

## **First State Bank of Newcastle Mobile Deposit User Agreement**

This Mobile Deposit User Agreement (this “Agreement”) contains the terms and conditions of the use of mobile deposit services and a supplement to the Deposit Account Terms and Conditions, Internet Banking and Bill Payment agreement, and other agreements between First State Bank of Newcastle (the “Bank”) and you (“Customer”, “you”). In the event of conflict or discrepancy between this Agreement and other agreements entered into between you and First State Bank of Newcastle regarding the subject matter herein, this Agreement shall take precedence.

**Services** – The mobile deposit services (the “Services”) are designed to allow you to make deposits to a qualified First State Bank checking, savings, or money market accounts from home or other remote locations by scanning checks and delivering the images and associated deposit information to the Bank.

**Acceptance of these Terms** – Your use of this Service constitutes your acceptance of this Agreement. This Agreement is subject to change periodically unless specifically prohibited by applicable law. The Bank will notify you of any material change either electronically or by physical mail to you at the most current address on record with the Bank. Notices shall be deemed delivered after one (1) business day if delivered electronically, or after three (3) business days if sent by physical mail. Changes to this Agreement will be deemed effective no less than thirty (30) days after delivery (as calculated by the above mentioned standards). You will have the right to terminate this Agreement prior to the effective date of amendment. After the amendment becomes effective, continued use of the Services by you will indicate consent to be bound by the revised Agreement. Further, the Bank reserves the right, at its sole discretion, to change, modify, add, or remove portions from the Services. Your continued use of the Services will indicate your acceptance of any such modifications to the Services. In addition, you provide Bank with your express consent permitting us to contact you as necessary to provide the Services (including push notifications to your mobile device). Such activities may include, but are not limited to, providing account alerts, confirming account activity, confirming mobile remote capture deposits, undertaking fraud prevention, servicing, advertising, or for any other purpose as provided in this Agreement.

**Limitations of Service** –When using this Service, you may experience technical or other difficulties. The Bank does not assume any responsibility for any technical or other difficulties or any resulting damages that you may incur. This service has qualification requirements and the Bank reserves the right to change the qualifications at any time without prior notice. The Bank additionally reserves the right to change, suspend or discontinue the Service in whole or in part, or Customer’s use of the Service, in whole or in part, immediately and at any time without prior notice to you.

**Hardware and Software** – In order to use this Service, Customer must obtain and maintain, at Customer’s expense, compatible hardware and software as specified by the Bank. The Bank is not responsible for any third party hardware or software you may need to use this Service. Any software is accepted by you as is and is subject to the terms and conditions of the software agreement you enter into directly with the third party software provider at the time of download and installation. In addition, you understand and agree you are still subject to the terms and conditions of any agreement you have with any unaffiliated third-party service providers, including, but not limited to your mobile service provider (e.g. AT&T, Verizon, Sprint, T-Mobile, etc.) or any third-party provider of or marketplace for the Services (e.g. Apple, Inc., Google, Inc. (Android)), and this Agreement does not amend or supersede any of those separate third-party service provider agreements. You understand that such services may provide for fees, charges, limitations and restrictions which might impact your use of the Services (e.g. data use charges, etc.), and you agree to be solely responsible for all such fees, charges, limitations and restrictions. You agree that only your mobile service provider is responsible for the performance and operation of its products and services, including your mobile device and the mobile service provider’s own network. You agree to resolve any problems with your mobile service provider without involving First State Bank, Apple, Inc., or Google, Inc. (Android). You must comply

with the applicable third party terms when using the Services (e.g. you cannot be in violation of your wireless provider agreement when using the Service).

**Fees** – The Bank may opt to charge a fee for the Service. You are responsible for paying the fees for the use of the Service. The Bank may change the fees for use of this Service at any time pursuant to the section titled “Acceptance of these Terms” above. You authorize the Bank to deduct any such fees from any Bank account in your name. The Bank is not liable for any costs you may incur from cellular data networks or other related equipment that may result from usage of this Service.

