



# Mobile Banking Terms & Conditions

You must read through the entire agreement before you may click Accept.

First National Bank of South Miami Mobile Banking Service Agreement

(Addendum to your Online Banking Service Agreement or

Business Internet Banking Service Agreement)

## I. INTRODUCTION - PARTIES AND DEFINITIONS

This Mobile Banking Service Agreement (as amended from time to time, this "Agreement"), governs the Mobile Banking service provided by First National Bank of South Miami and your use of that service. This Agreement also includes certain licensing rights and restrictions, including an end user agreement between you and our primary software licensor.

The terms "we", "us" and "our" refer to First National Bank of South Miami. The terms "you" and "your" refer to the customer of First National Bank of South Miami who is entering into this Agreement. The term "Mobile Banking" means a suite of services that we make available, enabling you to conduct banking transactions with us by using your Mobile Device. "Mobile Device" means a cellular telephone or similar wireless communications device (1) that is installed with software permitted by us ("Mobile Banking Software") that you have downloaded in order to conduct Mobile Banking transactions, or (2) that is capable of conducting Mobile Banking transactions by using other protocols we may choose to permit. We reserve the right to change the Mobile Banking Software and other protocols that we allow for Mobile Banking at any time without prior notice.

## II. MOBILE BANKING IS PART OF YOUR PRIMARY ONLINE BANKING SERVICE



Presently, Mobile Banking is available only to individuals who are already enrolled in our (personal) Online Banking service. Soon, however, Mobile Banking will also be available to customers who are enrolled in our Business Online Banking service.

The term "Primary Online Banking" means either the (personal) Online Banking service or the Business Online Banking service through which you choose to enroll in Mobile Banking. "Primary Online Banking Agreement" means either the (personal) Online Banking Service Agreement or the Business Online Banking Agreement, as amended from time to time, that you accepted when enrolling in your Primary Online Banking service. Your "Primary Online Banking Agreement" also includes related agreements that you have with us in connection with your Primary Online Banking (e.g., any agreement for our Bill Pay service or Transfers to a Friend service; any Multi Party Addendum; etc.)

This Mobile Banking Service Agreement is an Addendum to and includes the terms of your Primary Online Banking Agreement. Capitalized terms that are not defined in this Agreement are defined in your Primary Banking Agreement. The same credentials (Login ID and Password) that are in place for your Primary Online Banking service shall also apply to Mobile Banking.

### III. ACCEPTING THIS AGREEMENT

Before using Mobile Banking, you must both (a) consent to receive notices and disclosures electronically, and (b) read and accept this Agreement. You must evidence that consent and acceptance by selecting the button declaring your acceptance as part of your enrollment in Mobile Banking. In addition, you agree you are deemed to automatically renew that consent and acceptance each time you log in as a user of First National Bank of South Miami Mobile Banking and use Mobile Banking to conduct any transaction. The current version of this Agreement can always be viewed online through your Primary Online Banking service.

### IV. TERMS AND CONDITIONS

#### 1. CONSENT TO RECEIVE DISCLOSURES AND NOTICES ELECTRONICALLY



By accepting this Agreement, you consent to receiving notices and disclosures concerning Mobile Banking, Primary Online Banking, and your enrolled bank accounts electronically, including by mobile phone (e.g. SMS or other text message) or e-mail (each of the foregoing being an "electronic address"). You must enter your electronic address for such disclosures and notices when first enrolling in Mobile Banking. You are solely responsible for immediately updating your electronic address if it changes. You must update your electronic address by logging into your Primary Online Banking service, accessing the electronic page for managing your email address or accessing the Mobile Banking page to update your Mobile Device phone number, and entering your new electronic address. If you need assistance updating your electronic address, you may call the Customer Service Center at 305.667.5511. All disclosures and notices by us shall be deemed given and received by you immediately upon being sent to the electronic address you have most recently updated. Many disclosures and notices may also or instead appear in one or more of your bank account statements. Unless specifically required by law, we are not obligated to provide any disclosure or notice to you by regular mail or by any means other than electronic transmission. You may, without charge, withdraw your consent to receiving notices and communications electronically by calling our Customer Service Center at 305.667.5511, but in that event we can terminate your Mobile Banking service.

