

**CAPITAL BANK  
CASH MANAGEMENT SYSTEM  
SERVICES AGREEMENT  
AND YOUR TERMS AND CONDITIONS**

This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT is for the Products and related services (“Product” or “Products”) described below and provided by Capital Bank (“The Bank”).

The Services Agreement below includes a Fee Schedule and Product Information which are referenced herein, all of which are subject to the terms and conditions set forth here. This also incorporates by reference all of the terms of YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT governing all Business Entity Accounts with The Bank. In the event of any inconsistency between a provision of the CASH MANAGEMENT SYSTEM SERVICES AGREEMENT and YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT, the provisions of YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT shall prevail.

The terms “The Bank” “we,” “us” and “our” refer to Capital Bank. The terms “Business Entity”, “you” or “your” refer to the Business Entity.

When used in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, “The Authorities” collectively means the Federal Financial Institutions Examination Council, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the State Liaison Committee; which includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors and the National Association of State Credit Union Supervisors; the Electronic Check Clearing House Organization and National Automated Clearing House Association (“NACHA”). The parties acknowledge that The Authorities promulgate rules and regulations which may by law apply to these CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, and both The Bank and The Business Entity agree to comply with such rules and regulations currently in effect and as may be amended from time to time by The Authorities. The parties further agree that any term not defined in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT will be given its ordinary meaning, or if applicable, will have the meaning assigned to it by The Authorities.

**1. DESCRIPTION OF THE CASH MANAGEMENT SYSTEM**

The Bank’s Cash Management System is a suite of Products designed to improve cash flow, streamline operations and reduce expenses. The Cash Management System is implemented by the completion of a Master Administration Form, which allows Business Entity to identify accounts it wants to include in the system, select particular products it elects to implement and to set various operating parameters for these accounts.

The price for the Cash Management System is set forth in the Fee Schedule. The following Products are included in the price of the Cash Management System:

**a. Cash Management Business Online Banking.**

Cash Management Business Online Banking is a secure Internet-based Product that provides electronic access to The Bank’s website and all Products which are a part of the Business Entities’ Cash Management System. Business Entity will be assigned a Multi-factor Authentication token to login to The Bank’s website. Cash Management Business Online Banking is normally available 24/7 from any location that has Internet access. With Cash Management Business Online Banking, Business Entity can:

- Change Passwords and Login information
- View and print statements and notices
- View and print front and back of check images
- View checking and loan balances
- Transfer funds among designated accounts
- Make payments to loans and lines of credit

- Pay bills

**b. Account Transfers.**

Account Transfers allows the Business Entity to monitor its accounts, and when necessary, transfer funds among them. Transfers can be scheduled for the current day, a date in the future or on a recurring basis and will be processed in accordance with the Processing Schedule. Account Transfers give Business Entity the ability to:

- Add, view, edit or delete current or future-dated transfers
- Print transfer reference if needed
- Transfer funds for loan payment on a pre-defined date

**c. Administrative Controls.**

Administrative Controls allow the Business Entity to establish specific account access privileges and restrictions for functions its employees handle. For example, Administrative Controls can be set to require action by two employees to complete a Wire Transfer. Currently Administrative Controls are available which allow the business entity to:

- Establish a Cash Management Business Online Banking Administrator
- Administer and maintain employees' passwords, credentials, access, privileges and/or restrictions to Cash Management Business Online Banking Products and Business Mobile Banking App
- Set amount limits on electronic transfers ("ACH") and/or Wire Transfers
- Add/view a Stop Payment
- Download transactions
- View/print balances, statements and notices
- Maintain Alerts

**d. Real Time Alerts.**

The Real Time Alerts system continually monitors the business entity accounts, and based on the parameters selected, notifies the business entity that a selected event has occurred. For example, an alert will be sent to your business entity via an email or cell phone text message if a designated account drops below a predetermined amount you have selected. Currently the following alerts are available for business entity selection:

- ACH debit/credit–DDA
- ACH debit/credit–Savings
- Checking balance
- Savings balance
- CD interest
- Debit Card charge
- Incoming Wire Transfer
- Outgoing Wire Transfer
- Return Item

**e. Balance Reporting.**

Balance Reporting tracks the business entities' financial information and allows to view or print updated information. Balance information, such as ledger, available balance and factors that change the balances, including float and pending transfers, are available to help accurately forecast cash flow. Currently, the following account information is available:

- Current day's balance
- Prior day's balance
- Pending transactions
- Transaction queries
- Statement queries
- Stop Payment queries

**f. Bill Payment.**

Bill Payment allows for payments of all bills via the Internet, which saves time and money. Once a bill is setup for payment using a convenient schedule (weekly, monthly, specific date, etc.) the system will remember it and process the payment accordingly. If business entity elects to utilize Bill Payment, it will sign the Bill Payment Agreement, which is required by the third-party vendor administering this product.