**Qualifications For and Information Regarding the Services** – Provision of the Services to you is at the Bank’s sole discretion. For the purpose of this section and other provisions relating to the Services, any capitalized term not otherwise defined herein has the definition ascribed to it under the Check 21 Act and the Federal Reserve Regulation CC promulgated pursuant to the Check 21 Act. If you have met, in Bank’s sole discretion, the conditions we have established for use of Services to make deposits via Electronic Images, Bank will provide for acceptance for deposit to your account(s) the Electronic Images of Original Checks for collection as allowed under this Agreement and any related documentation.

By depositing Electronic Images with the Bank via the Services, you give Bank the same warranties and indemnities that Bank, as a reconvert bank, would give under applicable law or regulation. You understand and acknowledge that all of the warranties deemed given by a depositor of a check to a bank under the Uniform Commercial Code (“UCC”), as applicable from time to time in the State of Wyoming, shall also apply to any Electronic Image of an Original Check the same as if such Electronic Image or Substitute Check were a paper check within the meaning of the UCC as adopted by the State of Wyoming (“Wyoming UCC”). Accordingly, except to the extent that any warranties deemed given under the Wyoming UCC are expressly superseded by the Check 21 Act or the Check 21 regulations, you understand that you are deemed to give Bank all the same warranties you would have given under the Wyoming UCC for the deposit of an Original Check by transferring to Bank: (a) any Substitute Check; (b) an IRD or other item purporting to be a Substitute Check; or (c) any Electronic Image that purports to contain a Sufficient Copy of an Original Check or a Substitute Check. In addition to the other warranties listed in this Agreement, such warranties also include the following two (2) specific warranties regarding transfer and presentment:

- You warrant that the Electronic Image that Bank converts to a Substitute Check meets the requirements described in 229.51(a)(1)-(2) of the Check 21 Regulation (found at 12 CFR 229.51(a)(1)-(2) for legal equivalence;
- And your warranty given above is deemed given to bank and any other person, company or bank to which Bank transfers, presents or returns a Substitute Check or a paper or electronic representation of the Substitute Check.

The above warranties are deemed given to Bank and any person, company or bank, to which Bank transfers, presents or returns any of the Images included in such electronic file as a Sufficient Image Copy or that purports to be a Sufficient Image Copy created by Bank or any subsequent bank receiving a copy of such image. You represent that you shall permit no third parties to use the Services to deposit Original Checks to your account.

**Eligible Items** – You agree to scan and deposit only “checks” as that term is defined in Federal Regulation CC (“Reg. CC) and Check Clearing for the 21<sup>st</sup> Century Act. When the images of the front and back of the check are transmitted to the Bank, they are individually or collectively converted to an electronic image for subsequent presentment and collection. It shall therefore be deemed an “item” within the meaning of Articles 3 and 4 of the Uniform Commercial Code.

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You agree that you will **not** scan and deposit any of the following types of checks or other items which shall be considered ineligible items:

- Money orders
- Savings bonds
- Cashier's Checks
- Gov't. checks
- Travelers' checks
- Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into
- Checks containing an alteration 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 is drawn
- Checks payable jointly, unless deposited into an account in the name of all the payees
- Checks drawn on a financial institution located outside the United States
- Checks that are remotely created checks (as defined in Reg. CC)
- Checks not payable in United States currency
- Checks dated more than six (6) months prior to the date of deposit
- Checks that are "VOID" after 90 days
- Checks payable on sight or payable through Drafts (as defined in Reg. CC)
- Checks with any endorsement on the back other than that specified in this Agreement
- Checks that have previously been submitted through the Service or through a remote deposit service offered at any other financial institution, or otherwise previously converted to a substitute check, as defined by Reg. CC.

