

## **Mobile Deposit Agreement and Disclosures**

### **Introduction**

This Mobile Deposit Agreement and Disclosure ("Agreement") for our Mobile Deposit Service ("Mobile Deposit Service" or "Service") is a part of and subject to our Online Banking Agreement and Disclosures ("Online Banking Agreement"), which is incorporated herein by reference. "FCB," "Bank," "we," "us," and "our" refers to First Community Bank and "Customer," "you," and "your" refers to the customer enrolling in the Mobile Deposit Service. This Agreement does not replace, but supplements, any and all other agreements that govern any account maintained by the Customer at First Community Bank (whether now or in the future), which continue to apply notwithstanding anything in this Agreement. Your use of the Service is governed by this Agreement, the Online Banking Agreement, the Deposit Account Agreement for your deposit accounts, and other documentation and enrollment forms you have executed in establishing your banking accounts with us. To the extent there is a conflict between this Agreement and your other agreements with us, this Agreement controls with respect to your use of the Mobile Deposit Service. Please read this Agreement carefully and print a copy to retain with your Online Banking Agreement. By enrolling and using the Mobile Deposit Service, you agree to comply with the terms and conditions of this Agreement and acknowledge that you have read it carefully. "Business days" are Monday through Friday, excluding Federal holidays. Unless otherwise defined herein, all defined terms in the Online Banking Agreement apply in this Agreement.

### **I. General**

The Mobile Deposit Service provides you the ability to access and make deposits to your designated eligible Accounts using a mobile device (such as a smartphone or tablet) with a camera (referred to herein as a "Capture Device," as further defined below). The Mobile Deposit Service enables you to use a compatible Capture Device to scan an image of original paper checks ("Original Checks") that are drawn on or payable through United States financial institutions (each a "Check Image") and to electronically submit the Check Image and associated deposit information to FCB from your home or other remote locations using the Mobile Deposit Service for deposit into a designated eligible Account for collection thereafter by FCB. As used in this Agreement, a "Capture Device" means any device acceptable to us that provides for the capture of Check Images and for transmission through the clearing process. In order to utilize the Service, you must be enrolled in the Online Banking Service for either a consumer or a business. In addition, we reserve the right to refuse to allow any account to be linked to the Service. For further information regarding accessing Online Banking, refer to the Online Banking Agreement.

### **II. Service Requirements**

#### **A. Account Eligibility**

In order to enroll in the Service, you must be designated as an authorized signer or owner of an FCB Account that is eligible for this Service. For an Account to be eligible, it shall:

1. have been opened for at least 90 days and be in good standing and
2. have not more than one NSF item within the last 90 days.

In order to retain access to the Service, the Account must have one of fewer NSF items in a rolling 12 month period.

#### **B. Equipment and Software Requirements**

To access the Mobile Deposit Service, you must have or acquire and maintain a compatible Capture Device and a wireless plan from a compatible wireless carrier. First Community Bank will require access to your camera during the deposit process. In addition, you must be willing to accept email communication regarding Mobile Deposits on your mobile device. We do not guarantee your particular mobile device, mobile device camera, mobile device operating system, or mobile carrier will be compatible with the Service. You must also download the Mobile Deposit Service app. The app is available through the Apple App Store for iPhone and iPad applications and the Google Play Store for Android operating system applications.

#### **C. Deposit Limits and Presentment**

You may scan and submit Check Images for deposit to FCB within the dollar limits and other limits established by FCB. Deposit limits for Mobile Deposits to consumer accounts are \$1,000.00 per day and \$3,000.00 per month. Deposit limits for Mobile Deposits to commercial accounts are \$1,500.00 per day and \$4,500.00 per month. Mobile Deposits to both consumer and commercial accounts are limited to 10 deposited items per day and 30 deposited items per month. If you exceed the deposit limits, FCB may in its sole discretion accept or refuse the Check Image deposit. If at any time FCB accepts a Check Image deposit that exceeds the deposit limits, FCB will have no obligation to do so in the future. FCB may at any time at its sole discretion raise or lower deposit limits. The manner in which deposited items are cleared, presented for payment, and collected shall be at First Community Bank's sole discretion subject to the Deposit Account Agreement governing your Account(s).

