

## **Capital Bank Business Mobile Deposit Agreement Available With Cash Management**

PLEASE CAREFULLY REVIEW THESE TERMS AND CONDITIONS BEFORE PROCEEDING:

This Business Mobile Deposit Agreement (the "Agreement") is entered into by Capital Bank (the "Bank") and you (the "Company"). The Agreement governs your use of the Mobile Deposit Service offered by Capital Bank (the "Service") and is governed by the laws of the State of Texas, bank regulations and applicable federal law. By enrolling to use the Service, you agree to be bound by the terms and conditions contained in this Agreement:

### **1. Description of Service**

Business Mobile Deposit allows you to deposit money into certain Capital Bank accounts with your mobile device camera using the Cash Management Services Application or "Cash Management Services App". To use Business Mobile Deposit, you must be a Capital Bank account holder and have agreed to the Cash Management System Services Agreement. You may transmit deposits to us electronically only from a mobile capture device located in the United States.

### **2. Fees**

Users must be enrolled with Capital Bank's Cash Management program; therefore, Cash Management fees are applicable. You agree to pay the fee for Cash Management services as set forth in our fee schedule and fees may change from time to time. Internet data usage rates may apply from your Internet service provider or mobile carrier.

### **3. Equipment**

To use Business Mobile Deposit, you must have a supported mobile device, such as a smartphone that is compatible with the Cash Management Services App, with a camera and a supported operating system, have a data plan for your mobile device, and download the Cash Management Services App to your mobile device. We do not guarantee that all mobile devices and operating systems are compatible with the Service.

### **4. Types of Checks**

You can only deposit checks using Business Mobile Deposit; however, there are some checks that you cannot deposit. These include:

- a. Checks payable to any person or entity other than you.
- b. Checks containing any alteration of which you know or believe to be fraudulent or not authorized by the owner of the account on which the check is drawn.
- c. Checks that are not in original form with an original signature, such as substitute checks or remotely created checks.
- d. Checks drawn on a financial institution located outside the United States.
- e. Checks not payable in United States currency.
- f. Checks or items on which a stop payment order has been issued or for which there are insufficient funds.
- g. Other checks include: Traveler's Checks, Foreign Checks, Credit Card Advance Checks and Savings Bonds.

### **5. Receipt of Deposits**

We reserve the right to reject any check transmitted through the Service, at our discretion, without liability to you. Capital Bank is not responsible for processing or transmission errors that may occur, or for deposited items that we do not receive.

## **6. Cut-Off Times for Deposits**

Deposits sent using Business Mobile Deposit may be “submitted” any time of day, weekend, or holiday. However, deposits received by us after the daily cut-off time for electronic deposits will be deposited the next business day, provided that the deposit meets all requirements. Deposits submitted on holidays or weekends will also be deposited the next business day, provided it meets all requirements. The daily cut-off time for electronic deposits is 6:00 p.m. CST and is subject to change without notice to you.

## **7. Availability of Funds Deposited**

Items received through Business Mobile Deposit will be subject to the Bank’s Funds Availability Policy as defined by the Federal Reserve Board’s Regulation CC (12 CFR 229). The availability policy can be obtained at all Banking Centers and online at our website.

## **8. Image Quality**

The front and back images of an item transmitted to us must be legible, as determined in the sole discretion of Capital Bank and their Third Party Service Provider. Without limiting the foregoing, the image quality must comply with the requirements established time to time by Capital Bank, Third Party Service Provider, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association. Items with poor image quality may delay the deposit process, and you may be instructed to deposit the check using other methods. You agree that we shall not be liable for any damages resulting from items with poor image quality, including those related to rejection of, or the delayed or improper crediting of such a check, or from any inaccurate information you supply regarding the check or item.

## **9. Errors**

You must notify us of any errors, or suspected errors, related to the items deposited through the Service as soon as possible after they occur, and in no event later than 60 days after the related account statement is sent. You can contact us by calling 713-675-2341 or by visiting one of our Banking Centers. Unless you notify us within 60 days of any errors, the account statement containing the deposits made through the Service is deemed correct, and you cannot bring a claim against us for any alleged errors.

## **10. Deposit Limits**

We may establish limits on the number of checks and/or the total amount of checks deposited using Business Mobile Deposit. 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. These limits may change from time to time without notice. The current Cash Management daily dollar limit is \$50,000 per business day.

## **11. Destruction of Original Check**

You shall retain the originals of all checks which you capture as images and transmit to the Bank for not less than 7 days and shall make such originals available to the Bank on demand. After 7 days, you must destroy the check by shredding or other means, or clearly mark “VOID” or “Electronically Deposited” on the front and back of the check. This prevents the check from being presented for deposit another time. **You agree never to re-present to us or any other party a check or item that has been deposited through the Service.** You will be liable for checks that are presented and/or deposited more than once.

