

## Texas Gulf Bank, N.A.

### **Consumer Mobile Deposit Capture Agreement**

This Consumer Mobile Deposit Capture Agreement for Texas Gulf Bank, N.A. (the "Agreement") is made as of the date you first use the remote deposit capture service ("Mobile Deposit" or "Service"). This Agreement supplements the deposit account agreement(s), Online Banking Agreement, Mobile Banking Agreement and any other agreements (collectively referred to as "Other Bank Agreements") between Texas Gulf Bank, N.A. and customer using the Service. In this Agreement, "you" and "your" refer to the Service user who has enrolled in the Service and the terms "Bank" shall refer to Texas Gulf Bank, N.A. The Service is only for use with respect to your accounts used primarily for personal, family or household purposes and may not be used for any business purposes. Other Bank Agreements you have entered into are incorporated by reference and made a part of this Agreement. With respect to your use of the Service, to the extent that this Agreement has terms, covenants and conditions (collectively referred to as "Terms") contrary to the terms, covenants and conditions of Other Bank Agreements, the Terms of this Agreement shall control. Your use of the Service constitutes acceptance of the Terms of this Agreement.

### **Description:**

The Service is designed to allow you to make deposits to your checking, money market checking or savings accounts from your camera-enabled mobile device capable of capturing check images and information and electronically delivering the items and associated deposit information to the Bank for deposit to your designated account(s). The device must capture an image of the front and back of each check ("Check") to be deposited in accordance with the procedures contained herein; must read and capture the magnetic ink character recognition ("MICR") line on each Check; and must read and capture all such other data and information as is required by this Agreement or Federal Reserve regulations for the processing of these Checks for payment.

The Service converts your scanned Checks into substitute Checks, in accordance with the Check 21 Act and Federal Reserve Board Regulation CC (Vol. 12 of the U.S. Code of Federal Regulations, part 229) promulgated to comply with Check 21 Act, as it may be amended, substituted for, or recodify from time to time ("Reg. CC"), to facilitate the deposit and collections of such Checks. You agree that Bank shall determine in its sole discretion the manner in which Checks are cleared or presented for payment, including without limitation, by substitute Check, ACH or image exchange. Your use of the Service is also subject to, and you agree to comply with, the applicable rules and regulations of the Office of Foreign Assets Control Sanction laws, the USA Patriot Act and the Uniform Commercial Code as enacted in the State of Texas.

To use the Service, you must be a Bank account holder, have agreed to the Online Banking and Bill Payment User Agreement and enrolled in Mobile Banking.

### **Definitions:**

All capitalized Terms in this Agreement shall have the meaning given to them in this Agreement or Other Bank Agreements.

**Hardware and Software requirements:**

You must have a mobile device that is acceptable to us and a wireless plan from a compatible mobile wireless provider ("Mobile Device"). You must also use the operating system(s) and software that satisfies all technical specifications and other requirements that we and/or our service provider(s) establish and specify. We and/or our service provider(s) may change these specifications and/or requirements from time to time. Bank is not responsible for any third-party software you may need to use the Services.

You agree that you will perform, or cause to be performed by properly trained personnel, all vendor recommended maintenance, repairs, upgrades and replacements. Unless otherwise provided in this Agreement, you are solely responsible, at your own expense, for purchasing, installing, operating, testing and maintaining all hardware and software necessary to use the Service. You must install and test your Mobile Device, your system, and any other required hardware and software before you make your first deposit through the Service. You accept any such software "as is" and subject to the terms and conditions of the software agreement that you enter into directly with the third-party software provider at the time of download and installation. We are not responsible for, and you release us from, any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using the Service, e-mail or the Internet. You agree that all images and files transmitted to us through the Service will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems. We may change requirements at any time without prior notice. You may need to upgrade the Mobile App to use the Service.

**Deposit Limits:**

Bank reserves the right to establish and assign to you deposit limits for the Service (including limits on the dollar amount and/or number of Checks that you may transmit through the Service each day) and to modify such limits from time to time in the Bank's sole discretion, and you agree to comply with all such limits. Our current monthly deposit limit is \$5,000.00, and the highest Check amount is limited to \$2,500.00.

**Check Requirements (including image quality):**

Information on the Check

The image of an item transmitted to the Bank using the Service must be legible and contain images of the front and back of the Check. The image quality of the items must comply with the requirements established from time to time by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association. These requirements include, but are not limited to, ensuring the following information can clearly be read and understood by sight review of the Check image: the amount of the Check (both written and numeric); the payee; the signature of the drawer (maker); the date; the Check number; the information identifying the drawer and the paying financial institution that is preprinted on the Check including the MICR line that contains the routing transit number and account number of the account on which the Check is drawn; and all other information placed on the Check prior to the

time of an image of the Check is captured (such as any required identification written on the front of the Check and any endorsements applied to the back of the Check).

#### Types of Checks

You can only deposit Checks using "Mobile Deposit". Bank in its sole discretion may refuse to accept, and you represent and warrant that you shall not use the Service to deposit any Checks that:

- are payable to any person or entity other than you;
- are issued by you, or by any other person on any of your accounts or any account on which you are an authorized signer or joint account holder, or any account of any business entity of which you are a principal, officer or authorized signer; Checks containing any alteration of which you know or believe to be fraudulent or not authorized by the owner of the account on which the Check is drawn;
- any Checks that are not in original form with a signature, such as substitute Checks which have been previously endorsed by a financial institution or remotely created Checks;
- contain obvious alteration to any of the fields on the front of the Check, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the account holder;
- are drawn on a financial institution located outside the United States or are not payable in United States currency; are dated more than six (6) months prior to the date of deposit;
- are missing or have an invalid or incorrect routing number;
- are photocopies or otherwise not original paper Checks when they are scanned;
- are issued to multiple parties;
- are third party or second endorsed Checks;
- do not qualify as "original checks" as defined in Reg. CC;
- are prohibited by Bank's current procedures relating to the Service or are not acceptable under the terms of Other Bank Agreements.

In the event that you breach any of these representations or warranties, you agree to defend, indemnify and hold the Bank and its agents harmless from and against all liability, damages, and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. You further authorize us to charge your account(s) for the amount of any claim, suit or demand that constitutes a breach of warranty claim under the provisions of Check 21 Act, Reg. CC and/or the Texas Uniform Commercial Code.

Image Quality:

Both the front and back of each Check must be transmitted to the bank. The Bank in its sole discretion may refuse to accept Checks that do not meet our image quality requirements. This includes, without limitation Checks where:

- the front and/or back image is too large or too small;
- the front and/or back image is too light or too dark;
- the front and back images have a dimension or other mismatch or discrepancy;
- the image has torn or folded edges, cut corners, or other damage;
- the image does not comply with the standards for image quality established from time to time by the American National Standard Institute (ANSI), the Federal Reserve Board, any other regulatory agency, clearing house or association, or by us, or by applicable law.

Note: Any Check that you attempt to deposit using Mobile Deposit is subject to verification by Bank. We may reject an item for deposit for any reason and will not be liable to you. In such a case, you will need to deposit the item using other means, such as visiting a Bank branch.

**Endorsements and Procedures:**

You agree to restrictively endorse any item transmitted through the Service as "FOR MOBILE DEPOSIT ONLY, Texas Gulf Bank, account # ", Signature or as otherwise instructed by Bank. You agree to follow any and all other Procedures and instructions for use of the Services as the Bank may establish from time to time. 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. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility. For a Check payable to you and any joint owner(s) of your Bank account, the Check must be endorsed by all such payees and you may only use Mobile Deposit to deposit such Check into a Bank account jointly owned by all such payees. If the Check is payable to you or your joint owner, either of you can endorse it. If the Check is made payable to you and any non-joint owner, you may not deposit the Check into your Bank account using the Services.

**Rejection of Deposits:**

After we receive Check images and all other required deposit information from you through the Service, we shall provisionally credit your designated account for the total amount of such Checks. The provisional credit is subject to final payment of the Checks and is also subject to your Other Bank Agreements. You agree that all deposits received by us are subject to verification and final inspection and may be rejected by us in our sole discretion, and you shall be liable to the Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against the Bank relating to such deposits. Bank is not liable for any service or late charges that may be imposed against you due to the Bank's rejection of any Check that you transmit for deposit through the Service. In all cases, you are responsible for any loss or overdraft plus any applicable fees

to your account due to a Check being returned. You acknowledge and agree that, while we normally provide notice of rejected deposits, we may reject any Check transmitted through the Service in our sole discretion without notice to you, and we will not be liable for any such rejection or failure to notify you of such rejection. If we reject a Check for remote deposit, you must physically deposit the original Check.

**Unpaid Checks:**

You are solely responsible for verifying that Checks that you deposit by using the Service have been received and accepted for deposit by Bank. Bank will provide you with notice of any deposits that it is unable to process because Checks were returned unpaid by the payor financial institution. You agree to accept such notices at your e-mail address on file with us, but we may choose any reasonable method for providing such notices to you.

In the event that the Bank credits your account for a Check that is subsequently dishonored and returned, you authorize the Bank to debit the amount of such Check plus any associated fees from the account. To the extent that funds in your account are insufficient to cover such amount, we shall debit the deficiency amount from any of your other account(s) with the Bank in our sole discretion. Our right to charge your account(s) will apply without regard to whether the Check was timely returned or whether there is any other claim or defense that the Check was improperly returned.

Since the original Check is your property, it will not be returned and the Bank may charge back an image of the Check, an ACH debit, or other electronic or paper debit, as applicable, to your account. You further agree that any image that we charge back may be in the form of an electronic or paper reproduction of the original Check or a substitute Check.

You may not use the Service to deposit a substitute Check and you may not deposit the original Check through the Service or in any other manner if you receive a dishonored Check. You agree to comply with any additional instructions we may provide to you in connection with returned Checks.

**Your Duty to Report Errors:**

Bank will provide you with periodic statements that will identify the deposits that you make through the Service. In addition, you may access the Bank's Online Banking service for information about your deposits, return items, deposit adjustments, Checks and other transactions on your accounts. You agree that it is your responsibility to review all such information that the Bank makes available to you in a timely manner to verify that deposits made through the Service have been received and accepted by the Bank and are accurate. Receipt of a Check by the Bank through the Service does not constitute an acknowledgement by the Bank that the Check is error-free or that we will be liable for the Check.

You shall notify us promptly of any errors, omissions, or discrepancies in a deposit related to "Mobile Deposit" as soon as possible after they occur, and in no event later than 30 days after Bank account statement is sent.

Unless you notify us within 30 days, the account statement containing the deposits made through the Services is deemed correct, and you cannot bring a claim against us for any alleged errors.

You may notify us in writing to (Bank physical address) or telephoning us at 800-467-7216. Subject to applicable law, any failure by you to notify the Bank of any error, omission or other discrepancy in accordance with this Agreement and your Bank Account Agreement shall relieve the Bank of any liability for such error, omission or discrepancy.

**Availability of Service/ Contingency:**

The Service is generally available 7 days a week, 24 hours a day. At certain times the Service may not be available due to system maintenance or technical difficulties, including those of the wireless service provider or circumstances beyond our control. In the event you are unable to capture, balance, process, produce or transmit a file to the Bank, or otherwise comply with the terms or the Procedures for any reason, including but not limited to, communications, equipment or software outages, interruptions or failures, you will transport or mail the originals of all Checks to the closest Bank location. The deposit of original Checks at an office of the Bank shall be governed by the terms and conditions of the Other Bank Agreements and not by the terms of this Agreement. Bank is not responsible for providing an alternative method of remote deposit capture if the Service is not available.

**Funds Availability:**

The funds for the Checks that you deposit through the Service may not be immediately available to you. The funds for all accepted Checks will be available in accordance with Bank's Availability Disclosure, as amended from time to time.

**Cut Off Time for Deposits:**

Deposits made via "Mobile Deposit" must be made before 5 PM Central Standard Time in order to be considered deposited same day. Deposits made after 5 PM Central Standard Time will be considered deposited the next business day. A business day is Monday through Friday, excluding Federal holidays.

**Storage, Security and Destruction of the Original Checks:**

You agree that once a Check has been deposited through the Service, the original Check is your property and not the property of the Bank. You shall securely store the original Check for a reasonable period, not to exceed sixty (60) days, after you receive a deposit receipt through the Service that the Check has been accepted.

While the original Check is in your possession, you agree to use a high degree of care to safeguard the original Check and related files against security risks. Security risks include, without limitation, the theft or reproduction of the original Check or unauthorized use of the information on the Check or in the file. You shall take appropriate security measures to ensure that: a) only authorized persons shall have access to the original Check; b) the information contained on the Check shall not be disclosed to unauthorized persons; and c) the original Check will not be duplicated, will not be scanned more than one time, and will not be presented, deposited or negotiated again in any way. Upon request by the Bank you will promptly provide to the Bank a

retained original Check, or a sufficient copy of the front and back of the Check in form acceptable to us, to aid in the clearing and collection process, or to resolve claims by third parties, or for our audit or fraud loss prevention purposes.

After the sixty (60) day retention period expires, you shall destroy the original Check by shredding it or by any other permanent deletion manner that does not allow the original Check to be accessed by an unauthorized person(s) and in a manner that the original Check is no longer readable or capable of being reconstructed. After destruction of an original Check, the image will be the sole evidence of the original Check.

You agree that you will never present the original Check more than one time. You understand that you are responsible if anyone is asked to make a payment based on an original Check that has already been paid.

You agree to be responsible to us for any losses, costs, expenses, and damages we may incur as a result of your failure to comply with the provisions of this Section.

**Prohibition Against Presenting Checks More Than Once:**

Once you have used the Service to deposit a Check you agree not to present, or allow anyone else to present, that original Check or a substitute Check of that original Check again for deposit through the Service or by any other means. If you or anyone else present a Check or substitute Check for deposit more than once, in violation of this Agreement, you agree to indemnify, defend and hold the Bank harmless from and against all liability and damages that may result from any claims, suits or demands from third parties with respect to such Check or substitute Check. You agree that we may debit from your Bank account the aggregate amount of any Checks that are deposited more than once. To the extent that funds in your account are insufficient to cover such amount, we shall debit the deficiency amount from any other of your account(s) with the Bank in our sole discretion.

**Your Authentication Method:**

You agree that we are entitled to act upon instructions we receive with respect to the Service under your Online Banking User ID, PIN or other code or authentication method that we require (these components are referred to herein collectively as your "Authentication Method"). You are liable for all transactions made or authorized with the use of your Authentication Method. We have no responsibility for establishing the identity of any person who uses your Authentication Method. You agree that if you give any component of your Authentication Method to anyone or fail to safeguard its secrecy, you will be in violation of your obligations under your Bank Account Agreement and this Agreement. You agree to take appropriate steps to ensure that all components of your Authentication Method are protected and kept confidential.

You agree to indemnify and release us from any and all liability and agree not to make any claim or bring any action against us, relating to our honoring or allowing any actions or transactions that are conducted under your Authentication Method or acting upon instructions, messages or authorizations provided to us using your Authentication Method.

By accessing the Service with your Authentication Method, you authorize us to complete the requested transaction(s) through the Service. Any requests or instructions we receive from you through the Service using your Authentication Method shall be considered "in writing" under all applicable law and shall have the same force and legal effect as a writing signed by you. This includes, but is not limited to, inquiries, deposit transactions, Checks deposited, Check images, changes to accounts or services or any other communication you provide us through the Service using your Authentication Method.

**Mobile Deposit Security; Data Security:**

You understand that Check images captured using your Mobile Device are stored on the Mobile Device only until the associated deposit has been successfully submitted. 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 at 800-467-7216 and with written notice to Bank Attn: Customer Service, 1717 North Velasco, Angleton, Texas 77515 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.

You agree to protect the confidentiality of your account and account number, your data, and your personal identification information. Notwithstanding our efforts to ensure that the Service is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including e-mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Service or e-mail transmitted to and from us, will not be monitored or read by others.

**Compliance with Law; Prohibited Activities:**

You agree to use the Service for lawful purposes and in compliance with all applicable laws, rules and regulations. You are prohibited from engaging in, and you represent and warrant to the Bank, that you do not and shall not engage in, any business or activity that: a) would result in your being or becoming a money service business that regularly cashes third party checks, sells money orders, or handles wire transfers or other financial services for third parties; b) would result in your accepting restricted transactions in connection with another person in unlawful Internet gambling; c) would result in the Bank being used as a conduit for money laundering or other illicit purposes; or d) would directly or indirectly result in any activity or use of the Service that may be illegal or fraudulent.

**Your Financial Information:**

Bank may request financial and other information from you from time to time in order to evaluate the risks of providing the Service to you. You agree to promptly provide any such financial and other information we request. You authorize us to review your financial information, including consumer reporting agency reports,



before we authorize you to use the Service and for as long as you use the Service. If you do not provide any requested financial or other information, or if we determine that the credit, security or other risks of continuing to provide the Service to you are not acceptable, we may immediately terminate your access to the Service without prior notice.

**Fees and Charges:**

Bank offers the benefits and convenience of "Mobile Deposit" Services to you free. We reserve the right to charge fees for the Services in the future. Your use of the Service after the effective date of any fee changes shall constitute your agreement to such fee changes. You also understand and agree that you are responsible for any wireless service provider charges and any and all fees and charges that you may incur by accessing and using the Service.

**Changes/ Termination of Service:**

We may, in our sole discretion, modify, add or remove portions of the service or end the service at any time without notice. We may turn off the service to you if we suspect fraud, if you misuse Mobile Deposit, have excessive overdrafts or returned items or for other reasons in our sole discretion.

**Cooperation with Investigations:**

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

**Disclaimer of Warranties:**

YOU AGREE YOUR USE OF THE 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. BANK DISCLAIMS ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BANK MAKES NO WARRANTY THAT THE SERVICE (i) WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, (iii) THAT THE RESULTS OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (iv) THAT ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED. IN NO EVENT WILL BANK BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGE ARISING OUT OF THE USE, MISUSE OR INABILITY TO USE THE SERVICE OR FOR ANY LOSS OF DATA, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**Assignment:**

You may not assign any of your rights, duties and obligations under this Agreement. We may assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors, service providers, or other third parties.

**Governing Law:**

This Agreement is governed by, and is subject to the laws of the State of Texas.