**g. Downloads to Intuit QuickBooks™, Intuit Quicken or Microsoft Money.**

Using Cash Management Business Online Banking, Business Entity can securely access and download transactions into QuickBooks, which can reduce data entry time and possible keying errors during account reconciliation and improve efficiency of account management.

**h. eStatement.**

The eStatement Product allows business entity to electronically view, print, download and store account statements and notices on its network or workstation, reducing costs and allowing you to start the process of reconciling accounts sooner. On the night the statement is created, an email notifying you of its availability is delivered within minutes. The following documents are currently available for electronic delivery:

- Account Statements / Notices
- Loan Notices
- CD Notices

**i. Loan Sweep / Lines of Credit.**

Loan Sweep allows business entity to control interest expense and simplify the daily task of determining your cash position. On each banking day, the Loan Sweep will compare the actual collected balance in the designated account to a minimum and a maximum control balance which have been established jointly by The Bank and The Business Entity.

If the actual collected balance is **below the minimum** control, funds will be automatically transferred from the Business Entity line of credit, if sufficient line is available, to the designated account in an amount necessary to raise it to the minimum balance.

If the actual collected balance **exceeds the maximum** control balance, excess funds will automatically be transferred to your line of credit balance, if any, in increments established by The Bank.

**j. Zero Balance Account.**

The Zero Balance Account Product uses a combination of a main account tied to one or more sub-accounts, which are used by authorized employees to write checks and make deposits. The sub-accounts on which

checks are written and to which deposits are made, is maintained at zero dollars by transferring funds to or from the business entities' Primary Operating Account during The Bank's nightly accounting cycle.

**k. Business Mobile Banking.**

Business Mobile Banking provides access for managing business finances anytime, anywhere from a mobile device. Check business account balances, view recent transactions including check images, transfer money between accounts. Deposit checks by snapping a picture of each check and view deposit history within the app. Approve scheduled transactions through Cash Management Business Online Banking, including fund transfers, ACH transfers and wire transfers. Review and approve Positive Pay exceptions and receive alerts when approvals are pending. For additional information please refer to our Business Mobile Deposit Agreement.

**2. ADDITIONAL PRODUCTS AVAILABLE**

In addition to the Products included in the price for the Cash Management Business Online Banking, the following additional Products are also available:

Product A	Automated Clearing House Origination (ACH)
Product B	Business Debit Card
Product C	Investment Sweep–Repurchase Agreement
Product D	Positive Pay
Product E	Remote Deposit Capture
Product G	Wire Transfer

These Products will be included in the Business Entities' Cash Management Business Online Banking if selected by the Business Entity when it completes the Master Administration Form. Additional fees applicable for these Products are set forth in the Fee Schedule.

**3. BUSINESS ENTITIES' RESPONSIBILITIES FOR PRODUCTS SELECTED**

Participation in the Cash Management Business Online Banking requires that the Business Entity complete the Master Administration Form which forms a part of the contract between The Bank and The Business Entity. Business Entity agrees to be solely responsible for the accuracy of the information provided in the Master Administration Form.

Business Entity agrees that it is responsible for designating and training its Product Administrator to setup and monitor access to the Products by each authorized employee. Business Entity agrees to remove access of any terminated employee immediately, and agrees that it is solely responsible for maintaining the administration of the Products when employee duties and assignments change temporarily or permanently. The Bank shall be entitled to rely on any instruction or notice believed to have been provided by Business Entities' Administrator or other authorized employee.

Business Entity also acknowledges that certain Products which are provided through third-party vendors may require the completion of additional forms and contracts, and Business Entity agrees to complete any such documents required to implement particular Products selected.

**4. PRODUCT ACCESSIBILITY AND FEATURES**

Products selected are normally accessible seven (7) days a week, twenty-four (24) hours per day. However, certain information and/or transactions are not processed until after the close of the banking day and some transactions

may not be reflected in the system until the next banking day. These include, but are not limited to corrections or reversals due to insufficient funds, stop payment orders and legal processes. Certain funds may not be subject to immediate withdrawal. The Bank does not warrant that Products will be available at all times, and is not responsible for any loss arising from incomplete information or for any temporary interruption of Products, systems and/or services.

The function and available features of the Products described in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT are those that are available as of the date of the CASH MANAGEMENT SYSTEM SERVICES AGREEMENT. Business Entity acknowledges that changes in technology, business practices or applicable laws and regulations may cause certain features of Products to be discontinued, changed or to become unavailable. The Bank, in its sole discretion, may change, alter or discontinue certain functions or features of any Product without notice at any time.

## **5. USE AND OWNERSHIP OF CERTAIN PRODUCTS/EQUIPMENT**

Business Entity acknowledges that certain Products are provided by The Bank to the Business Entity under a sublicensing agreement with third-party vendors. Business Entity agrees that The Bank may in the future contract with additional third-party vendors for development and/or delivery of Products as it deems necessary or desirable.

