

## CAPITAL BANK NA BUSINESS MOBILE BANKING TERMS AND CONDITIONS

These Services are provided to you by Capital Bank, NA (or “we/us/our”) and powered by a third party’s (“Licensor’s”) mobile technology solution.

Section A of these Terms and Conditions is a legal agreement between you and Capital Bank, NA. Section B is a legal agreement between you and the Licensor.

### **SECTION A DEFINITIONS**

Unless otherwise noted with respect to specific Services, the following terms shall have the following meanings: "Account" means a checking, savings, money market, certificate of deposit or loan account. "Agent" means any director, officer, employee, representative, affiliate, third-party vendor or any other person acting on behalf of the Customer with actual, implied or apparent authority of Customer. Capital Bank, NA may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice. "Authorized Users" means each person(s) authorized (through a document or online instruction of a format required by Capital Bank, NA for such authorization purpose) to act as the Customer's Agent regarding the applicable Services, as well as each person who Capital Bank, NA in good faith believes is such an Agent. "Business Day" means any day on which we are open for business (generally, Monday through Friday, excluding Federal Reserve holidays). "Customer", "you" and "your(s)" mean, individually and collectively, as applicable, the person or business entity (and any parent company, subsidiary or affiliate of the same) and any authorized representatives, signers, and/or users on the Accounts(s) listed on Online Banking, that applies to use Business Mobile Banking for whom Capital Bank, NA provides such Services and each person who uses Mobile Banking with your authorization or with respect to whom you create circumstances that have the effect of granting them access to such Services. By electing to use Mobile Banking, you agree to be bound by these Terms and Conditions, both on your behalf and, if applicable, on behalf of your business as its representatives, signers, and users. "Mobile Banking" means a service that allows you to use a Mobile Device (including, but not limited to, an Android™ phone or an iPhone® to access Capital Bank, NA's Online Banking (referred as Business Capital Express hereinafter), including, but not limited to, through a mobile app or through Capital Bank, NA's mobile optimized internet site. "Mobile Deposit" means use of a mobile app to remotely deposit checks into a deposit account at Capital Bank, NA using the Services and a camera on a Mobile Device to image the check. "Mobile Device" means a mobile device, including, but not limited to, a mobile phone, personal digital assistant, or tablet. "Online Banking" means Capital Bank, NA Business Capital Express services, including, but not limited to, Bill Pay Service (Bill Pay). "Service(s)" means Capital Bank, NA's Mobile Banking including, but not limited to, Mobile Deposit and/or Bill Pay Service (Bill Pay). "We," "us," and "our" mean Capital Bank, NA.

Services are separate and apart from any other charges that may be assessed by your wireless provider. Your wireless provider's standard rates apply to Internet access. We do not charge for any content; however, downloading content may incur additional charges from your wireless provider. Please contact your wireless provider for information about your Internet access and messaging plans. Your wireless provider may impose Internet access, message and/or charge

limitations that are outside of our control, for using this service on your account. All such charges are billed by and payable to your wireless provider. You are responsible for any charges from your wireless provider. We are not responsible for any damages resulting from your failure to comply with any terms and conditions of your wireless provider.

To enroll in Services, you must also be a Business Capital Express subscriber. You acknowledge that you have read and agreed to the terms and conditions of the Business Capital Express Terms & Conditions. You also acknowledge and agree to these Terms and Conditions.

We are not responsible or liable for the acts, omissions, systems or services provided by the Licensor or any of the provisions of Section B below, all of which are the responsibility of the Licensor. References to "Agreement" in Section B below are references to Section B below.

Not all the Business Capital Express services or the functionality on the Capital Bank Online Banking website are available when you use a Mobile Device, and Mobile Banking functionality available to you may vary based on the Mobile Device you use and/or other factors. For those Business Capital Express services available through your Mobile Device, the Business Capital Express services may use different terminology and appear in different formats when viewed through your Mobile Device. You may be required to follow different instructions to access Business Capital Express through your Mobile Device. Processing of payment and transfer instructions may take longer through Mobile Banking.

You represent that you are the owner or authorized user of the Mobile Device you use to receive our Mobile Banking services, and that you are authorized to approve the applicable charges. You agree that we may send messages through your wireless provider to you and that your wireless provider is acting as your agent when sending and receiving messages. We may use the telephone or mobile phone number, email address or other delivery location we have in our records for you or other such information as you may provide to us to contact you for Mobile Banking.

