

## TERMS FOR MOBILE BANKING

This Terms for Mobile Banking (this "Mobile Agreement") is to be agreed to by Fidelity Bank ("Bank," "we," "us," or "our") and the customer of Fidelity Bank desiring to utilize mobile banking services ("you," or "your") prior to use of the mobile banking services.

This Mobile Agreement is incorporated into and made a part of your Fidelity Bank Online Banking Agreement. The mobile banking services are a "Service" provided pursuant to the Fidelity Bank Online Banking Agreement, and each mobile device you utilize for accessing the mobile banking services is a "computer" as such term is used in the Fidelity Bank Online Banking Agreement. Capitalized terms not defined in this Mobile Agreement have the meaning set forth in the Fidelity Bank Online Banking Agreement.

### A. License Terms

1. General. Access to Fidelity Bank's services via your mobile device is powered by the mobile technology solution owned by mFoundry, Inc (this licensor or any subsequent licensor of similar technology to Fidelity Bank, the "Licensor"). Licensor is not the provider of any of the financial services available to you through the Software (defined below), and Licensor is not responsible for any of the materials, information, products or services made available to you through the Software.
2. Ownership. You acknowledge and agree that Licensor is the owner of all rights, title and interest in and to the mobile technology solution made available to you hereunder, including but not limited to any downloaded software and the computer programs contained therein, as well as any accompanying user documentation, and all subsequent copies, updates or versions thereof, regardless of the media or form in which they may exist (all of which is collectively referred to herein as the "Software"). You may not use the Software unless you have first accepted the terms of this Mobile Agreement.
3. License. Subject to the terms and conditions of this Mobile Agreement, you are hereby granted a personal, nonexclusive, nontransferable, limited, royalty free, fully paid and revocable license to use the Software (in machine readable object code form only) in accordance with the terms of this Mobile Agreement and for the sole purpose of enabling you to use and enjoy the benefits of Fidelity Bank's services made available via the Software. This is not a sale of the Software. All rights not expressly granted to you by this Mobile Agreement are hereby reserved by Licensor. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This license may be terminated at any time, for any reason or no reason, by you or Licensor. Upon termination of this Agreement or the license to the Software, you agree to immediately destroy all copies of any Software which had been downloaded to your mobile device or otherwise in your possession or control.
4. Restrictions. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) copy, disassemble, decompile, reverse engineer, make derivative works of or manipulate any technology or data or content of the Software. 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.
5. Updates. The terms of this Mobile Agreement will govern any updates that replace and/or supplement the original Software, unless such update is accompanied by a separate license in which case the terms of that license will govern.

6. Consent to Use of Data. You agree that Licensor may collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of Software updates, product support and other services (if any) related to the Software. Licensor may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies.
7. Export Restrictions. You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.
8. U.S. 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 Mobile Agreement.
9. Disclaimer of 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 MATERIAL OR SERVICES OBTAINED OR ACCESSED VIA THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.
10. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FIDELITY BANK, LICENSOR OR ITS AFFILIATES OR LICENSORS BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, DIRECT, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, 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 LICENSOR'S LIABILITY ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**B. Short Message Service or Text Messaging (SMS) Terms**

1. Charges by Third Parties. The SMS services provided under this Mobile Agreement are separate and apart from any other charges that may be assessed by your wireless carrier for text messages sent to or received from Fidelity Bank. You are responsible for any fees or other

charges that your wireless carrier may charge for any related data or message services, including without limitation for short message service.

2. Content of Text Messages. The SMS services under this Mobile Agreement are provided by Fidelity Bank and not by any other third party. You and Fidelity Bank are solely responsible for the content transmitted through the text messages sent to and from Fidelity Bank. You must provide source indication in any messages you send (e.g., mobile telephone number, 'From' field in text message, etc.).

### **C. Check Deposit Service Terms**

1. Check Deposit Service. The mobile banking check deposit service (the "Deposit Service") is designed to allow you to present an image of a legal representation, as defined by federal law, of a check to be deposited into your Fidelity Bank checking or savings account by using a compatible camera-enabled mobile phone or device to scan original checks and to electronically transmit the images of the checks to the Bank for deposit to your designated account(s). The term "Business Day" means every Monday through Friday, excluding Federal Reserve holidays.
2. No EFT. You acknowledge and agree that no transaction made through or using the Deposit Service is an "electronic fund transfer" as defined by the federal Electronic Fund Transfer Act and/or Regulation E of the Consumer Financial Protection Bureau.
3. Your Responsibilities. As part of the Deposit Service, you must only use official and up to date applications provided by Fidelity Bank. You are responsible for all the data that you submit to us which must accurately represent the information on the original check(s). You agree that the electronic image of the item submitted to the Bank, as defined by federal law, is a legal representation of the check for all purposes, including return check processing.
4. Technical Difficulties; Suspension of Deposit Service. When using the Deposit Service, you may experience technical or other difficulties. We do not assume liability for any technical or other difficulties that you may incur. We reserve the right to change, suspend or revoke services, immediately and at any time without prior notice to you. In the event the Deposit Service is not available to you, you acknowledge that you can attempt to deposit your check at a branch office location, through a participating ATM, or by mail.
5. Hardware and Software. To use the Deposit Service, you must have a supported mobile device with a supported camera, a data plan, and software that meets all technical requirements for the proper delivery of the Deposit Service. You also agree that you may also incur, and shall pay any and all expenses related to the use of the Deposit Service, including, but not limited to, telephone service or Internet service charges.
6. Eligible Accounts. Only Checking and Savings accounts are eligible for the Deposit Service.
7. Charges and Fees. You agree to pay for the Deposit Service in accordance with our current fee schedule and as amended from time to time. You authorize us to automatically charge your account for all such fees incurred in connection with your use of the Deposit Service. If an item you transmit for deposit is dishonored, rejected or otherwise returned unpaid, you agree that we may charge back the amount of the return to the account the check was originally deposited to and you will be assessed a fee in the amount shown on the Bank's current Schedule of Fees and Charges for a returned check. If there are not sufficient funds in your account to cover the amount of the returned check, the account will be overdrawn and you will be responsible for payment. You agree that the Bank may debit any account maintained by you in order to obtain payment of your obligations under this Mobile Agreement. You acknowledge that wireless providers may assess fees, limitations, or restrictions. You agree that you are solely responsible for all such

fees, limitations, and restrictions, and that we may contact you via your wireless device for any purpose concerning your accounts at the Bank, including but not limited to account servicing and collection purposes.

8. Eligible Items. You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC, 12 CFR 229, Availability of Funds and Collection ("Regulation CC"), and only those checks that are permissible specifically by this Mobile Agreement. You can deposit checks payable in U. S. dollars and drawn at any U. S. bank including personal, business and government checks. All such checks must also be payable to, and endorsed by the account holder.
9. Ineligible Items. You agree that you will not use the Deposit Service to scan and deposit any ineligible items including but not limited to the following:
  - Checks or items payable to any person or entity other than you, or to you and another third party.
  - Checks or items containing alteration to any of the fields on the front of the check or item (including the MICR line), or which you know to be suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn.
  - Checks payable jointly, unless deposited into an account in the name of all payees.
  - Checks or items previously converted to a substitute check, as defined in Regulation CC.
  - Checks or items drawn on a financial institution located outside the United States.
  - Checks or items that are remotely created checks as defined in Regulation CC.
  - Checks or items not payable in United States currency.
  - Checks or items dated more than 6 months prior to the date of the deposit.
  - Checks or items on which a stop payment order has been issued or for which there are insufficient funds.
  - Checks with any endorsement on the back other than that specified in this agreement
  - Checks that have previously been submitted through the Deposit Service or through a remote deposit capture service offered at any other financial institution.

In addition to the checks or items listed above, the following specific items are not eligible for the mobile deposit service:

- Canadian checks
- Foreign checks
- U.S. savings bonds
- Treasury Tax & Loan (TTL) payments
- Travelers checks
- Money orders

Nothing in this mobile deposit agreement should be construed to require the Bank to accept any check or item for deposit, even if Fidelity Bank has previously accepted that type or item or check.

10. Image Quality. The image of an item transmitted to the Bank using the Deposit Service must meet, in our sole and absolute judgment, the standards and requirements of legibility that we establish from time to time. The images must also comply with the applicable standards and requirements of American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve Board and /or any other regulatory agency, clearinghouse or association.

11. Availability of Funds. You agree that check images transmitted using the Deposit Service and the funds represented by the checks are not subject to the funds availability requirements of Regulation CC. As a result, the funds for the checks that you deposit through the Deposit Service may not be immediately available to you. To be considered deposited on the Business Day that the check was transmitted, the deposit must be received and accepted by the Bank on or before 5:00 p.m. Eastern Time on a Business Day that the Bank is open (the "Cut-Off Time"). Otherwise, we will consider the deposit to be made on the next Business Day we are open. A deposit is considered received by Bank when a complete copy of the deposit has been written on a Bank electronic storage device in conformity with the Bank's technical and operational requirements. To meet the Cut-Off Time, the deposit must be received by the Bank prior to the Cut-Off Time and successfully pass the edits for conformity with the technical requirements. For accounts that have been open less than 90 days, the funds may not be available until the 2<sup>nd</sup> Business Day after the Business Day that your deposit was made. For accounts opened 90 days or longer, the funds may be available the next Business Day after the Business Day that your deposit was made. In either case, we may not make all of the funds available according to this schedule. If we elect not to make funds available according to this schedule, we will notify you via mail by the Business Day after we receive your deposit. Fidelity Bank may make funds available sooner based on other factors that Fidelity Bank, in its sole discretion, deems relevant.
12. Endorsement Requirements. You agree to endorse all items with your signature and print "For Fidelity Bank Mobile Deposit Only" on all items. The Bank reserves the right to reject all items that are not endorsed as specified. You agree to follow any and all other procedures and instructions for use of the Deposit Service as Fidelity Bank may establish from time to time.
13. Deposit Limits. The Bank reserves the right to establish and assign deposit limits for the Deposit Service (including limits on the dollar amount and/or number of checks that you may transmit through the Deposit Service ) and to modify such limits from time to time in the Bank's sole discretion, and you agree to comply with all such limits. The current daily deposit limit is \$2,500 per Business Day for consumer accounts and commercial accounts. The current limit for deposited items is 50 per month. We may accept or reject any transaction you attempt in excess of these limits in our discretion. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Mobile Agreement, and we will not be obligated to allow such a deposit at other times.
14. Receipt of Items. We reserve the right to reject any item transmitted through the Deposit Service, at our discretion. We are not liable for items we do not receive or for images that are not transmitted completely. An image is considered received when you receive a confirmation screen after submitting your deposit. However, such notification does not mean that the transmission was without error. Once an item is reviewed and approved, your account will be credited based on the terms set forth in the section above entitled "Availability of Funds."
15. Retention and Disposal of Items. You agree to retain each deposit item for seven Business Days after your funds have been posted to your account. Upon receipt of these funds in your account, you agree to mark the item prominently as "Void", and you agree to store each retained item in a secured locked container until proper disposal is performed. You will promptly provide any retained item to the Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any item. Unless otherwise requested by Bank, seven business days after your funds have been posted to your account, you agree to dispose of the item(s) in a way that prevents representing for payment (i.e. shredding).
16. Your Representations and Warranties. You represent warrant to Fidelity Bank that:

- You will only transmit eligible checks for deposit that you are entitled to enforce or are authorized to obtain payment for each check on behalf of a person entitled to enforce such transmitted check.
- Each image of the check you transmit to us is a true and accurate representation 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. The imaged check complies with the requirements of the Mobile Agreement (including but not limited to any endorsement requirements).
- You will not transmit duplicate items.
- You will not re-deposit or re-present the original item.
- You will comply with this Mobile Agreement and all applicable rules, laws and regulations.
- Neither the Bank nor any subsequent transferees of the check or its image will sustain a loss as the result of the fact that an image of the check instead of the original check, was accepted by us through the Deposit Service, presented for payment or returned.
- You agree to indemnify and hold harmless Fidelity Bank from any loss for breach of your representations or failure to comply with the terms of this Mobile Agreement.

**D. Additional Terms**

1. Compliance with Law. You agree not to conduct any transactions that would violate the laws of any state or the United States, including the economic sanctions administered by the U.S. Treasury's Office of Foreign Assets Control. You may not use the Software or any service offered by Licensor or Fidelity Bank to facilitate any activity that would violate applicable law.
2. Other Agreements. This Mobile Agreement are cumulative with and in addition to the terms of the Fidelity Bank Online Banking Agreement any terms of the signature cards or Account agreements for your Account(s) and the applicable Account disclosures, which may be amended from time to time. In the event of any conflict in such other related agreements and disclosure regarding Fidelity Bank's obligations to you, the terms of this Agreement will control.
3. Severability. If any provision of this Agreement should be held to be invalid, illegal or unenforceable, the parties agree that the remaining provisions of this Agreement should be constructed as if such invalid, illegal or unenforceable provision had never been contained herein.
4. Governing Law. This Agreement will be governed by and construed in accordance with federal law and, to the extent applicable, by the laws of the State of Georgia, without reference to its conflict of law provisions. This Mobile 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.
5. Waiver. Licensor and Fidelity Bank reserve the right to waive the enforcement of any of the terms of this Mobile Agreement with respect to any transaction or series of transactions. Any such waiver will not affect our right to enforce any of our rights with respect to other customers or to enforce any of our rights with respect to later transactions with you and is not sufficient to modify the terms and conditions of this Mobile Agreement.
6. Amendments. We may amend this Mobile Agreement from time to time. We will notify you of each revision by electronic delivery, mailing or otherwise delivering such amendment, revised agreement and notice thereof to you in accordance with applicable federal and state laws. If no federal or state law specifically governs the amendment, the amendment shall be effected by mailing or otherwise delivering it to you or posting it in our full-service locations at least ten (10) calendar days prior to the effective date of the amendment. Notwithstanding the foregoing and to the extent permitted by applicable law, we may change any term of this Mobile Agreement