### III. Limitations of Service

FCB's ability to provide the Mobile Deposit Service is conditioned upon the availability of the wireless and computer services and systems used in transmitting your requests and FCB's response. FCB shall not be liable or responsible for any loss or damage incurred due to the failure or interruption of the Mobile Deposit Service, wireless or computer services, or systems, resulting from the act or omission of any third party or other causes not reasonably within FCB's control. In the event the Mobile Deposit Service is unavailable for any reason, items may be deposited by alternate methods such as in person or by mail including a completed Account deposit slip. FCB is not liable for any checks or items it does not receive or for any images that are not readable. We reserve the right to change, suspend, or discontinue the Mobile Deposit Service, in whole or in part, or your use of the Mobile Deposit Service, in whole or in part, immediately and at any time without prior notice to you.

### IV. Security of your Capture Device and Account Information

You are responsible for (i) maintaining the confidentiality and security of your Capture Devices, 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 Service (collectively, "Access Information"), and (ii) preventing unauthorized access to or use of the information, files or data that you store, transmit or use in or with the Service (collectively, "Account Information"). You agree not to supply your Access Information to anyone. Further, you agree to implement and maintain internal security controls to protect the Access Information, Capture Device, and Account Information thereon. You will be responsible for all electronic communications, including image transmissions, text message, email and other data ("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 immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Information or Access Information, including your Capture Devices. We reserve the right to deny you access to the Service (or any part thereof) if we believe that any loss, theft or unauthorized use of Access Information has occurred.

### V. Eligible Checks and Items

You agree to scan and transmit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg CC") and only those checks that are permissible under this Agreement or such other items as we, in our sole discretion, elect to include under the Service ("Eligible Checks"). If a check or item is dishonored, you will receive an image of the original check or a substitute check as the charged back item. You agree that the image of the check transmitted to us shall be deemed an "item" within the meaning of Articles 3 and 4 of the applicable Uniform Commercial Code. You also agree that no transaction using the Mobile Deposit Service is an "electronic funds transfer" as defined in the Electronic Funds Transfer Act and Regulation E.

You agree that you will **NOT** use the Service to scan and deposit any checks or other items shown below as these are ineligible for deposit via your mobile device:

- Checks or items payable to any person or entity other than you;
- Checks payable to you and another party, unless deposited into a Mobile Deposit Account in the name of all payees;
- Checks that are illegible or otherwise do not meet the image quality requirements set forth below;
- Checks with unreadable magnetic ink character recognition ("MICR") information;
- Checks or items containing alteration(s) to any of the fields on the front of the check or item (including the MICR line), 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;
- Checks or items previously converted to a substitute check, as defined by The Check Clearing for the 21st Century Act and its regulations ("Check 21");
- Checks or items that are remotely created checks, as defined by Reg CC;
- Checks or items drawn on banks located outside the United States;
- Checks or items not payable in United States currency;
- Checks or items issued by the US Treasury or any other US federal agency;
- Money orders, cashier's checks, official checks, savings bonds, and traveler's checks;
- Checks dated more than six (6) months prior to the date of deposit;
- Checks payable on sight or payable through drafts, as defined by Reg CC; and
- Checks with any endorsement on the back other than that specified in this Agreement.

You understand that FCB is not obligated to accept for deposit any Check Image that FCB in its sole discretion determines to be ineligible for the Mobile Deposit Service, and FCB is not liable to you for rejecting any check or image transmitted by you. FCB further reserves the right to charge back to your Account, at any time, any item that we subsequently determine was ineligible. You agree that FCB is not liable for any loss, costs, or fees that you may incur as a result of our chargeback of an ineligible item. If you deposit any

Check Image that is ineligible for the Mobile Deposit Service, you agree to indemnify and reimburse FCB for, and hold FCB harmless from and against, any and all losses, costs and expenses (including reasonable attorneys' fees) FCB may incur associated with any warranty, indemnity or other claim related thereto.

