

Mobile Deposit User Agreement

This Mobile Deposit User Agreement (this "Agreement") contains the terms and conditions for the use of mobile deposit Services and/or other mobile remote deposit Services that BANK OF 1889 or its affiliates ("BANK OF 1889") may provide to its deposit account customers ("Customer" or "you" or "your"). The Consumer Deposit Account and Services Agreement and/or the Commercial Deposit Account Agreement and Services Disclosure (collectively, the "Deposit Agreement") are incorporated by reference and made a part of this Agreement. In the event of conflict or discrepancy between this Agreement and other agreements entered into between you and BANK OF 1889 regarding the subject matter herein, this Agreement shall take precedence.

Services. The mobile deposit services (the "Services") are designed to allow you to make deposits to a qualified BANK OF 1889 checking, savings, or money market account from home or other remote locations by taking pictures of checks or by scanning checks and delivering the images and associated deposit information to BANK OF 1889 or a third-party processor designated by BANK OF 1889.

Acceptance of these Terms. Your use of the Services constitutes your acceptance of this Agreement. This Agreement is subject to change periodically unless specifically prohibited by applicable law. BANK OF 1889 will notify you of any material change either electronically or by physical mail to you at the most current address on record with BANK OF 1889. Notices shall be deemed delivered after one (1) business day if delivered electronically, or after three (3) business days if sent by physical mail. Changes to this Agreement will be deemed effective no less than thirty (30) days after delivery (as calculated by the above mentioned standards). You will have the right to terminate this Agreement prior to the effective date of amendment. After the amendment becomes effective, continued use of the Services by you will indicate consent to be bound by the revised Agreement. Further, BANK OF 1889 reserves the right, at its sole discretion, to change, modify, add, or remove portions from the Services. Your continued use of the Services will indicate your acceptance of any such modifications to the Services.

Limitations of Service. When using the Services, you may experience technical or other difficulties. BANK OF 1889 does not assume any responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and BANK OF 1889 reserves the right to change the qualifications at any time without prior notice. BANK OF 1889 additionally reserves the right to change, suspend or discontinue the Services, in whole or in part, or Customer's use of the Services, in whole or in part, immediately and at any time without prior notice to you.

Hardware and Software. In order to use the Services, Customer must obtain and maintain, at Customer's expense, compatible hardware and software as specified by BANK OF 1889. BANK OF 1889 is not responsible for any third party hardware or software you may need to use the Services. Any hardware or 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 the time of download and installation.

Fees. BANK OF 1889 does not charge a fee for this service. BANK OF 1889 is not liable for any costs you may incur from cellular data networks or other related equipment that may result from usage of this Service.

Eligible items. You agree to photograph or scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). When the images of the front and back of a check are transmitted to BANK OF 1889, they are individually or collectively converted to an electronic image for subsequent presentment and collection. It shall thereafter be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code.

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 payable to any person or entity other than the person or entity that owns the account that the check is being deposited into
- 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 drawn on a financial institution located outside the United States
- Checks that are remotely created checks (as defined in Reg. CC)
- Checks not payable in United States currency
- Checks dated more than six (6) months prior to the date of deposit
- Checks or items prohibited by BANK OF 1889's current procedures relating to the Services or which are otherwise not acceptable under the terms of the Deposit Agreement
- Checks payable on sight or payable through Drafts (as defined in Reg. CC)
- Checks with any endorsement on the back other than that specified in this Agreement
- Checks that have previously been submitted through the Service or through a remote deposit service offered at any other financial institution

Endorsements and Procedures. Unless otherwise instructed by BANK OF 1889, you agree that all checks deposited through the Services must

- a. be signed by all required payees, and
- b. state "Deposit Only FNBNA Consumer Capture"

BANK OF 1889 will not be liable for any loss incurred from a delay or processing error resulting from an irregular endorsement or other markings by you. You agree to follow any and all other procedures and instructions for use of the Services as BANK OF 1889 may establish from time to time.

Receipt of Items. BANK OF 1889 reserves the right to reject any item transmitted through the Services, at BANK OF 1889's discretion and without liability. BANK OF 1889 is not responsible for items BANK OF 1889 does not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from BANK OF 1889 that BANK OF 1889 has received the image. Receipt of such confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. BANK OF 1889 further reserves the right to charge back to Customer's account at any time any item that BANK OF 1889 or its affiliates subsequently determine was not an eligible item. You agree that BANK OF 1889 is not liable for any loss, costs, or fees you may incur as a result of a chargeback of an ineligible item.

