



MOBILE DEPOSIT AGREEMENT

1. Introduction. This Mobile Deposit Agreement (“MDA” or the “Addendum”) sets forth the terms and conditions governing Capital Bank Corporation’s (“Capital Bank”) Mobile Deposit Service (the “Mobile Deposit Service”) and is an Addendum to the Online Banking Agreement (the “OBA”) governing your use of Capital Bank’s Online Banking Service. Your enrollment in the Mobile Deposit Service constitutes your agreement with the terms of the OBA and this Addendum. Terms used herein but not defined shall have the meaning assigned to them in the OBA. In this Addendum, the words “you” and “your” refer to you as the person or business entity entering into this Addendum. The words “you” and “your” also include any user you authorize to use the Mobile Deposit Service on your behalf. The words “we,” “us,” and “our” refer to Capital Bank. You acknowledge that you have read this Addendum and will retain a copy for your records. Capital Bank reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Service (as defined below). Your continued use of the Service will indicate your acceptance of any such changes to the Service.

2. Description of Service. The Mobile Deposit Service (“Service”) is designed to allow you to deposit checks (“original checks”) to your accounts from home or other remote locations. The deposit is made by taking a picture of an original check and delivering the digital images and associated deposit information (“images”) to us or our processor with your Mobile Device.

3. Application and Qualification. After you login to Mobile Banking, you may apply for Mobile Deposit. In order to enroll in the Service, you must be designated as an authorized signer or owner of a Capital Bank account (the “Account”) that is eligible for this Service, and be approved by Capital Bank. To become and remain eligible for the Service, you shall (a) maintain the Account in good standing, (b) subscribe to Capital Bank Online Banking Service, and (c) comply with such other restrictions on the Service as we may communicate to you from time to time.

4. Technical Requirements. To use the Services, you must obtain and maintain, at your expense, a compatible mobile device, hardware and software as specified by Capital Bank from time to time. Capital bank 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. Capital Bank does not assume responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and Capital Bank reserves the right to change the qualifications at any time without prior notice.

5. Fees. Presently, there are no fees associated with the Service. We may, upon 30-days prior notice to you, impose a fee for use of the Service or change the fee. Your continued use of the Service after the fee becomes effective shall constitute your acceptance of said fee or fee change.

6. 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.

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

8. Eligible items. You agree to scan and deposit original checks only (*i.e.*, drafts drawn on a credit union or bank and payable on demand. You agree that you will not use Mobile Deposit to deposit (the following are hereafter "Prohibited Checks"):

- (a) Checks payable to any person or entity other than you (*i.e.*, payable to another party and then endorsed to you);
- (b) Checks payable to you and another party who is not a joint owner on the account;
- (c) Checks that contain evidence of alteration, or that 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;
- (d) Checks that you have already negotiated or deposited previously, whether at Capital Bank or otherwise.
- (e) Checks previously converted to a substitute check or image replacement documents that purport to be substitute checks.
- (f) Checks drawn on a financial institution located outside the United States.
- (g) Checks that are remotely created checks,
- (h) Checks not payable in United States currency.
- (i) Checks dated more than six (6) months prior to the date of deposit.
- (j) Checks prohibited by the Capital Bank's current procedures related to this Service or which are otherwise not acceptable under the Account Agreement governing your Capital Bank account.
- (k) Checks payable on sight or payable through Drafts.
- (l) Checks with any endorsement on the back other than that specified in this Agreement.
- (m) Money Orders or Postal Money Orders.
- (n) Travelers Checks.

You agree that Capital Bank may, in its sole discretion, amend the list of Prohibited Checks from time to time. If you deposit a Prohibited Check, you agree to indemnify and reimburse Capital Bank for, and hold Capital Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys' fees) Capital Bank may incur associated with any warranty, indemnity or other claim related thereto.

You grant Capital Bank a security interest in all of your accounts or other deposits (whether general or special) at Capital Bank, and in all funds in such accounts or other deposits, to secure your obligations to Capital Bank under this Agreement to the maximum

extent permitted by applicable law. This security interest will survive termination of this Agreement.