**Warranty Disclaimer. We will not be liable for any delays or failures in your ability to access our Services or in your transmission or receipt of any text or other messages, as access and messaging are subject to effective transmission from your network provider and processing by your Mobile Device, as well as delays and interruptions in the Internet. Services are 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 SERVICES WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SERVICES WILL BE UNINTERRUPTED. YOUR USE OF THE SERVICES AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.**

You understand and agree that Mobile Banking messages may not be encrypted and may contain personal or confidential information about you, such as, your mobile phone number, your wireless providers name, and the date, time, and content of any mobile banking messages, including, but not limited to, account activity and status of your accounts and other information that you or we may provide. We may use this information to contact you and to provide the Services and to otherwise operate, develop and improve the Mobile Banking services. Your wireless provider and other service providers may also collect data from your Mobile Banking usage, and their practices are governed by their own policies. We are not responsible or liable for the acts or policies of such service providers. We reserve the right to disclose any information as necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect our rights or property, or otherwise as required or permitted by our agreement(s) with you and our policies and procedures. When you complete forms online or otherwise provide us with information in connection with our Mobile Banking service, you agree to provide accurate, complete and true information. We will not be responsible or liable for losses or damages arising from any disclosure of your account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, the messages sent through Mobile Banking.

Our Mobile Banking service, as well as the content and materials you may receive or access through your use of the Services, is proprietary to us and our licensors, and is for your personal use only. You will not allow any other person or entity to use the Services through your account or Mobile Device, nor will you damage, impair, interfere with, or disrupt our Mobile Banking service or its functionality.

You agree that if you are using our Mobile Banking service outside the United States, you are, as always, responsible for having access to the appropriate wireless and/or telecommunications networks and you are, as always, responsible for all associated fees and charges.

We reserve the right to alter charges and/or these Terms and Conditions from time to time.

Mobile Banking and Mobile Deposit (**where applicable**) are provided for your convenience and do not replace your monthly account statement, which is the official record of your account.

Mobile Banking and Mobile Deposit (**where applicable**) , including, but not limited to, instructions for payment, transfer and other transactions, may be delayed, interrupted or otherwise negatively impacted by factors relating to your Mobile Device, your Internet service provider, wireless provider or other parties, or due to other reasons. We will not be liable for any such delays, interruptions, or negative impacts to Mobile Banking or Mobile Deposit and you agree that neither we nor our service providers will be liable for any errors or delays in the content, or for any actions taken in reliance thereon.

**Mobile Deposit (where applicable).** Mobile Deposit allows you to make deposits of the electronic image of a check (an "item") to your eligible checking, savings, or money market accounts at Capital Bank, NA by capturing an electronic image of the item with the capture device (such as a camera) on your mobile device and submitting images and associated information to us for processing. The terms and conditions listed above also apply, as applicable, to Mobile Deposit.

**Eligible Items.** 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 in amounts over \$10,000

Checks payable to any person or entity other than you

Checks that have been previously deposited or have been converted to a image replacement document

Checks containing an alteration on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn

Checks payable jointly, unless deposited into an account in the name of all payees

Checks made payable to Cash

Checks that have been previously returned stop payment or account closed

Checks that have previously been submitted through a remote deposit capture service offered at any other financial institution

Post-dated Checks or Stale-Dated Checks

Unsigned Checks or not dated Checks

Money orders, cashier's checks, traveler's checks or savings bonds

Starter Kit Checks

Foreign Checks or checks not payable in United States currency

Checks prohibited by the Capital Bank NA's current procedures relating to the Service of which are otherwise not acceptable under the terms of your Capital Bank NA's account

**Image Quality.** The image of an item transmitted to Capital Bank NA using the Services must be legible and contain images of the front and back of the check. It must not be altered. It must capture all pertinent information from both sides of the Item. Image quality must comply with industry requirements established and updated by the ANSI, Federal Reserve Board and any other regulatory agency.

**Endorsement.** You agree to endorse all items captured and submitted using Mobile Deposit.

**Processing Time and Availability of Funds.** If we receive the image of an Item for deposit on or before 5:00 p.m. Eastern Time on a Business Day (as defined in the Service Agreement), we will consider that day the day of deposit. If we receive the image of an Item for deposit after 5:00 p.m. Eastern Time or on a weekend or on a non-Business Day, we may consider the next Business Day as the day of deposit. Items submitted through Mobile Deposit are subject to the Funds Availability Policy in your deposit account agreement applicable to the relevant account.

**Disposal of Transmitted Items.** You agree to safeguard and keep the original Item for thirty (30) Business Days after you have transmitted the Item. After 30 Business Days following the deposit using Mobile Deposit, if you have verified that the funds have been credited to your account, you agree to properly dispose of it to ensure it is not presented for deposit again.