Receiving electronic disclosures and notices on your Mobile Devices requires that your Mobile Device be an Internet-enabled Mobile Device that support 256-bit encryption. In order to keep notices and disclosures sent to you electronically, you must have the ability to save them to your Mobile Device or computer, or to print them. You may also request a paper copy of an electronic notice or disclosure at no additional charge by calling our Customer Service Center at 305.667.5511.

## 2. MOBILE BANKING SERVICE AGREEMENT

### A. Mobile Banking Functions

To access Mobile Banking service and functions, your Mobile Device must be Internet enabled and connected to the Internet through your mobile communications service provider. You must be enrolled in both a Primary Online Banking service and our Mobile Banking service. You must enroll the particular Mobile Device(s) that you wish to use with Mobile Banking. You must also un-register any Mobile Device(s) that you may no longer wish to be capable of using with Mobile Banking.

When you access Mobile Banking with your Mobile Device, you will see a menu of available Mobile Banking functions (e.g., view balances; view or search for transactions; locate branches; execute specific



types of internal or external funds transfers; etc.). From time to time we will add, and may modify or delete particular Mobile Banking functions or geographic areas served by Mobile Banking. We may make such changes in functions or geographic service with or without prior notice. We reserve the right to refuse to make any transaction that you may request through Mobile Banking.

Not all functions that are described in your Primary Online Banking Agreement or available at your Primary Online Banking service website are available with Mobile Banking. All terms and conditions in your Primary Online Banking Agreement or on your Primary Online Banking service's website that limit or govern your use of Primary Online Banking functions will also limit and govern your use of those functions through Mobile Banking.

#### B. Mobile Banking Service Availability

We will use reasonable efforts to make Mobile Banking service available for your use on a continuous basis. We do not guarantee functionality of Mobile Banking services (or any Mobile Banking Software) on all Mobile Devices, on all communications networks, in all geographic regions, or at all times. Mobile Banking service may be temporarily unavailable for regular or emergency system maintenance. We will endeavor to have our scheduled maintenance occur during non-peak hours, but we may conduct maintenance at any time. In addition, your accessibility to the Mobile Banking service may be interrupted because of conditions beyond our control, including outages in Internet availability. We will use commercially reasonable efforts to re-establish Mobile Banking service in those instances, but we do not promise the Mobile Banking service will always be available for your use. We may elect to discontinue Mobile Banking (or any of the services that we provide, from time to time, through Mobile Banking) at any time. If we choose to discontinue Mobile Banking, we will provide you with reasonable notice. In the case of a disaster, your Mobile Banking may be suspended in order to allow emergency and responding personnel to use the cellular networks. In no event, regardless of cause, shall we be liable to you for unavailability of Mobile Banking services, or your inability to access Mobile Banking or to execute Mobile Banking functions.

#### C. Fees Charged by First National Bank of South Miami

Currently, we charge no fees to enroll in or use Mobile Banking. However, we may assess fees (a) set forth in the other agreements, disclosures or fee schedules for particular banking products or accounts (such as overdraft or funds transfer fees), or (b) for products and services that you may purchase through Mobile Banking.



We reserve the right to institute or change fees for Mobile Banking after sending you prior notice. See the section entitled "Amending this Agreement or Fees."

#### D. Mobile Device and Mobile Communications

You are responsible for providing your own Mobile Device that supports 256-bit encryption. Mobile Banking users must download, install and use certain software systems and programs developed by us, our licensors or other third-parties. We are not responsible for any damage to your Mobile Device resulting from those activities, and you will be engaging in those activities at your own risk. To download Mobile Banking Software, please follow the instructions found in the Mobile Banking section of your Primary Online Banking site. Depending on its make and model, your Mobile Device may need to be capable of receiving an SMS text message to initiate the download.

You are responsible for obtaining your own mobile communications service provider. Your mobile communications service provider may charge you for Internet-related use and for text (SMS) messages, so please see your mobile carrier for further details about its charges. You are responsible for all fees and charges that you may incur to any mobile communications service provider or any other third parties while using Mobile Banking.