**Endorsements and Procedures** – Electronic Images shall be deemed received by Bank for deposit based upon time of receipt as well as successful receipt of Electronic Images that are complete, usable, and adhere to the standards discussed herein. If any Electronic Image is not complete, is not usable, or does not adhere to the standards, the Electronic Image may not be processed by Bank, in which event your deposit will be adjusted and notification provided. You understand we will process only your Electronic Images that comply with the standards discussed above and are Sufficient Image Copies, and we will use commercially reasonable efforts to present these Sufficient Image Copies for collection under the Check 21 framework. All checks submitted through the Services must be properly endorsed by you prior to transmittal. Unless otherwise instructed by the Bank, you agree that all checks deposited through this Service must

(a) be signed by all required payees, and

(b) state that they are "For Mobile Deposit only, account # ----".

You agree to follow any and all other procedures and instructions for use of this Service as the Bank may establish from time to time. Any loss that the Bank incurs from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility. The Bank has no responsibility or liability for any fees incurred due to the rejection of transmitted items for missing/incomplete endorsements.

**Receipt of Items** – In general, all images processed for deposit through the Services will be treated as "deposits" under your current Deposit Account Terms and Conditions with Bank. Any confirmation from Bank that we have received the image does not mean that the image contains no errors. The Bank reserves the

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right to reject any item transmitted through this Service, at the Bank's discretion and without liability. The Bank is not responsible for items the Bank does not receive or for images that are dropped during transmission. The Bank further reserves the right to charge back to Customer's account at any time any item that the Bank subsequently determine was not an eligible item. You agree that the Bank is not liable for any loss, costs, or fees you may incur as a result of a chargeback of an ineligible item. Following receipt, Bank may process the image by preparing a "substitute check" or clearing the item as an image.

**Deposit Limits** – The Bank may establish limits on the dollar amount and/or number of items or deposits that you make via the Services. If you attempt to initiate a deposit in excess of these limits, the Bank may reject your deposit. If the Bank permits you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and the Bank will not be obligated to allow such a deposit at other times. The current dollar daily limit is \$2,000.00 per check and \$3,000.00 per business day. There is currently no daily or monthly statement cycle limit on the number of items, as long as the respective dollar limits are not exceeded. Daily and monthly deposit limits may vary for users of other services provided by the Bank. Deposit limits are subject to change at the sole discretion of the Bank.

**Availability of Funds** – You agree that items transmitted using this Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC because this is considered an "electronic" deposit.

Generally, and except as otherwise provided herein, items transmitted using this Service will be available subject to the Bank's approval. Bank shall give provisional credit for deposits subject to revocation of credit for deposits as provided in Regulation CC and the Uniform Commercial Code. The availability of funds for deposits via the Services is set forth in this Agreement.

If you make a deposit using this Service before 2:45 p.m. MT, on a business day that the Bank is open, the Bank will consider that day to be the day of your deposit. However, if you make a deposit using this Service after 2:45 p.m. MT, or on a day that we are not open, the Bank will consider that deposit to have been made on the next business day that the Bank is open. Generally, funds will be available on the next business day following the day of deposit. First State Bank of Newcastle's business days are Monday thru Friday, excluding Federal Holidays.

You acknowledge that all credits given by the Bank for an item are provisional, subject to verification and final settlement. The Bank shall have no liability for the return or refusal of any item. The Bank will notify you by one of the following methods, mail, telephone, text message, or e-mail if there is any type of delay in your ability to withdraw funds for any of the following or other reasons, and the Bank will attempt to tell you when the funds will be available.

- The Bank suspects the check you deposited may not be paid.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your Account repeatedly in the past six months.
- There is an emergency, such as failure of computer or communications equipment.
- You are a new customer and your account relationship with us has been less than 30 calendar days.
- The Bank exercises its rights to investigate any unusual or suspicious items as determined by the Bank's sole discretion.

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

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**Returned Deposits** – Any credit to your account for checks deposited using the Services is provisional. If original checks deposited through Services 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 agree that an original check will not be returned to you, but that the Bank 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. You will reimburse the Bank for all loss, cost damage or expenses caused by or relating to the processing of the returned item. Without Bank’s approval, you shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to you.