9. Requirements.

- (a) Image. Each image must provide all information on the front and back of the original check at the time presented to you by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the original check, MICR information, signature(s), any required identification written on the front of the original check and any endorsements applied to the back of the original check. The image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.
- (b) Endorsements. Endorsements must be made on the back of the share draft or check within 1½ inches from the top edge, although we may accept endorsements outside this space. Your endorsement must include your signature and “via mobile deposit”. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility. If the check is payable to you or a joint owner, either of you can endorse it. A check payable to two or more payees must be endorsed by both payees. If the check is made payable to you and a joint owner, both of you must endorse the check.

10. Receipt of Deposit. All images processed for deposit through Mobile Deposit will be treated as “deposits” under your current Account Agreement with us and will be subject to all terms of the Account Agreement. When we receive an image, we will confirm receipt via an email sent to you. We shall not be deemed to have received the image for deposit until we have confirmed receipt to you. Confirmation does not mean that the image is without errors. We are not responsible for any image that we do not receive. Following receipt, we may process the image by preparing a “substitute check” or clearing the item as an image. We reserve the right, at our sole and absolute discretion, to reject any image for remote deposit into your account. We will notify you of rejected images.

11. Original checks. After you receive confirmation that we have received an image, you must securely store the original check for 10 calendar days after transmission to us and make the original check accessible to us at our request. Upon our request from time to time, you will deliver to us within 10 calendar days, at your expense, the requested original check in your possession. If not provided in a timely manner, such amount may be reversed from your account. Promptly after such period expires, you must destroy the original check by first marking it “VOID” and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. After destruction of an original check, the image will be the sole evidence of the original check. You agree that you will never re-present the original check. You understand that you are responsible if anyone is asked to make a payment based on an original check that has already been paid.

12. Returned Deposits. Any credit to your account for checks deposited using Mobile Deposit is provisional. If original checks deposited through Mobile Deposit are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank, for any reason, including, but not limited to, issues relating to the quality of the image, you agree that an original check will not be returned to you, but that we may charge back the amount of the original check and provide you with an image of the original check, a paper reproduction of the original check or a substitute check. You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned item.

Without our approval, you shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to you. We may debit any of your accounts to obtain payment for any item that has been rejected or returned, for any adjustment related to such item or for any warranty claim related to such item, whether or not the rejection, return, adjustment or warranty claim was made timely.

13. Your Warranties. You make the following warranties and representations with respect to each image:

- (a) Each image is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
- (b) The amount, payee(s), signature(s), and endorsement(s) on the image and on the original check are legible, genuine, and accurate.
- (c) You will not deposit or otherwise endorse to a third party the original check and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the original check or a paper or electronic representation of the original check such that the person will be asked to make payment based on an item that has already been paid.
- (d) There are no other duplicate images of the original check.
- (e) The original check was authorized by the drawer in the amount stated on the original check and to the payee(s) stated on the original check.
- (f) You are authorized to enforce and obtain payment of the original check.
- (g) You have possession of the original check and no party will submit the original check for payment.
- (h) With respect to each image, you make to us all representations and warranties that we make or are deemed to make to any party pursuant to law, regulation or clearinghouse rule. You agree that files and images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.
- (i) You will use the Mobile Deposit Service for lawful purposes and in compliance with all applicable laws, rules and regulations. You warrant that you will only transmit acceptable items for deposit and have handled the original items in accordance with applicable laws, rules and regulations.
- (j) FAILURE TO PROTECT YOUR MOBILE DEVICE, TABLET, COMPUTER, OR ANY OTHER HARDWARE AND SECURITY CREDENTIALS, SUCH AS USER NAME AND PASSWORD, MAY ALLOW AN UNAUTHORIZED PARTY TO ACCESS THE SERVICE AND TRANSMIT AN ELECTRONIC ITEM FOR DEPOSIT. ALL USES OF THE SERVICE THROUGH YOUR SECURITY CREDENTIALS WILL BE DEEMED TO BE AUTHORIZED BY YOU AND BINDING UPON YOU. YOU ASSUME THE ABSOLUTE AND ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF YOUR SECURITY CREDENTIALS. YOU AGREE TO NOTIFY CAPITAL BANK IMMEDIATELY IF YOU BECOME AWARE OF ANY LOSS, THEFT OR ANY UNAUTHORIZED USE OF THE SERVICE OR YOUR SECURITY CREDENTIALS.