We are not a party to, and we have no duty, liability or responsibility with respect to or in connection with (i) your mobile communications service provider agreement, or (ii) any Mobile Device, hardware, software or other any product or service you may purchase from others relating to your use of Mobile Banking. This Agreement does not amend or supersede any agreements that you have with third parties (such as your Mobile Device supplier and your mobile communications service provider), and you remain subject to all terms, fees, costs, other charges, limitations and restrictions in those agreements with third parties. Your Mobile Device supplier and your mobile communications service provider are responsible for their products and services. You agree that any problems you may have concerning those companies' products, services or agreements shall be resolved by you directly with them, and without involving us.

Your Mobile Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). We are not responsible for advising you of the existence or potential effect of any malware. Your use of your hardware and software is at your own risk.

#### E. Export Controls



Software programs, materials, tools, and technical data may be subject to U.S. export controls or the trade laws of other countries. You agree to comply with all export control regulations. You also acknowledge that you, not First National Bank of South Miami, have the responsibility to obtain such licenses to export, re-export or import as may be required. You agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws.

#### F. Mobile Banking License Rights Generally

In connection with your use of Mobile Banking Software, we and our licensors (or other third-parties who have directly or indirectly granted rights in those software systems and programs with respect to Mobile Banking) will require your agreement to certain license rights arrangements and/or end-user agreements ("Licenses"). By enrolling in portions of Mobile Banking relating to those software systems and programs, and by downloading and installing Mobile Banking Software, you will be evidencing your acceptance of the terms and conditions of those Licenses. We may also condition your use of Mobile Banking Software upon you affirming such Licenses by the use of "I Accept" dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

We and our service providers (including without limitation third-party providers of Mobile Banking Software) reserve all rights not granted to you in this Agreement and under the terms of such Licenses. If you obtain a different Mobile Device, you will be required to download and install Mobile Banking Software, to that different Mobile Device, under the same terms set forth in this Agreement. You agree to delete all such software from your Mobile Device promptly if the Licenses or this Agreement terminate for any reason. We reserve the right to change, add to, or terminate services with our third-party Mobile Banking Software providers, to substitute different Mobile Banking Software providers, and to enter into or arrange for the provision Mobile Banking Software by other licensors and third-parties.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR THE AGREEMENTS GOVERNING THE TERMS OF ANY LICENSE RIGHT RELATING TO THE USE OR OPERATION OF MOBILE BANKING OR MOBILE BANKING SOFTWARE, MOBILE BANKING SERVICES AND MOBILE BANKING SOFTWARE ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, OR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY OR COMPLETENESS. YOUR USE OF THE MOBILE BANKING SOFTWARE AND MOBILE BANKING SERVICES, AND ANY MATERIAL OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED VIA MOBILE BANKING, IS AT



YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

#### G. Additional Terms and Conditions in Related Agreements with Us.

Your use of Mobile Banking is subject to the terms and conditions of your Primary Online Banking Agreement (as amended from time to time). Without limitation, this Agreement is supplemented by your Primary Online Banking Agreement's provisions regarding disclaimers of warranties, limitations on our liability, indemnity, amendments, dispute resolution terms and procedures, and definitions. For consumer customers, this Agreement is also subject to consumer protection provisions in the (personal) Online Banking Agreement, including limitations on consumer customers' liabilities for unauthorized transfers, and contacting us concerning questions or errors. In the event of any specific conflicts between this Agreement and the terms of your Primary Online Banking Agreement, the terms of this Agreement will govern.

In addition, each deposit account or credit account that you access using Mobile Banking, and each transaction made in such accounts using Mobile Banking, remains subject to the general terms, conditions, and agreements governing those accounts (e.g., as applicable, the deposit account agreement, credit cardholder agreement, line of credit agreement, etc.).

#### H. Amending this Agreement or Fees

We may amend this Agreement at any time by sending notice as described in your Primary Online Banking Agreement; provided, however, that this Agreement governs our right to provide you with that notice electronically. You may choose to accept or decline the change. By continuing to use Mobile Banking after the effective date stated in the notice, you are deemed to accept that change.