**Restrictions and Limitations.** You agree:

only Items that originated as paper Items and no third party or electronic checks may be deposited using Mobile Deposit;

after you submit an Item for deposit using Mobile Deposit, you will not redeposit or otherwise transfer or negotiate the original Item;

not to deposit Items into your Account unless you have authority to do so;

after you submit an Item for deposit you are solely responsible for the storage or destruction of the original Items;

the electronic image of the Item will become the legal representation of the Item for all purposes; and

any image we receive accurately and legibly represents all of the information on the front and back of the original Item as originally drawn.

Fees. The bank reserves the right to charge for this service. If there is a fee it will be automatically deducted from your account and you will be notified in writing 30 days prior to any fees assessed.

Bill Pay. You will have the ability to do Bill payment initiation and bill pay approvals if your current online access is enabled to do so. Limits, bill pay vendors, and amounts scheduled (recurring/non-recurring) within online banking will carry over the mobile banking app.

Minimum Hardware and Software Requirements. In order to use Mobile Deposit or any other Services, you must obtain and maintain, at your expense, compatible hardware and software, including, but not limited to, an Internet enabled mobile device as specified by us to use this service.

Eligibility, Termination and Changes. You and your Account must meet the eligibility requirements in order to use Mobile Deposit or any other Services. We have the right to suspend or terminate Mobile Deposit or any other Services at any time and without notice, if you or your account(s) do not meet the eligibility requirements for the service, or if you are in violation of these End User Terms, the Services Agreement or your account agreement with us, or otherwise at our election. We also reserve the right to change the Mobile Deposit service or any other Services at any time without notice to you.

Errors. You agree to notify us of any suspected errors related to your deposit made with Mobile Deposit or related to any other Services immediately and no later than 30 days after the applicable account statement is provided, or as otherwise specified in your account agreement with us. For consumers, the period in which you must notify us may be longer as set forth in the "Disclosure and Agreement for Electronic Funds Transfers for Personal Accounts" in your deposit account agreement.

Indemnification. You agree to indemnify, defend and hold us harmless from and against any claims, losses, liability, cost and expenses (including, but not limited to, reasonable attorneys' fees) arising from your use of Mobile Deposit. This obligation survives termination of these End User Terms, as do any other terms as the context may naturally dictate

Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL \_\_\_\_\_ OR

LICENSOR OR ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES

ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES OR SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY 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, THE LIABILITY OF

\_\_\_\_\_, LICENSOR, OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES OR THE SOFTWARE SHALL NOT EXCEED TEN (\$10.00) DOLLARS IN THE AGGREGATE.

#### SECTION B - END USER LICENSE AGREEMENT TERMS FOR THE DOWNLOADABLE APP

**OWNERSHIP.** You acknowledge and agree that a third party provider or licensor to your financial services provider

("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to mobile banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

**LICENSE.** Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

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

DISCLAIMER WARRANTY. THE SOFTWARE 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 SOFTWARE WILL BE FREE

FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

LIMITATIONS OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR , THE

PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR

PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE

SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY 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, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

US GOVERNMENT RESTRICTED RIGHTS. The Software 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 Software by the United



States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

MISCELLANEOUS. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the state of Maryland excluding that body of laws pertaining to conflict of laws. If any provision 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 Agreement are subject to the exclusive jurisdiction of the courts of Maryland and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation, is 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.

CONTENT AND SERVICES. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

<https://capitalbankmd.com/capital-bank-privacy-policy/>

Fingerprint Login for Mobile Banking.

Fingerprint Login is an optional fingerprint sign-in method for Capital Bank - Rockville, MD Mobile Banking that may be available for certain Apple® (via Touch ID™) and Android® mobile devices that have a built-in fingerprint scanner. To use Fingerprint Login, you will need to first save your fingerprint on your mobile device (for more help with fingerprint scanning, contact the manufacturer that supports your mobile device.). Fingerprints are stored on your device only and Capital Bank - Rockville, MD never sees or stores your fingerprint information. You acknowledge that by enabling Fingerprint Login, you will allow anyone who has a fingerprint stored on your device access to your personal and payment account information within Capital Bank - Rockville, MD Mobile Banking. Capital Bank - Rockville, MD reserves the right to suspend or disable this feature at any time. Fingerprint Login can only be associated with one Mobile Banking username at a time on a device. If your device doesn't recognize your fingerprint, you can sign in using your standard login credentials (e.g. password). To use Fingerprint Login for Mobile Banking on multiple devices, you will need to set it up for each device. You can enable or disable Fingerprint Login anytime within Capital Bank - Rockville, MD Mobile Banking.

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