## **VI. Image Quality**

The image of a check or item transmitted to First Community Bank using the Service must be legible. The image quality of the checks and items must comply with the standards established from time to time by the American National Standards Institute, or any higher standard set by us, and with any requirements set by the Federal Reserve Board, any regulatory agency with jurisdiction over us, or any clearing house First Community Bank uses or agreement the Bank has with respect to processing checks. You agree that First Community Bank shall not be liable for any damages resulting from a check or item's poor image quality, including those related to rejection of or the delayed or improper crediting of such a check or item, or from any inaccurate information you supply regarding the check or item. You acknowledge and agree that even if FCB does not identify a Check Image as ineligible, the Check Image may be returned to FCB because, among other reasons, the Check Image or any substitute check created from the Check Image is deemed ineligible by the financial institution upon which it is drawn or any intermediate collecting financial institution. FCB's failure to identify a Check Image you transmit to us as ineligible shall not preclude or limit your obligations. You authorize us to process any Check Image you send to us or convert a Check Image to a substitute check, as defined by Check 21.

## **VII. Deposit Cut off Times and Funds Availability**

Mobile Deposits received prior to 5:00 pm Eastern Time on a business day will generally be available for withdrawal one to three (1-3) business days after the day of the deposit. However, funds deposited via Mobile Deposit may be subject to longer delays under certain circumstances. In accordance with the First Community Bank's (FCB) Funds Availability Policy, deposits are subject to limits, verification, and other restrictions. If your deposit is declined, you will be notified via the email address you entered as part of the Mobile Deposit enrollment process. Any credit to your Account is provisional and remains subject to final payment of the checks. You remain liable to FCB for any returns, dishonor, errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against FCB with respect to the items deposited.

## **VIII. Endorsements**

Before transmission, you agree to restrictively endorse any check as "First Community Bank Mobile Deposit Only On [MM/DD/YY]" or as otherwise instructed by First Community Bank. You agree to follow any and all other procedures and instructions for use of the Service as the Bank may establish from time to time, and to supply any information in your possession we may request regarding a check or item deposited or attempted to be deposited through use of the Service.

## **IX. Receipt of Images; Rejection of Images**

First Community Bank reserves the right to reject any check or item transmitted through the Mobile Deposit Service, at our sole discretion, without liability to you. The Bank is 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 the deposit history within the Mobile Deposit App displays the status as "scheduled." Receipt of such confirmation does not mean the transmission was received error free or complete or that it will be considered a deposit and credited to your Account. First Community Bank will send an email notice to you if your check image is rejected. First Community Bank further reserves the right to charge back to your Account, at any time, any item we subsequently determine was not an eligible item. You agree the Bank is not liable for any loss, costs, or fees you may incur as a result of our chargeback of the ineligible item.

## **X. Return Items**

You are solely responsible for any checks or other items for which you have been given provisional credit, and any such check or other item which has been returned or rejected may be charged to your Account. You acknowledge that all credits for deposits made through the Mobile Deposit Service are provisional, subject to verification and final settlement.

## **XI. Disposal of Transmitted Checks and Items**

You shall fully destroy each Original Check in your Check Image deposit fourteen (14) calendar days following crediting of your Check Image deposit or as FCB may otherwise instruct to ensure that it is not represented for payment. Prior to destruction, you shall maintain each Original Check in a secure location. You agree not to submit the item to FCB or to any other person or entity for deposit or credit after the item has been submitted and accepted by FCB or any other person or entity. During the time the retained check is available, you agree to promptly provide it to the Bank upon request. Following the expiration of the retention period, you agree to use a commercially reasonable method to destroy each Original Check. You are responsible if an Original Check is misused following submission by Check Image deposit and its full destruction.