#### I. Lost or Stolen Mobile Device or Password; Unauthorized Transactions

If you believe your Mobile Device, user name (Login ID), password, or other approved access device has been lost or stolen, or that someone has transferred or may transfer funds from your account without your authorization, contact us AT ONCE at 305.667.5511. For additional information regarding your and our rights and responsibilities regarding unauthorized transactions, please review your Primary Online Banking Agreement and the applicable agreement(s) governing the affected deposit account or credit account.

#### J. In Case of Errors or Questions about Your Account



In case of errors in or questions about your deposit or credit accounts, contact our Customer Service Center at 305.667.5511. For additional information regarding your and our rights and responsibilities regarding errors in or questions about your accounts and how such errors and questions are processed, please review your Primary Online Banking Agreement and the applicable agreement(s) governing the affected deposit account or credit account.

#### K. Mobile Deposit User Agreement

This Mobile Check Deposit User Agreement ("Agreement") contains the terms and conditions for the use of First National Bank of South Miami Mobile ("FNBSM") Check Deposit Capture services that are provided to you ("you," or "User").

1. **Services.** The mobile remote deposit capture services ("Services") are designed to allow you to make deposits to your checking, savings, or money market savings accounts from home or other remote locations by scanning or taking pictures of your checks and delivering the images and associated deposit information to First National Bank of South Miami's designated processor.

2. **Acceptance of these Terms.** Your use of the Services constitutes your acceptance of this Agreement. This Agreement is subject to change from time to time. We will notify you of any material change via e-mail, text message, or on our website(s) by providing a link to the revised Agreement or by an online secure message. You will be prompted to accept or reject any material change to this Agreement the next time you use the Service after FNBSM has made the change. Your acceptance of the revised terms and conditions along with the continued use of the Services will indicate your consent to be bound by the revised Agreement. Further, FNBSM reserves the right, in 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 changes to the Services.

3. **Limitations of Service.** When using the Services, you may experience technical or other difficulties. We will attempt to post alerts on our website or send you email messages to notify you of these interruptions in Service. We 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 we reserve the right to change the qualifications at any time without prior notice. We reserve 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.





4. Hardware and Software. In order to use the Services, you must obtain and maintain, at your expense, compatible hardware (web enabled iPhone or Android smart phone) and software (iPhone or Android Application) as specified by FNBSM. FNBSM is not responsible for any third party software you may need to use the Services. Any such 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 time of download and installation. The smartphone must be able to capture an image of the front and back of each check to be deposited; must read and capture the magnetic ink character recognition ("MICR") line on each check; and must read and capture all such other date and information as is required by this Agreement of Federal Reserve regulations for the processing of these checks for payments. We are not responsible for, and you release us from, any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using the Service, e-mail or the internet. You agree that all images and files transmitted to us through the service will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.

5. Fees. A fee may be charged for the Service. You are responsible for paying the fees for the use of the Service. Any fee that is charged will be disclosed prior to your deposit. FNBSM may change the fees for use of the Service at any time pursuant to the section titled "Acceptance of these Terms" above. You authorize FNBSM to deduct any such fees from any FNBSM account in your name. Fees will not be charged during any free trial period or other promotional campaigns.

6. Eligible items. You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). When the image of the check transmitted to FNBSM is converted to an Image Replacement Document for subsequent presentment and collection, it shall thereafter be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code. 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: 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 previously converted to a substitute check, as defined in Reg. CC. 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 6 months prior to the date of deposit. Checks or items prohibited by FNBSM's current procedures relating to the Services or which are otherwise not acceptable under the terms of your FNBSM account. 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 capture service offered at any other financial institution. Checks or items that are drawn or otherwise issued by the U.S. Treasury Department.