**Image Quality** – Each image must provide all information on the front and back of the original check at the time presented to you by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the original check, MICR information, signature(s), any required identification written on the front of the original check and any endorsements applied to the bank of the original check. The image of an item transmitted to the Bank using this Service must be legible, as determined in the sole discretion of the Bank. Without limiting the foregoing, the image quality of the items must comply with the requirements established under Reg. CC and otherwise from time to time by the Bank, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association. The Bank accepts no liability and makes no guarantee that its image standards will be acceptable to other banks when presented for payment.

**Retention and Security of Original Checks** – Upon your receipt of a confirmation from the Bank that the Bank has received an image that you have transmitted, you agree to retain the check in safekeeping in a secure environment for at least sixty (60) calendar days from the date of the image transmission. After sixty (60) days, you agree to destroy the check that you transmitted as an image, mark it “VOID” or otherwise render it incapable of further transmission, deposit, or presentment. Image quality is reviewed by the Bank after submission; however, if the receiving bank does not accept the image, you may be required to present the original check for payment. During the time the retained check is available, you agree to promptly provide it to the Bank upon request. The Bank assumes no liability for losses you may incur if the receiving bank does not accept your image and you are unable or unwilling to present the original check for payment. You agree that you will never re-present the original check. You understand that you are responsible if anyone is asked to make a payment based on an original check that has already been paid.

**Customer Representations and Warranties** – Customer represents and warrants to the Bank; (a) customer has the authority to enter into this agreement and perform its obligations hereunder and all information supplied by customer to the Bank is accurate and true; (b) customer will provide all reasonable assistance to the Bank in providing the Service set forth herein; (c) customer and any authorized users will only use this Service for lawful purposes and in compliance with all applicable rules and regulations and with the Bank’s reasonable instructions, rules, policies, specifications, terms and conditions, and operating procedures and will not violate any law of any country or the intellectual property rights of any third party; (d) customer has only transmitted acceptable items for deposit and has handled the original items following transmission to the Bank as agreed to or directed by the Bank and in accordance with applicable law; (e) customer is a person authorized to enforce each item or is authorized to obtain payment of each item on behalf of a person entitled to enforce an item; (f) the items have not been altered; (g) each item bears all applicable endorsements in a restricted format as directed by the Bank; (h) all the warranties set forth in and subject to the terms of 4-207 of the Uniform Commercial Code as adopted in the state of Wyoming, and as may be modified from time to time, as well as any other applicable section thereof; (i) the electronic image portion of each item accurately and legibly represents all of the information on the front and back of the original check as of the time the original check was truncated, the information portion of the item contains a record of all applicable micr-line information required for a substitute check, and the item conforms to the technical standards for an electronic item as specified by the Bank from time to time; (j) customer will submit only one accurate and clear image of the front and back of each item to the Bank only one time; (k) customer will not deposit the original item and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the

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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; (1) the amount of an item, and such other information contained in such item, is accurate and complete. Customer agrees that these representations and warranties shall be true and correct as of the date of each item and that the submission of each item to the Bank for processing shall be an acknowledgement of each such representation and warranty as of that date.

**Mobile Deposit Unavailability** – When using the Services, you may experience technical or other difficulties. The Services may be unavailable temporarily due to system maintenance or technical difficulties, including those of the Internet service provider, cellular service provider and Internet software. In the event that Mobile Deposit is unavailable, you may deposit original checks at our bank, via mail, night depository or teller transaction. Bank will attempt to post alerts on our website or send you a targeted notification to you, of these interruptions in Service. Bank cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and Bank reserves the right to change the qualifications at any time without prior notice. Bank reserves the right to change, suspend or discontinue the Services, in whole or in part, or your use of the Services, in whole or in part, immediately and at any time without prior notice to you.