Business Entity understands and agrees that the vendors used are the sole owners and licensors for their Products and that at no time will Business Entity have any claim or interest in the Products, other than Business Entities' information and data.

## **6. SYSTEM REQUIREMENTS**

### **a. Hardware and Software Requirements.**

Business Entity is responsible for acquiring and maintaining any equipment or software that is necessary for the operation of any Product selected. This currently requires a Windows compatible personal computer system with Internet connectivity; available hard disk drive space of at least 1 GB; a computer pointing device, such as a mouse; 128-bit SSL (Secure Socket Layer) compatible browser, such as the latest Internet Explorer; computer monitor capable of displaying Internet Web pages and graphics; operating system, such as the latest Windows; mobile banking requirements, such as the latest IOS or Android operating system, and other equipment that is compatible with The Bank's Products and systems. These requirements may change from time to time as newer or updated technology becomes available. Business Entity agrees that The Bank may require a specific brand or model of computer, scanner or other types of devices to properly operate the Product. Upon publication of such requirements by The Bank, Business Entity agrees to purchase the specific brand or models required to utilize and operate the Product, and not use any other brand or model while utilizing the Product.

### **b. Responsibility for Defects.**

The Bank assumes no responsibility for any defect or incompatibility of any computers or software that the Business Entity uses in connection with the Product, even if The Bank has previously approved their use. THE BANK MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE PRODUCTS, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU. Business Entity agrees to notify us promptly if any software or equipment The Bank provided to you becomes defective. The Bank's sole responsibility, if any, in such instances will be to repair or replace the defective software or equipment.

### **c. System Maintenance.**

Business Entity understands and agrees that operating systems and browsers become outdated and must be replaced to meet minimal security standards and receive "security patches"; and Business Entity further agrees not to operate any Cash Management Business Online Banking Product on any device which is operated and controlled by software that is designated by its manufacturer as being obsolete.

### **d. Proprietary Property.**

Business Entity agrees to comply with the terms of any software license(s) provided in connection with the Products and will not transfer, distribute, copy, reverse compile, modify or alter such software. Unless otherwise agreed to by The Bank in writing, the computer programs, service guides, security procedures, software and systems provided to Business Entity in connection with the Product represent our proprietary property and must be returned to us upon request.

## **7. SECURITY**

Business Entity shall be responsible for protecting against unauthorized access to the Products, information and data in accordance with guidelines published by The Authorities, which includes, but is not limited to the following:

- a.** Developing and maintaining specific security procedures that include:
  - 1) Providing individual employees with multifactor authentication, identification code (ID), password and other security measures and devices which shall not be revealed to another person;
  - 2) Requiring employees to change their passwords periodically or when requested by The Bank;
  - 3) Maintaining a firewall with current updates to protect the network and device from unauthorized access and hackers;
  - 4) Using virus and malware detection system with current updates that inspects files, emails and attachments received by Business Entity;
  - 5) Maintaining a Business Entity approved employee policy and oversight that governs employee screening, Internet usage, and which prohibits downloading unauthorized programs, documents and music.
  - 6) Requiring dual control over high risk, high dollar transactions.
  - 7) Separating employee duties, where possible, to restrict the risk associated with an employee having access to information, systems and data not required for his or her job;
  - 8) Prohibiting the use of email to initiate Cash Management Business Online Banking transactions or instructions when they contain confidential information;
  - 9) Storing original paper checks, substitute checks, reports and backup copies in a secure environment;
  - 10) Establishing a destruction date for original paper checks, substitute checks, reports and backup copies and destroying these items in such a manner as to prevent their reconstruction and use; and
  - 11) Destroying all hard drives, FAX machines, printers and electronic media (if owned or allowed) used with Product that become obsolete, unusable or defective in such a manner that they cannot be read by any means.
- b.** Providing The Bank with annual financial and risk management information as requested by The Bank and necessary to perform Business Entity financial evaluation and security risk assessment, as required by The Authorities.
- c.** Completing and providing to The Bank an electronic security self-audit questionnaire, upon request.
- d.** Allowing The Bank to conduct an onsite security review as defined by The Bank.
- e.** Conducting periodic training for all service and security components and annual training on changes in service and security and Business Entity policies regarding risk management.

Business Entity acknowledges that the use of the Products carries a certain amount of risk and Business Entity agrees to maintain insurance sufficient to cover damages for liability as a result of a security breach, including that associated with identity theft, theft of any confidential information, and employee theft or malfeasance while using The Bank Products.

In the event of any breach of Business Entities' network or mobile device such as a smartphone, any unauthorized access to confidential information, or if it believes or has reason to believe that any security procedure or credential has been or may become compromised, Business Entity will notify The Bank immediately. Such notification will include all customer names and account numbers that were accessed, method of access (if known), notifications to law enforcement agencies, estimated damage, actions taken since breach was detected, and planned future actions. Business Entity agrees to notify The Bank before making any oral or written statements that may be published by newspaper, radio, television or Internet.

