

## BANK OF THE WEST

### TERMS AND CONDITIONS

#### MOBILE DEPOSIT CAPTURE SERVICE END USER AGREEMENT

This Mobile Deposit Capture Service End User Agreement (“Agreement”) contains the terms and conditions for the use of the Mobile Deposit Capture service (“Mobile Deposit Capture”) that Bank of the West (hereafter referred to as (the Bank, our, us, or we) may provide to you (you, your, or user). The Agreement supplements the terms of other agreements you have entered into with the Bank, including Deposit Account Agreement and related fee schedule and disclosures that govern the terms, conditions and fees of your deposit account(s) with us, each as may be amended from time to time (such as deposit account agreements, fee schedules and related disclosures being referred to hereinafter individually as an Account Agreement and collectively as the Account Agreements). The terms and conditions of your Account Agreement are incorporated by reference and made a part of this Agreement. In the event of a conflict between the terms of this Agreement and your Account Agreement the terms of this Agreement shall control as it regards the provision of the Service.

- 1. Services.** The Mobile Deposit Capture service provides you the ability to access and make deposits to your designated eligible Accounts using the software provided by the Bank. The Mobile Deposit Capture service is designed to take advantage of The Check Clearing for the 21<sup>st</sup> Century Act and its regulations (collectively “Check 21”). The Mobile Deposit service enables you to use a compatible handheld device to scan an image of original paper checks (“Original Checks”) that are drawn on or payable through United States financial institutions (each a “Check Image”) and to electronically submit the Check Image and associated deposit information to Bank of the West using the software for deposit into a designated eligible account for collection thereafter by Bank of the West.
- 2. Acceptance of these Terms.** By electronically accepting this Agreement, you are agreeing to all of the terms contained within it. This Agreement is subject to change from time to time. We will notify you of any material change. We will provide you with advance notice of any changes to the terms of this Agreement when required to do so by applicable law. Furthermore, Bank of the West reserves the right, in its sole discretion, to change, modify, add, or remove portions from the service. Your continued use of the service after we provide you notice of change will indicate your acceptance of the revised Agreement.
- 3. Fees.** Currently we do not impose any fees for the service. We reserve the right to impose fees for the service in the future and we will notify you of any such fees, in the manner and to the extent required by this Agreement and by law. 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 other fees and charges that you may incur by accessing and using the service.
- 4. Deposit Limits.** We reserve the right to impose deposit limits on the amount(s) and/or number of deposits (over a period of time set by us) that you transmit using the service and to modify such limits 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 be subject to the terms of this Addendum, and we will not be obligated to allow such a deposit at other times.

- For an account that has been opened less than 6 months, the daily dollar deposit limit is \$500 per business day.

**5. Types of Checks.** You may deposit checks using Mobile Deposit Capture, however, there are some checks that you cannot deposit. These include:

- Checks payable to any person or entity other than you.
- Checks containing any alteration of which you know or believe to be fraudulent or not authorized by the owner or the account on which the check is drawn.
- Any checks that are not in original form with a signature, such as substitute checks or remotely created checks, as defined in Reg. CC.
- Traveler’s cheques or money orders.
- Returned checks.
- Postdated checks or stale dated checks (more than 6 months old).
- Checks written off an account at a financial institution located outside the United States.
- Checks not payable in United States currency.

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

**6. Deposit Processing.** Scanning and submitting check image deposits does not constitute receipt of the deposit by Bank of the West. Generally, check image deposits received prior to 3:00 pm., Central Standard Time are processed on the business day of receipt. Any check image deposit received after this time or on Saturdays, Sundays, and holidays when Bank of the West is closed will be processed on the next business day. Acknowledgement that your check image deposit has been received by Bank of the West does not mean that the check image deposit was received error free.

**7. Funds Availability.** Our policy is to make funds from your check deposits available to you the next business day as the day we process your deposit. See preceding section on Deposit Processing. However, all deposits, including mobile deposits, are subject to verification and not available for immediate withdrawal.

**8. Deposit Verification.** You may verify receipt and the amount of your check image deposit credited to your account by reviewing your statement online or transaction activity on your mobile device.

**9. Your Responsibility.**

- You agree that you will use the Mobile Deposit Capture service to scan only original checks payable to and properly endorsed by you by signing your name(s) and writing “For Mobile Deposit Only” under your endorsement, drawn on financial institutions in the United States with a valid ABA/Routing Number and denominated in U.S. Dollars, and intended for deposit by you to your designated account with Bank of the West. All other items may be deposited by alternate methods such as in person.
- You understand that Bank of the West is not obligated to accept for deposit any check image that Bank of the West in its sole discretion determines to be ineligible for the Mobile Deposit Capture service. Ineligible items include: checks images of items drawn on banks outside the

United States, check images that are illegible, images of checks previously converted to Substitute Checks (as defined by Check 21), and check images with unreadable magnetic ink character recognition (“MICR”) information. The quality of any check image must comply with the requirements established from time to time by the Federal Reserve Board, or any other regulatory agency, clearing house or association. You acknowledge and agree that even if Bank of the West does not identify a check image as ineligible, the check image may be returned to Bank of the West because, among other reasons, the check image or any Substitute Check created from the check image is deemed ineligible by the financial institution upon which it is drawn or any intermediate collecting financial institution. Bank of the West’s failure to identify a check image you transmit to Bank of the West as ineligible shall not preclude or limit your obligations.

- You shall securely store each original check for a reasonable period, not to exceed ninety (90) days following receipt and crediting of your check image deposit or as Bank of the West may otherwise instruct. You understand each original check must be fully destroyed following any retention period and that a paper shredder is one method to assure destruction. You are responsible if an original check is misused following submission by check image and its full destruction.

**10. User warranties and indemnification.** You warrant to Bank of the West that:

- You will only transmit eligible items;
- You will not transmit duplicate items;
- You will not deposit, redeposit or present the Original Check with Bank of the West or any other party;
- You will comply with this Agreement and all applicable rules, laws and regulations;
- You are not aware of any factor which may impair the collectability of the item;

You agree to indemnify and hold harmless Bank of the West from any loss for breach of this warranty provision or terms of this Agreement.

**11. Deposit Receipt.** Bank of the West will acknowledge receipt of your Check Image deposit submitted through the Mobile Deposit Capture service and notify you if a Check Image is not eligible for deposit using the mobile application. Bank of the West’s ability to provide the Mobile Deposit Capture service is conditioned upon the availability of the wireless or computer services and systems used in transmitting your request and Bank of the West’s response. Bank of the West shall not be liable or responsible for any loss or damage incurred due to the failure or interruption of the Mobile Deposit Capture service, wireless or computer services, or systems, resulting from the act or omission of any third party or other causes not reasonably within Bank of the West’s control.

**12. Termination.** We may terminate this Agreement at any time for any reason. This Agreement shall remain in full force and effect unless and until it is terminated by us. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use the Mobile Deposit Capture service for any unauthorized or illegal purposes or in a manner inconsistent with the terms of any agreement you entered into with us.

- If you wish to cancel the Mobile Deposit Capture service, you must notify the Bank, and you must also discontinue using Mobile Deposit Capture at that time. You may notify us at

[customerservice@bnkwest.com](mailto:customerservice@bnkwest.com) , or writing to Bank of the West Customer Service Dept., 108 West Northwest Hwy, Grapevine, TX 76051, or telephoning us at 877.310.3511.

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