## **XII. Representation and Warranties**

You make the following representations and warranties to us:

- You shall not alter any Original Check or Check Image and shall review the Check Image to ensure that it accurately represents all of the information on the front and the back of the Original Check at the time you scanned the Check Image.
- You are a person authorized to enforce each Original Check or are authorized to obtain payment of each Original check on behalf of a person authorized to enforce the item.
- Each Original Check bears all required and authorized endorsements and has not been altered.
- You shall submit to FCB only Check Images that are eligible for processing, including, but not limited to, Check Images that are legible and contain machine-readable MICR data.
- You shall not submit to FCB for deposit using Mobile Deposit Service any check that is payable jointly unless the check is being deposited into an Account in the name of all payees on the check.
- You will use the Mobile Deposit Service for lawful purposes only and in compliance with all applicable rules and regulations and our instructions, rules, and specifications.
- You shall destroy Original Checks as stated above.
- You will not use the Mobile Deposit Service to transmit or deposit any Original Check (i) payable to someone other than you; (ii) which you know or should have known to be fraudulent, altered, unauthorized, or missing a necessary endorsement; (iii) that is drawn on an institution located outside of the United States; or (iv) that is created by you purportedly on behalf of the maker, such as a remotely created check.
- You shall not deposit into your Account with FCB or any other deposit taking institution, or otherwise negotiate or transfer to anyone, any Original Check that you submitted as a Check Image deposit to FCB, unless following receipt of your submission, FCB notifies you that the Check Image is ineligible and not accepted for deposit or that the Check Image or any Substitute Check created from the Image is refused by the financial institution upon which it is drawn.
- You shall use the Mobile Deposit Service only for your own use in accordance with the terms of this Agreement and all applicable laws and regulations. You shall not make the Mobile Deposit Service available or transfer your rights to use the Mobile Deposit Service for the benefit of any third party.

## **XIII. Fees**

Currently, there is no fee or charge assessed by the Bank for you to enroll in or use the Mobile Deposit Service. You may, however, incur charges to receive Internet service on your Capture Device. You may also incur charges from your wireless carrier when sending and receiving text messages. You will be solely responsible to your wireless carrier for any such Internet or text messaging charges.

First Community Bank may, upon at least 30 days prior notice to you, assess fees or charges for use of the Service, as required by applicable law. If you continue to use the Service after such fee becomes effective, you agree to pay the Service fee that has been disclosed to you.

## **XIV. Changes to the Service**

First Community Bank reserves the right to terminate, modify, add and remove features from the Service at any time in our sole discretion. You may reject changes by discontinuing use of the Service. Your continued use of the Service will constitute your acceptance of and agreement to such changes. Maintenance to the Service may be performed from time-to-time resulting in interrupted Service or delays, and you agree that the Bank shall have no liability for any such interruptions or delays. Attempts to provide prior notice of scheduled maintenance may be made, but we cannot guarantee that such notice will be provided.

## **XV. Ownership and License**

You agree that First Community Bank retains all ownership and proprietary rights in the Mobile Deposit Service, associated content, technology, Mobile Deposit Service app and website(s). 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 which would be contrary to First Community Bank's business interest, or (iii) to First Community Bank's actual or

potential economic disadvantage in any aspect. You may use the Service only for your own 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.

## **XVI. Geographic Constraints**

You agree that you will not use the Service in locations that are prohibited under US law and regulations, including laws and regulations issued by the Office of Foreign Assets Control.

## **XVII. Errors**

You agree to notify First Community Bank of any suspected errors regarding items deposited through the Service right away, and in no event later than 60 days after the applicable First Community Bank account statement is sent. Unless you notify the Bank within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against First Community Bank for such alleged error.

## **XVIII. Cooperation with Investigations**

You agree to cooperate with FCB in the investigation of transactions, poor quality transmissions, and resolution of any claims, including providing, upon request and without further cost, any originals or copies of items deposited through the Mobile Deposit Service in your possession and your records relating to such items and transmissions.