7. Endorsements and Procedures. You agree to restrictively endorse any item transmitted through the Services as "For mobile deposit only, account # \_\_\_\_\_" or as otherwise instructed by FNBSM. You agree to follow any and all other procedures and instructions for use of the Services as FNBSM may establish from time to time. For a check payable to you and any joint owner(s) of your Bank account, the check must be endorsed by all such payees and you may only use Mobile Deposit to deposit such check into a Bank account jointly owned by all such payees. If the check is payable to you or your joint owner, either of you can endorse it.

8. Receipt of Items. We reserve the right to reject any item transmitted through the Services, at our 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 FNBSM that we have received the image. Receipt of such confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. We further reserve the right to charge back to your account at any time, any item that we 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 our chargeback of an ineligible item. After we receive check images and all other required deposit information from you through the Service, we shall provisionally credit your designated account for the total amount of such checks. The provisional credit is subject to final payment of the checks and is also subject to your Bank Account Agreement. You agree that all deposits received by us are subject to verification and final inspection and may be rejected by us in our sole discretion, and you shall be liable to the Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against the Bank relating to such deposit. The Bank is not liable for any service or late charges that may be imposed against you due to the Bank's rejection of any check that you transmit for deposit through the Service. In all cases, you are responsible for any loss or overdraft plus any applicable fees to your account due to a check being returned. You acknowledge and agree that, while we normally provide notice of rejected deposits, we may reject any check transmitted through the Service in our sole discretion without notice to you, and we will not be liable for any such rejection or failure to notify you of such rejection. If we reject a check for remote deposit, you must physically deposit the original check.

9. Availability of Funds. You agree that items transmitted using the Services are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. In general, if an image of an item you transmit through the Service is received and accepted before 7:00 p.m. Eastern Time on a business day that we are open, we consider that day to be the day of your deposit. Otherwise, we will consider that the deposit was made on the next business day we are open. Funds deposited using the Services will generally be made available in three business days from the day of deposit. FNBSM may make such funds available sooner based on such factors as credit worthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors as FNBSM, in its sole discretion, deems relevant.



10. Disposal of Transmitted Items. Upon your receipt of a confirmation from FNBSM that we have received an image that you have transmitted, You agree to retain the check in a secure location for at least 14 calendar days from the date of the image transmission. After 14 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. During the time the retained check is available, upon FNBSM's request, you agree to promptly deliver it to us within two business days, at your expense. If not provided in a timely manner, such amount will be reversed from your account.

11. Deposit Limits. We may establish limits on the dollar amount and/or number of items or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times. The current daily dollar limit is \$1,000.00 per business day for retail banking clients. In addition, the current monthly dollar limit is \$3,000.00 per any 30 calendar day period for retail banking clients. There is no daily or monthly statement cycle limit on the number of items, as long as the respective dollar limits are not exceeded.

12. Presentment. The manner in which the items are cleared, presented for payment, and collected shall be in FNBSM's sole discretion subject to the deposit account agreement governing your account.

13. Errors. You agree to notify FNBSM of any suspected errors regarding items deposited through the Services right away, and in no event later than 30 days after the applicable FNBSM account statement is sent. Unless you notify FNBSM within 30 days, such statement regarding all deposits made through the Services shall be deemed correct, and you are prohibited from bringing a claim against FNBSM for such alleged error.

14. Errors in Transmission. By using the Services you accept the risk that an item may be intercepted or misdirected during transmission. FNBSM bears no liability to you or others for any such intercepted or misdirected items or information disclosed through such errors.

15. Image Quality. The image of an item transmitted to FNBSM using the Services must be legible, as determined in the sole discretion of FNBSM. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by FNBSM, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association. These requirements include, but are not limited to, ensuring the following information can clearly be



read and understood by sight review of the check image: the amount of the check (both written and numeric); the payee; the signature of the drawer (maker); the date; the check number; the information identifying the drawer and the paying financial institution that is preprinted on the check including the MICR line; and all other information placed on the check prior to the time of an image of the check is captured (such as any required identification written on the front of the check and endorsements applied to the back of the check).