**The Bank shall have no liability for losses caused by or arising out of any unauthorized access to Business Entities' network or mobile device or confidential information, and Business Entity will indemnify and hold The Bank harmless from any losses, costs, suits, damages, liabilities and expenses resulting from Business Entities' failure to keep such information confidential, even if such losses are caused in whole or in part by the failure of The Bank to use ordinary care.**

Business Entity acknowledges and agrees that the above procedures are commercially reasonable and adequate for the purposes intended.

## **8. DESIGNATED ACCOUNTS**

### **a. Primary Operating Account.**

Business Entity shall establish and maintain a demand deposit account, designated as its Primary Operating Account, which will be utilized for Business Entities' transactions in connection with certain Products. The Bank is authorized to debit, by any method chosen by The Bank, the Primary Operating Account for all electronic credit entries, and to credit the Primary Operating Account for all debit entries, submitted by Business Entity on the presentment date, effective date or settlement date for the offset amount provided on any medium acceptable to The Bank. All credit or debit entries are provisional. The Primary Operating Account will also be utilized to apply credits or debits for rejected, returned or erroneous electronic entries.

Business Entity agrees that the collected balance in the Primary Operating Account shall at all times be sufficient to cover Business Entities' daily "net" settlement amount on the effective date or settlement date, as necessary. The Bank is not obligated to process any electronic credit entry unless Business Entities' Primary Operating Account contains a balance in collected funds sufficient to pay all electronic credit entries submitted by Business Entity. Should The Bank elect to process any electronic credit entry for which it has not received final settlement, the amount of such entry, at the option of The Bank, shall become immediately due and payable by Business Entity to The Bank and The Bank shall have the right to charge the amount thereof to any account of Business Entity maintained at The Bank.

If the offsetting debit exceeds the collected balance of the Primary Operating Account, or if The Bank otherwise determines in its sole discretion that any single credit item or combination of credit items involves an unacceptable risk to The Bank, The Bank has the right to hold all or some of the credit items originated. Failure to maintain adequate collected balances in the Primary Operating Account shall constitute "cause" for immediate termination of this agreement.

### **b. Reserve Account.**

The Bank may notify Business Entity at any time and at The Bank's sole discretion, that Business Entity must establish and maintain a reserve account with The Bank sufficient to cover the entries initiated by Business Entity for a period of time determined by The Bank. Business Entity consents and agrees that funds in the reserve account are available to The Bank at any time to offset any liabilities incurred by Business Entity under this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, and Business Entity assigns, pledges and grants a security interest in the Primary Operating Account and reserve account to The Bank to secure the performance of its obligations and all indebtedness to The Bank incurred hereunder.

## **9. CREDIT**

The Bank shall have the option, but not the obligation, to extend credit to Business Entity from time to time, either by a credit to the Primary Operating Account or by such other means as The Bank may elect, in a sum sufficient to

cover any entry and all related fees or charges to be debited to Business Entities' Primary Operating Account or other account. **ANY EXTENSION OF CREDIT BY THE BANK TO THE BUSINESS ENTITY IS AT THE SOLE AND ABSOLUTE DISCRETION OF THE BANK.** In the event such an extension of credit is made, the amount thereof shall bear interest at the lower of either (1) 18% or (2) the highest non-usurious rate allowed by law from the date such extension of credit is made until the date it is repaid to The Bank. In the event The Bank does not elect to make any such extension of credit, Business Entity shall provide The Bank with immediately available funds in an amount sufficient to cover all credit entries and related charges on the same day as the file containing such credit entries is delivered/transmitted to The Bank.

## 10. PROCESSING SCHEDULES

The Bank shall provide data processing for the Products selected in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT according to the Processing Schedule. The Bank reserves the right to change the Processing Schedule upon thirty (30) days' notice prior to any change that affects Business Entity, unless a shorter period is required by The Bank in its sole discretion to maintain the security or integrity of its systems or directives of The Authorities. Business Entity agrees to the following:

- a. Business Entity shall submit an annual schedule of anticipated delivery dates of data files, and convey to The Bank on the day of transmission the transaction volume and dollar amount for receipt verification;
- b. The delivery and settlement dates must be dates acceptable to The Bank in its sole and absolute discretion. Should the delivery or settlement cycle be altered at any time, The Bank must be informed in writing of the new schedule at least two (2) weeks prior to the effective date of change. The Bank will use reasonable diligence and ordinary care in implementing and adhering to the scheduled delivery dates.

## 11. DATA MANAGEMENT

### a. Data Format.

Business Entity assumes the sole responsibility for providing The Bank with complete and accurate information in the form and format necessary to provide the Product it requests. The Bank will provide Business Entity with written specifications for data, ACH entries, media and checks and deposits, which are acceptable. We are not obligated to detect errors in your transfers, payment instructions and parameters or related information. The Bank will, in its sole discretion, determine the adequacy of the information and format in which it is submitted, and may refuse to provide the Product(s) until such information and/or format is submitted correctly.