14. Mobile Deposit Unavailability. The Mobile Deposit Service may be unavailable temporarily due to system maintenance or technical difficulties, including those of the Internet service provider, cellular service provider and Internet software. In the event that the Mobile Deposit Service is unavailable, you may deposit original checks at one of our branches or at an ATM owned and operated by Capital Bank and equipped to accept deposits. We reserve the right to change, suspend or discontinue the Mobile Device 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..

15. Funds Availability. . For purposes of funds availability, Capital Bank defines a Business Day as every day except Saturdays, Sundays and federal holidays. Mobile Deposits confirmed as received before the established cut-off time of 5:00 PM EST on a Business Day will be considered deposited that day. Deposits received after 5:00 PM EST on a Business Day will be considered deposited on the next business day. Mobile deposits will generally be available for withdrawal on the first business day after the day we receive the deposit, however longer delays may apply. See Capital Bank's Funds Availability Policy for details on longer delays and special rules that apply to new customers (first 30 days).

16. Bank Closure. In its sole discretion, Capital Bank may wish to allow for an earlier cut-off time due to inclement weather, power failure, unforeseen circumstances or Holiday processing. Capital Bank will make every attempt to notify you of any planned closures. You understand and agree that in some instances, such as weather related closures, communication well in advance may not be possible.

17. Mobile Deposit Security. You will complete each deposit promptly. If you are unable to complete your deposit promptly, you will ensure that your mobile device remains securely in your possession until the deposit has been completed. It is your responsibility to establish and maintain procedures to safeguard against unauthorized deposits. You will notify us immediately by telephone with written confirmation if you learn of any loss or theft of original checks. You will ensure the safety and integrity of original checks from the time of receipt until the time of destruction. If warranted in our reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring, to confirm that you have satisfied your obligations under this Agreement.

18. Your Responsibility. You are solely responsible for the quality, completeness, accuracy, validity and integrity of the image. You are solely responsible if you, intentionally or unintentionally, submit fraudulent, incorrect or illegible images to us or if Mobile Deposit is used, by authorized or unauthorized persons, to submit fraudulent, unauthorized, inaccurate, incorrect or otherwise improper or unusable images to us. In addition you agree that you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Service, copy or reproduce all or any part of the technology or Service; or interfere, or attempt to interfere, with the technology or Service. We and our technology partners retain all rights, title and interests in and to the Services, Software and Development made available to you.

19. Indemnification Obligation. You understand and agree that you are required to indemnify us and hold us harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from your use of the Services and/or breach of this Disclosure and Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement. You understand and agree that you are required to indemnify our technology partners and hold harmless affiliates, officers, employees and agents from and against any third party claims, suits, proceedings, actions or demands, including to claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to your use of the Services unless such claim directly results from an action or

omission made in bad faith. You understand and agree that this paragraph shall survive the termination of this Agreement.

20. DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF ANY REMOTE BANKING SERVICE 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 ANY REMOTE BANKING SERVICE, 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 ANY REMOTE BANKING SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN ANY REMOTE BANKING SERVICE OR TECHNOLOGY WILL BE CORRECTED.

21. 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 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 ANY REMOTE BANKING SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY LAW.

22. Errors. You agree to notify Capital Bank of any suspected errors regarding items deposited through the Services right away, and in no event later than 30 days after the applicable Capital Bank account statement is sent. Unless you notify Capital Bank 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 Capital Bank for such alleged error.

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

24. Enforceability. Capital Bank may waive enforcement of any provision of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of the Agreement. Any such waiver shall not affect Capital Bank's 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.

25. Ownership & License. You agree that Capital Bank 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 Capital Bank's business interest, or (iii) to Capital Bank's actual or potential economic disadvantage in any aspect. 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.

26. Termination. Capital Bank may terminate this Agreement at any time and for any reason.

This Agreement shall remain in full force and effect unless and until it is terminated by Capital Bank. 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 any other agreement with Capital Bank.

27. Entire Agreement; Conflicting Terms. This Addendum forms part of and is incorporated by reference into the OBA. Except as amended by this Addendum, the OBA remains in full force and effect. In the event of any conflict between this Addendum and the OBA, this Addendum shall govern with respect to the Service.