**Compliance with Law** – You will use the Services for lawful purposes and in compliance with all applicable laws, rules and regulations. You warrant that you will only transmit acceptable items for deposit and have handled the original items in accordance with applicable laws, rules and regulations, including the sanctions laws administered by OFAC and the Bank Secrecy Act.

**Cooperation with Investigation** – You agree to cooperate with the Bank 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 this Service in your possession and your records relating to such items and transmissions.

**Termination** – The Bank may terminate this Agreement at any time and for any reason. This Agreement shall remain in full force and effect unless and until it is terminated by the Bank. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use this Service for any unauthorized or illegal purposes or you use this Service in a manner inconsistent with the terms of your Deposit Terms and Conditions or any other agreement with the Bank.

**Enforceability** – The Bank may waive enforcement of any provision of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of the Agreement. Any such waiver shall not affect the Bank's rights with respect to any other transaction or modify the terms of this Agreement.

**Severability** – In the event that any provision of this Agreement shall be deemed to be invalid, illegal, or unenforceable to any extent, the remainder of the Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**Security Procedures and Communications** – Certain procedures, including the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, tokens and other security devices, systems and software (the "Security Procedures), designed to verify the origination (but not errors in transmission or content) of instructions, orders and other communications (each, a "Communication") sent between Customer and the Bank may be used in connection with this Service. Customer agrees that any such mutually agreed-upon Security Procedures shall be deemed commercially reasonable. The Bank shall not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication where the Bank reasonably doubts its authorization, authenticity, contents, origination, or compliance with the Security Procedures. The Bank shall have no duty to discover, and shall not be liable for, errors or omissions by Customer. If the Bank complies with the Security Procedures in respect of a Communication, the Bank shall be entitled to act on that

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Communication and shall not be obligated to verify the content of such Communication, establish the identity of the person giving it, or await any confirmation thereof, the Bank shall not be liable for acting on, and Customer shall be bound by, any Communication sent in the name of the Customer, whether or not authorized. Whenever the Security Procedures include the assigning to Customer of any confidential password, logon identification, security questions, personal or location identification number, repetitive code, token or similar security devices. Customer shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify the Bank if the confidentiality or integrity of any such security device or information has been breached, compromised, or threatened. Customer shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Customer's negligence or deliberate acts or otherwise. The bank shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any security devices. With respect to the Services, you will complete each deposit promptly. If you are unable to complete your deposit promptly, you will ensure that your mobile device remains securely in your possession until the deposit has been completed. It is your responsibility to establish and maintain procedures to safeguard against unauthorized deposits. You will notify us immediately by telephone with written confirmation if you learn of any loss or theft of original checks. You will ensure the safety and integrity of original checks from the time of receipt until the time of destruction. If warranted or in reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring, to confirm that you have satisfied your obligations under this Agreement.

**Customer Service** – Bank and any of its third party service providers are the developers of these Services. If you have any questions, complaints or claims with respect to the Services, you may contact the Bank by phone at 307-746-4411, or toll free at 1-888-788-2892, or by writing to us at 24 N. Sumner, Newcastle, WY 82701.

**Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming. Any litigation under this agreement shall be resolved in the courts of Newcastle, Wyoming.

**Force Majeure** – In no event shall the Bank be liable for delays which happen for reasons beyond its control, including without limitation, acts of civil, military, or banking authorities, national emergencies, riots, weather, unavoidable difficulties with equipment, the unavailability of the internet, any errors in information provided, any difficulties caused by an internet or other service provider or any hardware or software failure, whether caused by a virus or otherwise.

**Entire Agreement** – This agreement constitutes the entire agreement between you and the Bank regarding the subject matter herein and supersedes existing agreements and all other related communications, written or oral, regarding the subject matter herein.

A copy of this agreement is available online at [www.fsbnewcastle.com](http://www.fsbnewcastle.com). Or you may request that a copy of this Agreement be mailed to you by contacting us in the manner indicated in the Customer Service section of this agreement.

March 2016