16. Unpaid Deposited Items. You are solely responsible for verifying that checks that you deposit by using the Service have been received and accepted for deposit by the Bank. The Bank will provide you with notice of any deposit that is unable to process because checks were returned unpaid by the payor financial institution. You agree to accept such notices at your e-mail address on file with us, but we may choose any reasonable method for providing such notices to you. In the event that the Bank credits your account for a check that is subsequently dishonored and returned, you authorize the Bank to debit the amount of such check plus any associated fees from the account. To the extent that funds in your account are insufficient to cover such amount, we shall debit the deficiency amount from any of your other account(s) with the Bank in our sole discretion. Our right to charge your account(s) will apply without regard to whether the check was timely returned or whether there is any other claim or defense that the check was improperly returned. You understand and agree, that since the original check is your property, it will not be returned and the Bank may charge back an image of the check, an ACH debit, or other electronic or paper debit, as applicable, to your account. You further agree that any image that we charge back may be in the form of an electronic or paper reproduction of the original check or a substitute check. You may not use the Service to deposit a substitute check and you may not deposit the original check through the Service or in any other manner if you receive a dishonored check. You agree to comply with any additional instructions we may provide to you in connection with returned checks.

17. User Warranties and Indemnification. You warrant to FNBSM that: a. You will only transmit eligible items. b. You will not transmit duplicate items. c. You will not re-deposit or re-present the original item. d. All information you provide to FNBSM is accurate and true. e. You will comply with this Agreement and all applicable rules, laws and regulations. f. You are not aware of any factor which may impair the collectability of the item. You agree to indemnify and hold harmless FNBSM from any loss for breach of this warranty provision.

18. Cooperation with Investigations. You agree to cooperate with us in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, upon request and without further cost, any originals or copies of items deposited through the Service in your possession and your records relating to such items and transmissions.



19. Termination. We 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 us. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use the Services for any unauthorized or illegal purposes or you use the Services in a manner inconsistent with the terms of your deposit account service agreement or any other agreement with us.

20. Enforceability. We 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 our rights with respect to any other transaction or to modify the terms of this Agreement. 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.

21. Ownership & License. You agree that FNBSM 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 FNBSM's business interest, or (iii) to FNBSM's actual or potential economic disadvantage in any aspect. You may use the Services only for non-business, 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 Services.

22. 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 SERVICE WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.



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

24. Governing Law. This agreement and the interpretation of its terms shall be governed by and construed in accordance with the laws of the State of Florida, without regard to Florida's conflicts of laws rules, and the Rules.

25. Jurisdiction and Venue. A party may bring an action to enforce this Agreement in any United States district court or in any other court of competent jurisdiction. Such claim shall be brought within one year of the date on which the party's cause of action accrues.

26. Captions. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement.

27. Business Day. If any time period set forth in this Agreement expires on other than a business day in the City of Miami, Florida; i.e., on a Saturday, Sunday or legal holiday, such period shall be extended to and through the next succeeding business day in Miami, Florida.

Please contact us at 305.667.5511 with any questions you may have regarding the above information and disclaimers.



For questions or concerns about the Mobile Banking service itself or mobile deposit, you may call us at 305.667.5511 or by mail at:

First National Bank of South Miami

5750 Sunset Dr, South Miami, FL

## V. PROVIDER END USER AGREEMENT

The primary licensor for First National Bank of South Miami's mobile banking services is Banno, LLC ("Provider"). The Provider has provided us the right to enter into the following end user agreement (the "End User Agreement") with you for the use of the Product (defined below). By enrolling in our mobile banking service, and during such time as we maintain our rights to license the Product, you hereby agree as follows:

(i) General. Access to First National Bank of South Miami's mobile banking services via your mobile device is powered by the mobile technology solution owned by Provider. The Provider is not the provider of any of the financial services available to you through the "Product" (defined below), and the Provider is not responsible for any of the materials, information, products or services made available to you through the Product.

(ii) Ownership. You acknowledge and agree that Provider is the owner of all rights, title and interest in and to the mobile technology solution made available to you hereunder, including but not limited to any downloaded software and the computer programs contained therein, as well as any accompanying user documentation, and all subsequent copies, updates or versions thereof, regardless of the media or form in which they may exist (all of which is collectively referred to herein as the "Product"). You further acknowledge that the design and look of the Product, which includes images, graphics, text, logos and icons, photographs, editorial content, notices, software and other materials are owned by Provider and protected under the United States and other applicable copyright, trademark and other laws. You may not use the Product unless you have first accepted the terms of this End User Agreement.

(iii) License. Subject to the terms and conditions of this End User Agreement, you are hereby granted a personal, nonexclusive, nontransferable license to use the Product (in machine readable object code



form only) in accordance with the terms of this End User Agreement and for the sole purpose of enabling you to use and enjoy the benefits of First National Bank of South Miami's services made available via the Product. This is not a sale of the Product. All rights not expressly granted to you by this End User Agreement are hereby reserved by Provider. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Product. This license may be terminated at any time, for any reason or no reason, by you or the Provider. Upon termination, you agree to immediately destroy all copies of any Product which has been downloaded to your mobile device or otherwise in your possession or control.

(iv) Restrictions. You shall not: (i) modify, revise or create any derivative works of the Product; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Product; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Product; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Product, including, but not limited to, any trademark, logo or copyright.

(v) Updates. The terms of this End User Agreement will govern any updates that replace and/or supplement the original Product, unless such update is accompanied by a separate license in which case the terms of that license will govern.

(vi) Consent to Use of Data. You agree that Provider may collect and use technical data and related information, including but not limited to technical information about your mobile device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services (if any) related to the Product. Provider may use this information, as long as it is in a form that does not personally identify you, to improve its products or provide services or technologies.

(vii) Source of Information. The Product, at your direction, will retrieve your information maintained online by financial institutions and billers with which you have customer relationships, maintain accounts or engage in financial transactions and other log-in related information ("Account Information"). Provider does not review, verify or analyze the Account Information for accuracy or any other purpose, but simply gathers, organizes and reports your Account Information to you. There may be technical difficulties which result in a failure to obtain data, a loss of data, a loss of personalized settings or other service interruptions. Account Information reported by the Product is timely only to the extent that it is promptly provided by the third-party sites. Account Information may be more up to date when obtained directly from the third-party sites.





(viii) Your Responsibility for Information. You are responsible for providing Provider with accurate and updated (as necessary) account numbers, user names, passwords and other log-in related information ("Registration Information") so that the Product is able to access Account Information. If you become aware of any unauthorized use of your Registration Information, you should notify your financial institution immediately.

(ix) Mobile Alerts. The Product may provide automatic, Product-related alerts to your mobile device. Account alerts may be turned on or off as part of the Product. They may then be customized, deactivated or reactivated by you. Provider may add new alerts periodically, or cease to provide certain alerts at any time in its sole discretion. Electronic alerts will be sent to the Product through its operating specific notification system or for the html client the phone number or email address you have provided as your primary email address for the Product. If your email address or your mobile device's email address changes, you are responsible for informing us of that change through the Product settings interface. Alerts may include sensitive information such as low balance warnings or large deposits but will never include account numbers or balance information. You must re-enter the Product to see such details.

(x) Rights You Grant to Provider. By submitting data, passwords, user names, PINs, log-in information, materials and other information to Provider through the Product, you are licensing that content to Provider solely for the purpose of providing the Product to you and for such other purposes as are set forth in the Privacy Policy under section xi below (the "Privacy Policy"). Provider may use and store the content in accordance with the Privacy Policy. By submitting such information to Provider, you represent that you are entitled to submit it to Provider for use for this purpose, without any obligation by Provider to pay any fees. By using the Product, you expressly authorize Provider to access your Account Information maintained by identified third parties, on your behalf as your agent. When you use the "Add Accounts" feature of the Product, you will be directly connected to the website for the third party you have identified. Provider will submit information including user names and passwords that you provide to log you into the site. You hereby authorize and permit Provider to use and store the information submitted by you to the Product (such as account passwords and user names) to accomplish the foregoing and to configure the Product so that it is compatible with the third-party sites for which you submit your information. For purposes of this Agreement and solely to provide the Account Information to you as part of the Product, you grant Provider a limited power of attorney, and appoint Provider as your attorney-in-fact and agent, to access the third party sites, retrieve and use your information with the full power and authority to do and perform each thing necessary in connection with such activities as you could do in person. You acknowledge and agree that when Provider is accessing and retrieving Account Information from the third-party sites, Provider is acting as your agent, and not as the agent of or on behalf of the third party. You understand and agree that the Product is not sponsored or endorsed by any third parties accessible through the Product.



(xi) Privacy Policy. Provider will not sell or rent your personal information to anyone, for any reason, at any time. Provider uses and discloses your personal information only as follows: (a) to analyze usage and improve the Product, (b) to deliver to you any administrative notices, alerts and communications relevant to your use of the Product, (c) to fulfill your requests for certain products and services, (d) for market research, project planning, troubleshooting problems, detecting and protecting against error, fraud or other criminal activity, and (e) in order to enable the financial institution through which you signed up for the Product (your "Primary Financial Institution") to offer additional product offerings to you, the Product provides to your Primary Financial Institution financial product details of any external institutions you have added through the Product, provided that no external transactional data will ever be shared with your Primary Financial Institution. Notwithstanding the foregoing, Provider reserves the right (and you authorize Provider) to share or disclose your personal information when Provider determines, in its sole discretion, that the disclosure of such information is necessary or appropriate (x) to enforce our rights against you or in connection with a breach by you of this End User Agreement, (y) to prevent prohibited or illegal activities, or (z) when required by any applicable law, rule regulation, subpoena or other legal process.

(xii) The Product is not a Professional Advisor. NEITHER PROVIDER NOR THE PRODUCT IS INTENDED TO PROVIDE LEGAL, TAX OR FINANCIAL ADVICE. PROVIDER AND THE PRODUCT ARE NOT FINANCIAL PLANNERS, BROKERS OR TAX ADVISORS. The Product is intended only to assist you in your financial organization and decision-making and is broad in scope. Your personal financial situation is unique, and any information and advice obtained through the Product may not be appropriate for your situation. Accordingly, prior to making any financial decisions or implementing a financial strategy, you should consider obtaining additional information and advice from professionals, such as accountants, attorneys, financial advisors or other professionals who are fully aware of your individual circumstances.

(xiii) Alert Disclaimer. You understand and agree that any alerts provided to you through the Product may be delayed or prevented for a variety of reasons. Provider attempts to provide alerts in a timely manner with accurate information, however, Provider neither guarantees the delivery nor the accuracy of the content of any alert. You also agree that Provider shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert, or for any actions taken or not taken by you or any third party in reliance on an alert.

(xiv) Your Indemnification of Provider. You agree to defend, indemnify and hold harmless Provider and its officers, directors, shareholders, and employees, from and against all claims and expenses, including but not limited to attorney fees, in whole or in part arising out of or attributable to any breach of this Agreement by you.



(xv) Export Restrictions. You may not use or otherwise export or re-export the Product except as authorized by United States law and the laws of the jurisdiction in which the Product was obtained. In particular, but without limitation, the Product may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Product, you represent and warrant that you are not located in any country or on any such list. You also agree that you will not use the Product for any purposes prohibited by United States law.

(xvi) U.S. Government Restricted Rights. The Product 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 Product by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this End User Agreement.

(xvii) Disclaimer of Warranty. THE PRODUCT 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 PRODUCT WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED. YOUR USE OF THE PRODUCT AND ANY MATERIAL OR SERVICES OBTAINED OR ACCESSED VIA THE PRODUCT IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

(xviii) Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER OR ITS AFFILIATES OR LICENSORS BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, 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, PROVIDER'S LIABILITY ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF \$250. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.



(xix) Miscellaneous. This End User Agreement constitutes the entire agreement between you and Provider concerning the subject matter hereof. This End User Agreement will be governed by and construed in accordance with the laws of the state of Iowa, excluding that body of laws pertaining to conflict of laws. If any provision of that portion 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 End User Agreement are subject to the exclusive jurisdiction of the courts of Iowa and you expressly consent to jurisdiction and venue thereof and therein. This End User Agreement and all related documentation are and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.