## **XIX. Termination of Service**

We may terminate this Agreement at any time and for any reason. Without limiting the foregoing, this Agreement may be terminated if you breach any term of the Agreement, if you use the Service for any unauthorized or illegal purposes, or you use the Service in a manner inconsistent with the terms of your Deposit Account Agreement or any other agreement you have with us.

## **XX. Limitation on Bank Liability and Disclaimer of Warranties**

### **LIMITATION ON LIABILITY**

**IN NO EVENT WILL THE BANK OR ANY OF ITS 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 GOODS OR SERVICE), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE MOBILE DEPOSIT SERVICE, OR ANY TRANSACTIONS THEREUNDER, EVEN IF THE BANK HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

### **No Liability for Certain Failures**

Except as specifically provided in this Agreement or where applicable law requires a different result, neither we nor our Service providers or agents will be liable for any loss or liability resulting in whole or in part from any act or failure to act of your equipment or software, or that of an Internet browser, by an Internet access provider, by an online service provider or by an agent or subcontractor of any of them, nor will we or our Service providers or agents be responsible for any direct, indirect, special or consequential, economic or other damages arising in any way out of your access to or use of, or failure to obtain access to the Service.

### **DISCLAIMER OF WARRANTIES**

**WE MAKE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THE MOBILE DEPOSIT SERVICE AND THE SERVICES PROVIDED TO YOU UNDER THIS AGREEMENT. WE DO NOT AND CANNOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT ERRORS OR THAT ANY OR ALL SERVICES WILL BE AVAILABLE AND OPERATIONAL AT ALL TIMES.**

## **XXI. Indemnification**

Except to the extent that we are liable under the terms of this Agreement or applicable federal law, you agree to indemnify and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all claims, liability, damages and/or costs (including but not limited to reasonable attorney's fees) arising from (a) your use of the Mobile Deposit Service; (b) a third party claim, action, or allegation of breach of warranty, infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; (c) any fraud, manipulation, or breach of this Agreement by you; or (d) your violation of any law or any rights of a third party. We reserve the right, at our own expense, to assume the exclusive defense and

control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without our prior written consent.

## **XXII. Waiver of Right to Jury Trial**

**YOU AND THE BANK EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTES, LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT, THE MOBILE DEPOSIT SERVICE, AND SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO THIS AGREEMENT OR THE SERVICE.**

## **XXIII. Miscellaneous**

- A. Entire Agreement.** You agree that this Agreement, including the other agreements referenced herein, is the complete and exclusive statement of the agreement between you and FCB as to the Mobile Deposit Service, which supersedes any proposal or prior agreement, oral or written, and any other communications between you and us relating to the subject matter of this Agreement.
- B. Assignment.** You may not assign this Agreement to any other person or entity. We may assign this Agreement to any company with which we are directly or indirectly affiliated. We may also assign or delegate certain of our rights or responsibilities under this Agreement to independent contractors or other third party service providers.
- C. No Waiver.** We will not be deemed to have waived any of our rights or remedies under this Agreement unless we send the waiver to you by electronic message or we otherwise mail or deliver to you a written waiver signed by us. No delay or omission on our part in exercising any of our rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies we may have. A waiver on one occasion will not be construed as a bar or waiver of any rights or remedies on future occasions.
- D. Severability.** If any provision of this Agreement is held to be invalid or otherwise unenforceable, the remainder of the provisions shall continue in full force and effect and shall in no way be invalidated or otherwise affected.
- E. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state in which your Account is opened, without regard to such state's conflicts of law provisions, and applicable federal law, except to the extent this Agreement can and does vary such laws.
- F. Captions.** The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions for this Agreement.
- G. Survival.** The provisions of this Agreement, which by their nature survive expiration or termination of this Agreement, shall survive, including without limitation, Sections III, IV, VII, XV, XVII, XVIII, XX, XXI, XXII, and XXIII.

*iPhone and iPad are trademarks of Apple, Inc.*

*Android is a trademark of Google, Inc*