### b. Data Usability.

Should The Bank determine that Business Entities' input is unreadable or cannot be processed, Business Entity will be notified and a replacement file requested. Business Entity must then indicate when the replacement file will be available to The Bank. Should it be determined that a replacement file cannot be provided before the Processing Schedule deadline, Business Entity will be advised of available processing options.

### c. File Error.

If Business Entity discovers that any file it has initiated was in error, it shall notify The Bank of such error. If such notice is received after the Processing Schedule deadline, The Bank will utilize its best efforts on behalf of Business Entity to resolve the error. The Bank shall not be liable to Business Entity for any noncompliance with The Authorities. The Bank's sole obligation is to initiate a reversal or correction file, as permitted by The Authorities.

### d. Error Notification.

Upon notification that any entry (or group of entries) has been rejected/returned by any of The Authorities or any financial institution for any reason, The Bank will notify Business Entity, and the rejected entry(s) will



be returned and, as applicable, credited to or debited from the Primary Operating Account and confirmation of the action will be sent to Business Entity by The Bank. The Bank assumes no other responsibility with respect to any rejected or returned entries. Business Entity shall assume sole responsibility for remaking and resubmitting rejected entry(s) or otherwise handling the payments due receivers, unless rejection was due solely to an error in the handling of such entries by The Bank and sufficient data is available to The Bank to permit it to re-transmit such entries. In such latter event, The Bank's sole obligation for its own error shall be to correct errors and properly transmit Business Entities' entries for no additional fee.

**e. Reject Standard.**

All entries submitted by Business Entity shall be prepared and delivered in accordance with The Authorities and rejected transactions should be less than the "reject standard" of one percent (1%) of total transactions processed. Should Business Entity fail to prepare entries in accordance with the reject standard or fail to provide entries acceptable to The Bank, The Bank may refuse to process and transmit the entries. In the event Business Entity repeatedly exceeds the reject standard, The Bank may terminate this agreement or, at its sole and absolute discretion, may assist Business Entity to correct such issues provided that Business Entity maintains a reserve in an amount to reasonably cover the dollar amount of rejected entries in the Primary Operating Account. The Bank shall advise Business Entity of the amount at which such reserve must be maintained. The Bank shall have an immediate and unqualified right to deduct, at any time, any returned entries from any of Business Entities' accounts maintained at The Bank.

## **12. COMPENSATION FOR ERRORS**

**a. Compensation for Errors.**

Business Entity agrees that compensation, if any, for the loss of interest or use of funds due Business Entity as a result of an error on the part of The Bank, whether for delay, non-completion, failure to follow instructions or other error, or of The Bank's failure to execute a payment order on the date received when received prior to the deadline established by The Bank, provided such execution or error is within The Bank's direct control, will be for interest losses for a period from the date the transfer should have been made to the date the proper transfer is made but not to exceed ninety (90) days and will be in the form of either of the following, at the sole option of The Bank:

- 1) adjustment of the aggregate ledger and collected balance of Business Entities' account(s) to reflect properly in the average balances on the account analysis of the amounts that would have resulted had no error occurred; or
- 2) reimbursement not to exceed the average Fed Funds interest rate for the period and amount in question, less reserves, computed on a daily basis.

**b. Losses Not Covered.**

The Bank is not liable for any loss or damage arising out of the failure to complete a transfer to or from your account on time or in the correct amount, if The Bank used ordinary care, and such failure is caused by circumstances outside our reasonable control. Examples include, but are not limited to:

- 1) Through no fault of The Bank, Business Entity does not have sufficient funds available in its account to make the transfer;
- 2) The failure is due to incorrect information provided to The Bank;
- 3) The terminal was not working properly and Business Entity knew about the breakdown when it started the transfer;
- 4) The ATM (automated teller machine) where Business Entity is making the transfer malfunctions;
- 5) Acts of God, fire and computer malfunctions.

There may also be other exceptions stated in other agreements with Business Entity.

### 13. ERROR RESOLUTION

**a. Verification of Accuracy of Reports and Data.**

Business Entity acknowledges and agrees that it is Business Entities' responsibility to examine all receipts, notices, statements and reports it receives from The Bank in connection with the Cash Management System, and to immediately report any errors or problems. BUSINESS ENTITY'S DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT contains information regarding Business Entity's duty to examine its statements. The identical duties and responsibilities apply to Business Entity and The Bank with regard to error reporting regarding information received through the Cash Management Business Online Banking. Please refer to BUSINESS ENTITY'S DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT for more information.

The Bank will only re-credit Business Entity's account for errors or problems as required by law. Call or write The Bank immediately with errors or questions about Business Entity's electronic transfers at the telephone number or address listed in this agreement. If Business Entity tells us orally, The Bank may require Business Entity to submit its complaint or question in writing within ten (10) days.

**b. Prompt Investigation.**

If Business Entity provides us with timely notice of an error or problem in any notice or report provided through the Cash Management Business Online Banking, The Bank will investigate the matter and notify Business Entity of the results as soon as reasonably possible. The Bank will provide copies of the documents that The Bank uses in its investigation to Business Entity upon request.

### 14. TIMELY INVESTIGATIONS

Business Entity and The Bank agree to cooperate promptly and fully in the investigation of any claim asserted by any person arising out of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT or any transaction that violates a Product.

### 15. LOCATIONS

Business Entity warrants and represents that it transacts business from only the locations disclosed in the Master Administration Form. Failure to include all business locations in the Master Administration Form may be cause for termination of this agreement. Should Business Entity add or change any locations during the term of this agreement, it agrees to notify The Bank immediately in writing, and to complete a revised form disclosing its location for inclusion in the CASH MANAGEMENT SYSTEM SERVICES AGREEMENT.

### 16. CONSENT FOR eSTATEMENTS

Business Entity understands and agrees to receive and use eStatements in the same manner as paper documents delivered by U.S. Postal Service. eStatements will be delivered via secure electronic means, as determined solely by The Bank. If Business Entity requires paper documents, Business Entity must notify The Bank in writing at the following address:

Capital Bank  
Electronic Banking Department  
P.O. Box 24337  
Jacinto City, TX 77229-9988

To ensure that The Bank is able to provide Business Entity with eStatements, Business Entity must maintain a current email address. Please contact The Bank at [customerservice@capitalbanktx.com](mailto:customerservice@capitalbanktx.com) to update Business Entity's email address or if Business Entity has any questions concerning the delivery of its eStatements.

## 17. CONFIDENTIALITY

Each party understands and acknowledges that it may be the recipient of confidential information, which may include, but is not limited to software or documentation owned or licensed by third parties. The Bank and Business Entity agree to hold as confidential all non-public information they receive from the disclosing party. All information shall remain the property of the discloser or its suppliers and licensors. Recipient may only use information in accordance with the intent and purpose of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT.

## 18. FEES

Business Entity agrees to pay a fee to The Bank for providing the Product selected at the rate published on the Fee Schedule. The Bank reserves the right to change the fees as published in this schedule from time to time upon thirty (30) days' notice to Business Entity.

Business Entity shall pay all fees due to The Bank through the ACH network unless otherwise set forth in the Product Information Sheet. Business Entity shall neither make nor assert any right of deduction or setoff from Fees invoiced for Products. Any invoice submitted by The Bank shall be deemed correct unless Business Entity provides written notice to The Bank within fourteen (14) days following the invoice date specifying in detail the nature of the disagreement.

Suspension of Products by The Bank as authorized by Paragraph 19 of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, does not relieve the Business Entity from its obligation to pay any and all fees, charges and costs due to The Bank. Suspended Products may be resumed at The Bank's discretion upon receipt of full payment owed. Past due amounts are subject to an interest rate of 1.5% per month from the date of the invoice, subject to the maximum rate permitted by law. Business Entity agrees to pay all costs of collection including, but not limited to, attorney and collection agency fees.

## 19. SUSPENSION OF PRODUCTS

If Business Entity fails to maintain proper security, fails to properly maintain its accounts in good standing or is in violation of any provision of the CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, The Bank may immediately suspend access and use of all Products. Reinstatement to use Products may require Business Entity to re-apply and obtain approval from The Bank's Credit Committee or two executive officers.

## 20. TERMINATION

### a. For Cause.

The Bank may immediately terminate this Cash Management System for cause. The Bank has sole authority and discretion to determine whether cause exists to terminate this Cash Management System. Cause may include but is not limited to any of the following occurrences by Business Entity:

- 1) failure to properly manage any of its accounts;
- 2) violation of any security procedure or practice as outlined in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT or any attachments hereto;
- 3) violation of any regulatory requirements;
- 4) failure to comply with this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT and by reference the **YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT**;
- 5) inability to maintain stable financial condition;
- 6) failure to operate the Cash Management System and Products in a manner that is consistent with industry standard risk management; and
- 7) falsification of any information contained in the Master Administration Form.

If The Bank terminates the Business Entities' Cash Management System for cause, the Business Entity agrees to pay The Bank any termination or out-of-pocket expenses incurred by The Bank.

**b. Without Cause.**

Either party may terminate this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT without cause upon three (3) months' written notice of intent to terminate.

In the event Business Entity terminates this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT without cause, Business Entity agrees to pay the remaining Cash Management System product fees to The Bank for the remaining 3 month notification period. Business Entity also agrees to return all equipment, user guides, proprietary training materials and documents provided for use with the Cash Management System Products within fourteen (14) days following termination date.

**22. DISCLAIMER OF WARRANTY**

Unless expressly provided elsewhere in this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, The Bank disclaims all warranties, express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose. Business Entity assumes the risk as to the quality of the Products and accepts them on an "as is" basis.