## **12. Indemnity**

You warrant to Capital Bank that:

- a. You will only transmit eligible checks and items that you are entitled to, and ensure that all checks and items include all required signatures and endorsements.
- b. Images will meet Capital Bank's image quality standards.
- c. You will not transmit an image or images of the same check or item to us more than once and will not deposit or negotiate, or seek to deposit or negotiate, such check or item with any other party.
- d. You will not deposit or re-present the original check of deposit.
- e. All information you provide to us is accurate and true, and that all transmitted images accurately reflect the front and back of the check.
- f. You will comply with this Agreement and all applicable rules, laws and regulations.
- g. You will use the Services only for your own deposits.
- h. You agree to indemnify and hold harmless Capital Bank from any loss for breach of this warranty provision or the terms of this Agreement.

### **13. Security of Your Mobile Device**

You are responsible for (i) maintaining the confidentiality and security of your Mobile 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, 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. You agree not to supply your Access Information to anyone and to immediately notify us if you become aware of any loss, theft or unauthorized use of any access information, including your Mobile Devices. We reserve the right to deny you access to the Service if we believe that any loss, theft or unauthorized use of access information has occurred.

If you believe your password has been lost or stolen or that someone may have fraudulently accessed your Account without your permission, contact us at 713-675-2341 or write us at Capital Bank, 10304 I-10 East Freeway Houston, Texas 77029.

### **14. Limitations**

When using Business Mobile Deposit, you may experience technical or other difficulties that are outside the control of Capital Bank. In addition, the Bank does not warrant that the Service will be available at all times. We are not responsible for damages that you may incur as a result of these difficulties, disruptions or unavailability of the Service.

### **15. Changes to the Service**

We reserve 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, delays or errors in the Service and we shall have no liability for any such interruptions, delays or errors.

### **16. Termination**

We may turn off the service to you if we suspect fraud, if you misuse Business Mobile Deposit, have excessive overdrafts or returned items or for other reasons at our sole discretion.

### **17. Relationship to Other Agreements**

You agree that when you use Business Mobile Deposit, you will remain subject to the terms and conditions of all your existing agreements with us, our affiliates, and/or any unaffiliated service providers, including, but not limited to, your mobile service carrier or provider, and that this Agreement does not amend or supersede any

of those agreements. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Business Mobile Banking (for example, your mobile service carrier or provider may impose data usage or text message charges for your use of or interaction with Business Mobile Banking, including while downloading the Software, receiving or sending Business Mobile Banking text messages, or other use of your Wireless Device when using Software or other products and services provided by Business Mobile Banking), and you agree to be solely responsible for its products and services. Accordingly, you agree to resolve any problems with your carrier or provider directly without involving us. You also agree that if you have any problems with Business Mobile Banking, you will contact us directly at 713-675-2341.

#### **18. Ownership and License**

You agree that Capital Bank and its Third Party Service Providers, including Fiserv Solutions, Inc., retain all ownership and proprietary rights in the Service, associated content, technology, and website(s). You agree not to copy, disassemble, decompile, or otherwise reverse engineer any part of the Service, including the App. You may use the Service only for your own benefit. 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. In the event that you attempt to use, copy, license, sublicense, sell or otherwise convey or to disclose the App or any other part of the Service, in any manner contrary to the terms of this Addendum, we shall have, in addition to any other remedies available to us, the right to injunctive relief enjoining such actions.

#### **19. Third Party Beneficiary**

You agree that our Third Party Service Providers, including Fiserv Solutions, Inc., may rely upon the provisions of this Agreement, including its disclaimer of warranties and any limitations of liability and that such Third Party Service Providers are, for the purpose of this Agreement, third party beneficiaries to this Agreement with the power to enforce this Agreement.

#### **20. Liability**

WE ARE ONLY RESPONSIBLE FOR PERFORMING THE SERVICE AS EXPRESSLY STATED IN THIS ADDENDUM. THERE IS NO GUARANTEE THAT ACCESS TO THE SERVICE WILL BE AVAILABLE AT ALL TIMES AND WE SHALL NOT BE LIABLE IF YOU ARE UNABLE TO ACCESS THE SERVICE. THE SERVICE IS PROVIDED "AS IS" AND, EXCEPT AS PROHIBITED BY LAW, WE AND OUR THIRD PARTY SERVICE PROVIDERS DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING THE SERVICE, APP, EQUIPMENT OR SOFTWARE, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF ANY PARTIES' PROPRIETARY RIGHTS. IN NO CASE SHALL CAPITAL BANK OR ANY OF OUR THIRD PARTY SERVICE PROVIDERS BE LIABLE FOR ANY LOSS OF DATA, PROFIT, GOODWILL, OR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE SUFFERED BY YOU ARISING OUT OF OR RELATED TO THIS ADDENDUM, THE APP, THE SOFTWARE, THE EQUIPMENT OR THE SERVICE WHETHER OR NOT SUCH CLAIM FOR DAMAGES IS BASED ON TORT OR CONTRACT OR WHETHER WE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES, EXCEPT AS MAY BE REQUIRED BY LAW. IN STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INDIRECT SPECIAL OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, CAPITAL BANK AND OUR THIRD PARTY SERVICE PROVIDERS' LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW.