or by conventional mail; a choice to be made at the Bank's sole discretion. Any notice to you will take effect when it is delivered to you by email or conventional mail to the last address we have for you in our records. You can review, download and print the most current version of this Agreement at any time for your records. If you do not agree to the changes, you may discontinue your use of the Service.

2. Governance. This Agreement will be governed by and construed in accordance with the laws of the state of Florida excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of Florida and the parties expressly consent to jurisdiction and venue thereof and therein.

3. Limitations of Services. From time to time, when using the Service, you may experience technical or other difficulties. The Bank cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. This Service has certain program parameters and qualification requirements, and we reserve the right to change those parameters and qualifications at any time without prior notice. We reserve 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 without prior notice to you.

SECTION 2 MOBILE DEPOSIT

4. Mobile Deposit Services. The FCB Mobile Deposit Service is designed to allow you to make electronic imaged deposits to an FCB checking, money market or savings account. There is no charge for the Service. If the deposit account utilized for this Service is a joint account, acceptance of this Agreement by one party provides access to the Service for the other account holder(s). The Bank or its correspondents, transferees or third party service providers, may prepare Substitute Checks or Image Replacement Documents, ("IRD") as these terms are defined

in the Check Clearing for the 21st Century Act, to facilitate the deposit and collection of your imaged item. The Bank may also utilize the Automated Clearing House system administered by the National Automated Clearing House Association.

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6. Limitations of Liability. The Bank shall have no liability to you , or any other person or entity representing or joining you, for loss, damage, cost or expense arising out of use of the Service [regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds]. The Bank shall have no liability for any error or delay in performing the Service and shall have no liability for not processing an imaged item if:

- The Bank receives actual notice or has reason to believe that you have filed or commended a petition or proceeding for relief under any bankruptcy or similar law;
- The ownership of funds involving an imaged item or a joint account holder's authority to transmit an imaged item is in question;
- The Bank suspects that the deposit account is or has been used for illegal or fraudulent purposes;
- The Bank suspects that an imaged item may be altered, counterfeit, or otherwise not "properly payable" as required by the Uniform Commercial Code as in effect in the state of Florida;
- The Bank reasonably believes that the processing of an imaged item is prohibited by federal law or regulation, or as otherwise so prohibited in this Agreement;
- Any item fails to meet the image quality standards imposed by the Federal Reserve or other regulatory agencies from time to time.
- Any item fails to contain a restrictive endorsement as required by this Agreement.

Additionally, the Bank shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, hurricanes, fires, natural disasters, acts of nature, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints or any other event beyond our control. In no event will the Bank be liable for any indirect, consequential, punitive or special damages. Bank will also be excused

from failing to process or delay in processing an imaged item if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

7. Eligibility. Bank will determine whether you are eligible for use of the Service based on certain qualifications (listed below). Your eligibility is validated initially at the activation of the Service, and again each time you initiate an electronic deposit. The Bank may suspend or terminate your use of the Service at any time and without prior notice to you. If you violate the terms of this or any other related Agreement, then we also may use such actions as a basis to terminate your account relationship with us. The following initial qualifications are required in order to be approved for the Service (initially) and each time you make an electronic deposit:

- The deposit account must be opened to be eligible for mobile deposit.
- The deposit account must have a monthly average balance of \$0.00 or more for the past 90 calendar days or 3 completed statement cycles whichever is applicable.
- 2 or less overdraft occurrences cycle-to-date.
- 6 or less overdraft occurrences year-to-date.
- 6 or less overdraft occurrences prior year-to-date.

8. Duties and Responsibilities of the Bank.

• Processing - during any Business Day (Monday through Friday, excluding Federal Holidays) the Bank will process and deposit into the deposit account any checks electronically submitted by you through the Service in accordance with applicable law and the following operational procedures:

The Bank will not examine deposited checks to verify any data or dates.

The Bank will process deposited checks according to the amount entered by you when the item is deposited.

Deposits received for process after 5:00 PM EST will be deposited to your account the following Business Day that the Bank is open. The deposit will be considered received when they arrive at the Bank and The Bank has a reasonable opportunity to act on it. The Bank will not be responsible for any missed deadlines or lost file/image or unsend transmission due to any interruption of the Service or oversight on your part to complete the transmission process.

• Collection of Checks - The Bank, in its sole discretion, shall determine the manner in which images shall be presented to the drawee bank. The Bank, in its sole discretion, shall select the clearing agents used to collect and present the images, and Bank's selection of a clearing agent shall be considered to have been designated by you. Bank shall not be liable for the negligence of any clearing agent.

- Provisional Credit and Availability of Funds - Upon acceptance of the deposit, the Bank will grant provisional credit to the account for the deposited amount, subject to final payment of the deposited check(s). For the purpose of determining the availability of funds, the Bank may, in its sole discretion, place a hold on any deposited check(s). Generally, a two (2) business day hold from the day of deposit is applied to mobile deposits. The Bank may, in its discretion, place a hold on any check deposited through the Service. A hold on your funds may affect availability of funds.

- Record Maintenance - The Bank will maintain a record and image of each check deposited by you using the Service for a period of five (5) years or such other retention period as may be required by applicable law.

- Returned Check(s) - Any check(s) returned unpaid for any reason will be debited from your account at the Bank. You shall not scan and re-deposit a returned check through the Service. You may deposit the physical returned check at a local banking center if you choose. You will be responsible for any fees associated with a returned check(s) as per your normal account terms and conditions and schedule of charges.

b. Your Duties and Responsibilities as a Customer.

- Lawful Purposes Only - You agree to use this Service as intended for lawful, non-fraudulent purposes only.

- Compliance with Federal Laws - You agree to comply with, and not knowingly violate, any existing and Future rules and regulations related to the Bank Secrecy and USA PATRIOT Acts, as well as those issued by the United States Department of the treasury's Office of Foreign Assets Control (OFAC). Additionally, you warrant that you will abide by the terms of this Agreement at all times.

- Indemnification - You agree to indemnify and hold harmless the Bank from any loss for breach of this warranty. Further you acknowledge that all information provided to the Bank for use of the Service is accurate and true.

- Check Requirements - the name of the payee(s) on any deposited check must be that of the account holder(s). All deposited checks must bear the signature of a drawer.

- Restrictive Endorsement - You agree to properly endorse any check transmitted through the Services in the properly designated section on the back of the check as follows: **“FOR MOBILE DEPOSIT ONLY TO FCB ACCOUNT NO. XXX”**.

- Amount - If applicable, you agree to enter the amount of the deposited check using the amount written on the check in to the appropriate data fields for the Service.

- Image Quality - Each check deposited through the Service shall contain an accurate representation of the front and the back of each check and shall be of such quality that the following information can clearly be read and understood by signature review of such image:

- The amount of the check;
 - The payee of the check;
 - The signature of the drawer of the check;
 - The date of the check;
 - The check number;
 - The information identifying the drawer and the paying bank that is preprinted on the check including the MICR line; and
 - All other information placed on the check prior to the time an image of the check is captured electronically, such as any required identification written on the front of the check and any endorsements applied to the back of the check.
- Duplicate Checks - You, as the user of this Service, warrant to the Bank that no check will be duplicated for deposit either through use of the Service or physical deposit of the original check at a Banking Center location. The Bank will reverse and not provide credit for said items deemed in good faith to be duplicates. You agree to indemnify the Bank for any and all loss, damage or expense arising out of or related to any duplicate deposit of an item, including but not limited to the amount of the duplicate item, interest, costs and reasonable attorney fees. In addition, continued processing of duplicate items shall result in immediate termination of the Service.
- Duty to Report Errors - You are responsible for notifying the Bank of any errors, omissions, or interruptions in, or delay or unavailability of, the Service as promptly as practicable, and in any event within one Business Day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and in the case of any error, within ten (10) calendar days of the date you became aware of the error. Failure to notify the Bank of any error, omission, or other discrepancy within such ten-day period shall relieve the Bank of any liability for such error, omission or discrepancy.
- Mobile Device and System Requirements - You are required to maintain, at your sole expense, any device or software application needed to utilize the Service.
- Document Retention and Destruction - Once your check image has been credited to your deposit account, you must mark the original check by writing mobile check deposit on the front with the date. You shall retain the original check for a period of thirty (30) calendar days. During this thirty (30) day period, you must store the original paper check securely using precautions at least as secure as those you would use to protect a blank check and you must make the original paper check available to us for review at any time and as necessary for us to facilitate the clearing and collection process, to address third party claims, or for our own audit purposes. Should you fail to produce the original paper check, you authorize us to deduct the amount of the check in question from your account, regardless of whether such action may cause your account to not have sufficient funds, and to pay any associated fees. Immediately after this thirty (30) day

period, you must destroy the original paper check. You should destroy the original checks by shredding the checks and totally obliterating the checks in such a manner that the checks cannot be reconstructed, nor can any information on the checks be read. You may not present the original check or any image or substitute check created from the original check for payment at any other financial institution.

c. Eligible Items. You agree to only use the Service to deposit only paper checks as that term is defined in Federal Reserve Regulation CC which are payable on demand and drawn on or payable through or at an office of a U.S. bank, that is handled for forward collection.

d. Prohibited Items. You agree not to deposit (and understand it is against Bank policy and terms of this Service to attempt to deposit) any of the following:

- A second endorsed check or item.
- A check or item containing obvious 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(s) of the account on which the check or item is drawn.
- Check or item payable to any person other than yourself and/or joint account holder(s) (third party checks).
- Check or item previously converted to a substitute check, as defined in Regulation CC.
- An Image Replacement Document (IRD).
- A check previously deposited.
- Check or item that is drawn on a financial institution located outside the U.S.
- Check or item that is a remotely created check, as defined in Regulation CC.
- Check or item that is an Electronic Check, as defined in Regulation CC.
- Check or item that is an Electronically Created Check, as defined in Regulation CC.
- Check or item not payable in U.S. currency.
- Money Orders, Traveler's Checks or Savings Bonds.
- Check or item dated more than six (6) months prior to the date of deposit.
- Checks or items prohibited under the terms and conditions of your FCB deposit account.

e. Image Quality. The image of an item transmitted to FCB using the Service must be legible. The image quality of the items must comply with the requirements established from time to time

by ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association. Checks should be placed on a dark background, ensuring the image is in focus and the four corners of the check are visible inside the red box. You agree to cooperate with the Bank in the event the Bank needs assistance in the reading of an image or balancing of a transaction or such items will be placed in suspense by the Bank pending resolution.

f. Receipt of Items. The Bank reserves the right to reject any item transmitted through the Service, at our sole discretion, without liability to you. We are not responsible for items we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from the Bank that we have received the image. Receipt of such confirmation does not mean that the transmission was error free or complete. If there is a discrepancy between the entered and confirmed amount and the amount on the scanned image we will credit the account based on the scanned image. Any item will be deemed to have been deposited at the banking center where the account is maintained.

g. Deposit Limits. The following standard limits are established when the Service is activated:

For accounts opened less than 90 days

- \$1,000 daily limit
- \$1,000 payment limit
- \$3,000 (Monthly/25 days)
- 10 items per day
- 25 items per month limit (Monthly/25 days)

For accounts opened greater than or equal to 90 days

- \$2,500 daily limit
- \$2,500 payment limit
- \$15,000 (Monthly/25 days)
- 10 items per day
- 25 items per month limit (Monthly/25 days)

h. Ownership & License. You agree that FCB retains all ownership and proprietary rights in the Services, associated content, technology, and website(s). Your use of the Services 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 Services. Without limiting the restriction of the foregoing, you may not use the Services (i) in any anti-competitive manner, (ii) for any purpose which would be contrary to FCB's business interest, or (iii) to FCB's 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 Services.

i. User warranties and indemnification. You warrant to FCB that:

- You will not deposit or represent the original item.
- All information you provide to FCB is accurate and true.
- You will comply with this Agreement and all applicable rules, laws and regulations.
- You agree to indemnify and hold harmless FCB from any loss for breach of this warranty provision.

j. **DISCLAIMER OF WARRANTIES. 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 SERVICES WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.

Section 3 - Text Messaging

- **Text Messaging Services.** The FCB text messaging services are separate and apart from any other charges that may be assessed by your wireless carrier for text messages sent to or received from the Bank. You are responsible for any fees or other charges that your wireless carrier may charge for any related data or message services, including without limitation for short message service. This service is provided by the Bank and not by any other third party. You and the Bank are solely responsible for the content transmitted through the text messages sent to and from the Bank. You must provide source indication in any messages you send (i.e., mobile telephone number, "from" field in text message, etc. For help, text "HELP" to 79680. To cancel your plan, text "STOP" to 79680 at any time. If you have questions about your text messaging services, please contact customer service at <mailto:ebanking@fcb1923.com> or call 1-877-557-3635.
- **Virus Protection and Firewalls.** You should routinely scan your Mobile Device using a reliable virus detection and anti-spyware product. Undetected or unrepaired viruses may corrupt and

destroy your programs, files, and even your hardware. Additionally, you may unintentionally transmit the virus to other computers. You should also utilize a firewall (hardware and/or software). You are solely responsible for the maintenance, installation and operation of your Mobile Device and software used in accessing the Service. We are not responsible for and you agree to hold us harmless from any damages, losses, costs, errors, deletions, or failures that occur as a result of or in connection with any malfunction of your computer, Mobile Device or software, or your failure to obtain adequate online security hardware and software, nor will we be responsible for any computer viruses that, or any other third-party attempts to, affect your computer, Mobile Device or software while using the Service. Notwithstanding our efforts to insure that the Service is secure, you acknowledge that the internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Service or email transmitted to and from us, will not be monitored or read by others.

Section 4 - End User Software License Agreement for Downloadable App

1. Ownership. You acknowledge and agree that a third party provider or licensor ("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to FCB's Mobile Banking services 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").

2. License. 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 this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

3. Restrictions. You shall not:

- modify, revise or create any derivative works of the Software; or,
- decompile, reverse engineer or otherwise attempt to derive the source code for the Software; or,
- redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or,
- remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

4. Disclaimer Warranty. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR , THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights. The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

7. Content and Services. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

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