**23. LIMITATION OF LIABILITY**

The Bank's responsibility and liability to Business Entity for any liabilities, claims, losses, costs, expenses (including attorney's fees and costs) or damages of any kind, including without limitation direct or indirect, special, incidental, consequential and punitive damages, arising in connection with any aspect of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, including but not limited to the use or the inability to use any Product, any failure, error, omission, interruption, defect, delay in operation or transmission, computer viruses, or any line or system failure related to any Product, are strictly limited to those expressly provided by the Uniform Commercial Code Article 4A as adopted by the State of Texas. BUSINESS ENTITY AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY THE BANK, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, ATTORNEYS, AND ALL PERSONS IN PRIVITY WITH IT FROM AND AGAINST ANY LIABILITIES, CLAIMS, LOSSES, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS) OR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES, ARISING IN CONNECTION WITH ANY ASPECT OF THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, EVEN IF THE LOSSES RESULTED FROM THE NEGLIGENCE OF THE PARTIES INDEMNIFIED HEREUNDER. THE BANK'S LIMITED RESPONSIBILITY AND LIABILITY AS SET FORTH HEREIN CONSTITUTES BUSINESS ENTITIES' SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT IN LIEU OF ALL OTHER REMEDIES, WHETHER EXPRESSED OR IMPLIED AND WHETHER AT LAW OR IN EQUITY, AND THE BANK HEREBY DISCLAIMS, AND BUSINESS ENTITY WAIVES AND RELINQUISHES ITS RIGHT TO ANY OTHER REMEDY AND CLAIMS.

**24. UNAVOIDABLE CIRCUMSTANCES**

Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil unrest or military authority, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing such an event agrees to give the other party notice promptly following such occurrence, and to use diligent efforts to resolve disruptions or performance issues as promptly as reasonably practicable.

**25. SEVERABILITY**

If any of the provisions of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT are deemed invalid under any applicable statute or rule of law, all remaining provisions shall remain in full force and effect.

**26. ENTIRE AGREEMENT**

This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT (including its Attachments and Product Information Sheets, and other written agreements which are incorporated into this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT by reference) constitutes the entire understanding between the parties as to the Cash Management System, and supersedes any and all previous agreements with respect thereto.

## **27. AMENDMENTS**

This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT may be amended by The Bank at any time upon thirty (30) days' written notice to Business Entity. Business Entity may amend this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT only by written supplemental agreements executed by both Business Entity and The Bank.

## **28. WAIVER**

**NO OFFICER OR EMPLOYEE OF THE BANKS HAS AUTHORITY TO ORALLY WAIVE ANY PROVISION OF THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT. THE BANK HAS THE RIGHT, BUT NOT THE OBLIGATION, IN ITS SOLE DISCRETION, TO WAIVE ANY TERM OR PROVISION OF THE CASH MANAGEMENT SYSTEM SERVICES AGREEMENT AT ANY TIME OR FROM TIME TO TIME, BUT ANY SUCH WAIVER SHALL NOT CONSTITUTE A WAIVER OF ANY TERM OR PROVISION IN THE FUTURE.**

## **29. NO ORAL AGREEMENTS**

**NO OFFICER OR EMPLOYEE OF THE BANK HAS AUTHORITY TO ORALLY MODIFY ANY PROVISION OF THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT. THERE ARE NO ORAL CONDITIONS, REPRESENTATIONS, AGREEMENTS OR COMMITMENTS AFFECTING THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT AND EACH PARTY HEREBY ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT IN RELIANCE UPON ANY REPRESENTATION MADE BY THE OTHER PARTY NOT SPECIFICALLY EMBODIED HEREIN.**

## **30. INDEPENDENT CONTRACTORS**

Business Entity and The Bank expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other except as expressly authorized herein.

## **31. ASSIGNMENT**

The terms and provisions of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT shall inure to the benefit of and be binding upon the Business Entity, The Bank and their respective successors and assigns; provided, however, that the Business Entity may not assign its rights hereunder without prior written consent of The Bank. The Bank may assign or delegate certain of its rights and responsibilities under this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT as it deems necessary.

## **32. TITLES AND SUBTITLES**

The titles of the paragraphs and sections of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT are for convenience only and will not be used to construe or interpret any provisions hereof.

## **33. BUSINESS ENTITIES' REPRESENTATIONS AND WARRANTIES**

By executing this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT, Business Entity represents and warrants that:

- a.** The individual signing the Master Administration Form and agreeing to this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT has full requisite power and authority to execute and deliver this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT to The Bank on behalf of the Business Entity for whom he/she signs and to bind the Business Entity to the CASH MANAGEMENT SYSTEM SERVICES AGREEMENT.
- b.** If Business Entity is not a natural person, it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization; that it has full power to own its properties and to carry on its business as now conducted; that it is duly qualified to do business and is in good standing in

each jurisdiction in which the name of business conducted by it makes such qualification necessary and/or desirable; that if applicable, it has properly filed and received an Assumed Name Certificate as required by applicable law; and that it has not commenced any dissolution proceedings.