Availability of Funds. BANK OF 1889 reserves the right to reject any item transmitted through the Services, at BANK OF 1889's discretion and without liability. BANK OF 1889 is not responsible for items BANK OF 1889 does not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from BANK OF 1889 that BANK OF 1889 has received the image. Receipt of such confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. BANK OF 1889 further reserves the right to charge back to Customer's account at any time any item that BANK OF 1889 or its affiliates subsequently determine was not an eligible item. You agree that BANK OF 1889 is not liable for any loss, costs, or fees you may incur as a result of a chargeback of an ineligible item.

Disposal of Transmitted Items. Upon your receipt of a confirmation from BANK OF 1889 that BANK OF 1889 has received an image that you have transmitted, you agree to retain the check in safekeeping in a secure environment for at least forty five (45) calendar days from the date of the image transmission. After forty five (45) days, you agree to destroy the check that you transmitted as an image, mark it "VOID", or otherwise render it incapable of further transmission, deposit, or presentment. Image quality is reviewed by BANK OF 1889 after submission; however, if the receiving bank does not accept the image, you may be required to present the original check for payment. During the time the retained check is available, you agree to promptly provide it to BANK OF 1889 upon request. BANK OF 1889 assumes no liability for losses you may incur if the receiving bank does not accept your image and you are unable or unwilling to present the original check for payment.

Deposit Limits. BANK OF 1889 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, BANK OF 1889 may reject your deposit. If BANK OF 1889 permits you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and BANK OF 1889 will not be obligated to allow such a deposit at other times. Daily and monthly deposit limits may vary for users of other services provided by BANK OF 1889 or its affiliates.

Presentment. The manner in which the items are cleared, presented for payment, and collected shall be in BANK OF 1889's sole discretion, subject to the Deposit Agreement or other agreements governing your account.

Errors. You agree to notify BANK OF 1889 of any suspected errors regarding items deposited through the Services right away, and in no event later than fourteen (14) days after the applicable BANK OF 1889 account statement is sent. Unless you notify BANK OF 1889 within fourteen (14) days, such statement regarding all deposits made through the Services shall be deemed correct, and you are prohibited from bringing a claim against BANK OF 1889 for such alleged error.

Errors in Transmission. By using the Services you accept the risk that an item may be intercepted or misdirected during transmission. BANK OF 1889 bears no liability to you or others for any such intercepted or misdirected items or information disclosed through such errors.

Image Quality. The image of an item transmitted to BANK OF 1889 using the Services must be legible, as determined in the sole discretion of BANK OF 1889. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by BANK OF 1889, ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association. BANK OF 1889 accepts no liability and makes no guarantee that its image standards will be acceptable to other banks when presented for payment.

CUSTOMER REPRESENTATIONS AND WARRANTIES. CUSTOMER REPRESENTS AND WARRANTS TO BANK OF 1889:

- A. CUSTOMER HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER AND ALL INFORMATION SUPPLIED BY CUSTOMER TO BANK OF 1889 IS ACCURATE AND TRUE;
- B. CUSTOMER WILL PROVIDE ALL REASONABLE ASSISTANCE TO BANK OF 1889 AND ITS SUBCONTRACTORS IN PROVIDING THE SERVICES SET FORTH HEREIN;
- C. CUSTOMER AND ANY AUTHORIZED USERS WILL ONLY USE THE SERVICES FOR LAWFUL PURPOSES AND IN COMPLIANCE WITH ALL APPLICABLE RULES AND REGULATIONS AND WITH BANK OF 1889'S REASONABLE INSTRUCTIONS, RULES, POLICIES, SPECIFICATIONS, TERMS AND CONDITIONS, AND OPERATING PROCEDURES AND WILL NOT VIOLATE ANY LAW OF ANY COUNTRY OR THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY;
- D. CUSTOMER HAS ONLY TRANSMITTED ACCEPTABLE ITEMS FOR DEPOSIT AND HAS HANDLED THE ORIGINAL ITEMS FOLLOWING TRANSMISSION TO BANK OF 1889 AS AGREED TO OR DIRECTED BY BANK OF 1889 AND IN ACCORDANCE WITH APPLICABLE LAW;
- E. CUSTOMER IS A PERSON AUTHORIZED TO ENFORCE EACH ITEM OR IS AUTHORIZED TO OBTAIN PAYMENT OF EACH ITEM ON BEHALF OF A PERSON ENTITLED TO ENFORCE AN ITEM;
- F. THE ITEMS HAVE NOT BEEN ALTERED;
- G. EACH ITEM BEARS ALL APPLICABLE ENDORSEMENTS IN A RESTRICTED FORMAT AS DIRECTED BY BANK OF 1889;
- H. ALL THE WARRANTIES SET FORTH IN AND SUBJECT TO THE TERMS OF 4-207 OF THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF TEXAS, AND AS MAY BE MODIFIED FROM TIME TO TIME, AS WELL AS ANY OTHER APPLICABLE SECTION THEREOF;
- I. THE ELECTRONIC IMAGE PORTION OF EACH ITEM ACCURATELY AND LEGIBLY REPRESENTS ALL OF THE INFORMATION ON THE FRONT AND BACK OF THE ORIGINAL CHECK AS OF THE TIME THE ORIGINAL CHECK WAS TRUNCATED, (2) THE INFORMATION PORTION OF THE ITEM CONTAINS A RECORD OF ALL APPLICABLE MICR-LINE INFORMATION REQUIRED FOR A SUBSTITUTE CHECK, AND (3) THE ITEM CONFORMS TO THE TECHNICAL STANDARDS FOR AN ELECTRONIC ITEM AS SPECIFIED BY BANK OF 1889 FROM TIME TO TIME;

- J. CUSTOMER WILL SUBMIT ONLY ONE ACCURATE AND CLEAR IMAGE OF THE FRONT AND BACK OF EACH ITEM TO BANK OF 1889 ONLY ONE TIME;
- K. CUSTOMER WILL NOT DEPOSIT THE ORIGINAL ITEM AND NO PERSON WILL RECEIVE A TRANSFER, PRESENTMENT, OR RETURN OF, OR OTHERWISE BE CHARGED FOR, THE ITEM (EITHER THE ORIGINAL ITEM, OR A PAPER OR ELECTRONIC REPRESENTATION OF THE ORIGINAL ITEM) SUCH THAT THE PERSON WILL BE ASKED TO MAKE PAYMENT BASED ON AN ITEM IT HAS ALREADY PAID;
- L. THE AMOUNT OF AN ITEM, AND SUCH OTHER INFORMATION CONTAINED IN SUCH ITEM WHICH IS ACCURATE AND COMPLETE. CUSTOMER AGREES THAT THESE REPRESENTATIONS AND WARRANTIES SHALL BE TRUE AND CORRECT AS OF THE DATE OF EACH ITEM AND THAT THE SUBMISSION OF EACH ITEM TO BANK OF 1889 FOR PROCESSING SHALL BE AN ACKNOWLEDGMENT OF EACH SUCH REPRESENTATION AND WARRANTY AS OF THAT DATE.

Cooperation with Investigations. You agree to cooperate with BANK OF 1889 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 Services in your possession and your records relating to such items and transmissions.

Termination. BANK OF 1889 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 BANK OF 1889. 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 the terms of your Deposit Agreement or any other agreement with BANK OF 1889.

Enforceability. BANK OF 1889 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 BANK OF 1889's rights with respect to any other transaction or modify the terms of this Agreement.

Severability. 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.

Ownership & License. You agree that BANK OF 1889 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 Customer's 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 BANK OF 1889's business interests, or
- iii. to BANK OF 1889's actual or potential economic disadvantage in any aspect.

You may use the Services only in accordance with this Agreement. 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.

Security Procedures and Communications. Certain procedures, including the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, tokens and other security devices, systems and software (the "Security Procedures"), designed to verify the origination (but not errors in transmission or content) of instructions, orders and other communications (each, a "Communication") sent between Customer and BANK OF 1889 may be used in connection with the Services. Customer agrees that any such mutually agreed-upon Security Procedures shall be deemed commercially reasonable. BANK OF 1889 shall not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication where BANK OF 1889 reasonably doubts its authorization, authenticity, contents, origination or compliance with the Security Procedures. BANK OF 1889 shall have no duty to discover, and shall not be liable for, errors or omissions by Customer. If BANK OF 1889 complies with the Security Procedures in respect of a Communication, BANK OF 1889 shall be entitled to act on that Communication and shall not be obligated to verify the content of such Communication, establish the identity of the person giving it, or await any confirmation thereof, and BANK OF 1889 shall not be liable for acting on, and Customer shall be bound by, any Communication sent in the name of Customer, whether or not authorized. Whenever the Security Procedures include the assigning to Customer of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, token or similar security device, Customer shall not disclose such security device except to employees or agents authorized to act for Customer in connection with Services. Customer shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify BANK OF 1889 if the confidentiality or integrity of any such security device is breached or threatened. Customer shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Customer's negligence or deliberate acts or otherwise. BANK OF 1889 shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any security devices.

DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF THE SERVICES 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 1889 DISCLAIMS ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BANK OF 1889 MAKES NO WARRANTY THAT THE SERVICES

- i. WILL MEET CUSTOMER'S REQUIREMENTS,
- ii. WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE,
- iii. THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND
- iv. ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.

INDEMNIFICATION. IN ADDITION TO ITS INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, AND EXCEPT FOR LOSSES OR EXPENSES ATTRIBUTABLE TO BANK OF 1889'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, DEPOSITOR AGREES TO INDEMNIFY BANK OF 1889 FOR ANY LOSS OR EXPENSE SUSTAINED (INCLUDING INTEREST, COSTS, ATTORNEYS' FEES AND EXPENSES OF LITIGATION) RESULTING FROM

- i. CUSTOMER'S LACK OF AUTHORITY TO MAKE THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN;
- ii. ANY ACTION TAKEN OR NOT TAKEN BY BANK OF 1889 WITHIN THE SCOPE OF ITS AUTHORITY IN HANDLING AN ITEM;
- iii. ANY WARRANTY REQUIRED TO BE MADE BY BANK OF 1889 WITH RESPECT TO AN ITEM UNDER APPLICABLE LAW OR REGULATION; AND
- iv. YOUR BREACH OF ANY TERMS AND CONDITIONS OF THIS AGREEMENT.

LIMITATION OF LIABILITY. YOU AGREE THAT BANK OF 1889 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 RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES 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 SERVICES, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF BANK OF 1889 HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT WILL BANK OF 1889'S LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES OF ANY KIND EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF ITEMS RECEIVED BY BANK OF 1889 FROM DEPOSITOR FOR MOBILE DEPOSIT SERVICES DURING THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED. DEPOSITOR AGREES THAT THE DOLLAR LIMITATION DESCRIBED IN THIS SECTION IS REASONABLE, EVEN IF ITS ACTUAL DAMAGES EXCEED THIS LIMITATION.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.

Assignment. BANK OF 1889 may assign this Agreement or delegate any of its responsibilities hereunder to a third party without notice to or consent from you. You may not assign this Agreement or delegate any of your responsibilities hereunder to a third party without BANK OF 1889's prior written consent, which consent may be withheld, conditioned or delayed in the sole and absolute discretion of BANK OF 1889.

FORCE MAJEURE. IN NO EVENT SHALL BANK OF 1889 BE LIABLE FOR DELAYS WHICH HAPPEN FOR REASONS BEYOND ITS CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OF CIVIL, MILITARY, OR BANKING AUTHORITIES, NATIONAL EMERGENCIES, RIOTS, WEATHER, UNAVOIDABLE DIFFICULTIES WITH EQUIPMENT, THE UNAVAILIBLTY OF THE INTERNET, ANY ERRORS IN INFORMATION PROVIDED, ANY DIFFICULTIES CAUSED BY AN INTERNET OR OTHER SERVICE PROVIDER OR ANY HARDWARE OR SOFTWARE FAILURE, WHETHER CAUSED BY A VIRUS OR OTHERWISE.

Entire Agreement. This Agreement constitutes the entire agreement between you and BANK OF 1889 regarding the subject matter herein and supersedes existing agreements and all other related communications, written or oral, regarding the subject matter herein.