- c. This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT has been duly authorized by Business Entity.
- d. The execution of this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT does not, and will not, cause a breach by Business Entity of any other contract, agreement or understanding to which Business Entity is a party.
- e. This CASH MANAGEMENT SYSTEM SERVICES AGREEMENT constitutes a valid, fully enforceable and legally binding obligation of Business Entity. Business Entity will maintain this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT as an official record of Business Entity continuously from the time of its execution.

#### **34. NOTICES**

Written notice required or permitted to be given under this CASH MANAGEMENT SYSTEM SERVICES AGREEMENT shall be given by: (a) secure email (b) registered or certified mail, Return Receipt Requested, postage prepaid; (c) confirmed facsimile; or (d) nationally recognized overnight courier service, and shall be sent to the address designated on Paragraph 16 of the Cash Management System Services Agreement, or to such other address that The Bank or Business Entity may designate in writing.

All such notices shall be effective upon receipt. If Business Entity elects to use any other method of communications it does so at its own risk and acknowledges that such methods, including, but not limited to, unsecure email pose a security risk, and agrees that The Bank is not responsible for the consequences of such communication.

#### **35. CONSENT TO JURISDICTION AND VENUE; WAIVER OF RIGHT TO JURY TRIAL; TIME LIMITATION FOR FILING LEGAL ACTION**

**THE PARTIES AGREE THAT THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION AND EFFECT BY, AND SHALL BE ENFORCEABLE IN ACCORDANCE WITH THE LAWS OF TEXAS, WITHOUT REGARD TO OR APPLICATION OF CONFLICT OF LAW RULES OR PRINCIPLES. ALL CLAIMS, ACTIONS OR PROCEEDINGS WHICH ARISE OUT OF OR ARE IN CONNECTION WITH OR RELATED TO THE CASH MANAGEMENT SYSTEM SERVICES AGREEMENT SHALL BE LITIGATED EXCLUSIVELY IN THE STATE COURTS OF HARRIS COUNTY, TEXAS WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE OF THESE MATTERS. FOR ANY SUCH LITIGATION, THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND HEREBY IRREVOCABLY WAIVE ANY RIGHTS EACH OTHER MAY HAVE TO REMOVE THIS CASE FROM SUCH COURTS OR OTHERWISE TRANSFER OR CHANGE THIS JURISDICTION OR VENUE OF ANY SUCH LITIGATION BROUGHT AGAINST THEM BY ANY THIRD PARTY TO THIS AGREEMENT. THE PARTIES IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY APPLICABLE LAW. UNLESS OTHERWISE PROHIBITED BY ARTICLE 4A OF THE UNIFORM COMMERCIAL CODE, BUSINESS ENTITY MAY NOT BRING ANY CLAIM AGAINST THE BANK ARISING DIRECTLY OR INDIRECTLY OUT OF THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT OR ANY OF THE PRODUCTS PROVIDED WITH THIS CASH MANAGEMENT SYSTEM SERVICES AGREEMENT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.**

#### **36. GOVERNING LAW**

This Cash Management System Services Agreement is governed by the laws of the State of Texas, bank regulations and applicable federal law. By accepting this Cash Management System Services Agreement, Business Entity acknowledges that it understands and accepts the terms and conditions of this Cash Management System Services Agreement.

### 37. FEE SCHEDULE

Standard Cash Management Services Fee - \$15.00

**Services Include:**

- Cash Management Online Banking
- Account Sweeps
- Administrative Controls
- Loan Sweep / Line of Credit
- Zero Balance Account
- Multi-factor authentication
- Card Valet
- Business Mobile Banking – per request
  - Mobile Deposit
- Designated Business Services Specialist

**Add-On Product Available:**

- Bill Payment – no additional charge
- Business Debit Card (s) – no additional charge
- Positive Pay - \$25 monthly service charge (includes primary account)
  - \$10 for each additional account

Premium Cash Management Services Fee - \$25.00

**Services Include:**

- Cash Management Online Banking
- Account Sweeps
- Administrative Controls
- Loan Sweep
- Zero Balance Account
- Multi-factor authentication
- Card Valet
- Business Mobile Banking – per request
  - Manage accounts and ancillary Cash Management products remotely
  - Mobile Deposit
- Designated Business Services Specialist

**Customize your Cash Management Suite by Adding Any of These Products**

- Bill Payment – no additional charge
- Business Debit Card (s) – no additional charge
- ACH Origination    \$25 per month + \$0.10 per item
- Investment Sweep    \$25 per month
- Positive Pay    \$25 includes primary account
  - \$10 for each additional account
- Remote Deposit Capture                                    \$40 per month
  - \$25 per additional location, per month
  - \$50 per bank provided scanner per month
  - Or one-time purchase option available
- Wire Transfer
  - Domestic    \$10 Incoming / \$15 Outgoing
  - International                                        \$15 Incoming / \$40 Outgoing