

MOBILE DEPOSIT CAPTURE AGREEMENT

This Mobile Deposit Capture Agreement, ("Agreement") is the contract which covers your and our rights and responsibilities concerning the Mobile Deposit Mobile offered to you by Continental Bank ("Bank"). The words "we," "us," and "our" mean Continental Bank. The word "account" means any one or more deposit accounts you have with the Bank. By clicking the electronic signature "acceptance" Customer and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments.

The Mobile Deposit Capture is offered for the purpose of converting original checks to substitute checks, as such term is defined in the Check Clearing for the 21st Century Act and Federal Reserve Board Regulation CC ("Check 21"), for deposit with Bank and for processing and presentment to a collecting or paying financial institution. The Mobile Deposit Capture is subject to the following terms and conditions.

1. Mobile Deposit Capture

1.1 Mobile Deposit Mobile Process. Customer will scan checks or drafts ("items") with an Electronic Device using the Continental Bank Mobile Banking App, creating an electronic image and Customer will transmit, using Mobile Banking, an electronic file of such electronic images that the Bank will deposit to Customer's account. The Bank's processing agent shall perform an image quality assessment of scanned checks or items and shall convert items meeting the Bank's required standards into substitute checks to facilitate the deposit and collection of such items. Customer agrees that the manner in which items (e.g., substitute check, image exchange, ACH) are cleared or presented for payment shall be determined by Bank, in its sole discretion. Bank reserves the right to select the clearing agents through which Bank clears items. Customer agrees to be bound by any clearinghouse agreements, operating circulars and image exchange agreements to which Bank is a party.

1.2 Funds Availability. For purposes of determining the availability of funds, checks deposited via Mobile Deposit are considered received by Bank when the Mobile deposit system expressly indicates that the checks were received by or delivered to Bank. Customer agrees that the scanning and transmitting of checks does not constitute receipt by Bank. Generally, checks scanned and transmitted via Mobile Deposit before 3:00 p.m. Mountain Time on a business day (defined as Monday through Friday excluding holidays) will be received by the Bank on that day. For the purpose of establishing funds availability, the Customer's deposits via Mobile Deposit are deemed to be received by the Bank at its office located at the address designated in this Agreement for the delivery of notices to be provided under this Agreement. Acknowledgment of receipt or delivery does not constitute an acknowledgment by Bank that the transmission of a check or items does not contain errors. The Bank may place an immediate hold on checks deposited through Mobile Deposit and the first \$225 of your deposit will be available the day after the day of deposit. Depending upon the type of check and/or amount that you deposit, funds may not be available until the seventh business day after the day of deposit.

1.3 Deposit Acceptance. Customer agrees that Bank may at any time, in its sole discretion, refuse to accept deposits of Checks from Customer via Mobile Deposit. In the event that Mobile Deposit Capture is interrupted or is otherwise unavailable, Customer may, at its option, deposit checks in-person or via mail to the Bank's office.

2. Customer Account

2.1 Customer Account. Customer will designate a Bank checking account as the settlement account to be used for the purposes of settling, in aggregate, the financial transactions requested in connection with the Mobile Deposit Capture. The Bank shall provide Customer with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to the Mobile Deposit Capture. Customer shall be responsible for auditing and balancing of any settlement account.

2.2 Responsibility for Scanning. Customer is solely responsible for scanning deposit items, accessing the Mobile Deposit Capture from the Bank and for maintaining Customer's equipment (Electronic Device). Customer will be responsible for the payment of all telecommunications expenses associated with the Mobile Deposit Capture. Bank shall not be responsible for providing or servicing any Equipment for Customer.

2.3 Responsibility for Check Endorsement. For all mobile check deposits, you must endorse the original paper check with your name and providing: "FOR CONTINENTAL BANK MOBILE DEPOSIT ONLY". If you fail to provide this endorsement, we may refuse the deposit and return it to you and you agree to indemnify the Bank from any liability or loss to the Bank arising from the payment of the original paper check without such required endorsement.

2.4 Deposit Requirements. Customer agrees that it will only use the Mobile Deposit Capture to deposit checks drawn on financial institutions within the United States, excluding its territories. Customer will deposit checks not falling within this requirement in person, or by U.S. Mail accompanied by a deposit slip issued by Bank. Customer agrees that each check it submits for deposit through the Mobile Deposit Capture will meet the image quality standards established in American National Standards Institute's standard X9.37.

2.5 Check Retention & Destruction. Customer agrees that all items belong to Customer and not to Bank and that those items shall be handled in accordance with this Agreement. After receipt by Bank of any transmission by Customer of imaged items for deposit to Customer's account, Bank will acknowledge by electronic means its receipt of such electronic transmission. Customer's electronic transmission is subject to proof and verification. Customer shall retain the original of all imaged items that have been deposited via Mobile Deposit for reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond sixty (60) days from the date processed, and shall properly destroy and dispose of such original checks after such time. During the period that the Customer maintains the original checks, the Customer understands and agrees that it must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including by employees) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Mobile Deposit Mobile Capture) and (ii) unauthorized use of information derived from the original checks. When Customer destroys, and disposes of, the original checks pursuant to the requirements of this Agreement, the Customer understands and agrees that it must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent shredding equipment.)

2.6 Presentment Prohibitions. The Customer shall not present, or attempt to present, or allow others, either directly or indirectly, to present, or attempt to present, for deposit by any means (i) any Substitute Check that has already been presented for deposit via Mobile Deposit Capture or (ii) any original check, the Substitute Check of which has already been presented for deposit via Mobile Deposit. In the event that the Customer, or any third party, presents, or attempts to present, a deposit in violation of this Subsection the Customer agrees to defend, indemnify, and hold Bank and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such Substitute Check or original check. Customer agrees that the aggregate amount of any items which are deposited more than once will be debited from Customer's account, and to the extent funds in Customer's account are insufficient to cover such amount, any balance shall be debited by Bank from any other deposit accounts with Bank in its sole discretion. If such a transfer occurs, appropriate fees, as listed in the Fee Schedule will be applied. Customer further acknowledges that Customer and not the Bank is responsible for the processing and handling of any original items which are imaged and deposited utilizing the Mobile Deposit Capture and Customer assumes all liability to the drawer of any item imaged using the Mobile Deposit Capture or liability arising from the Bank's printing of any substitute check from those images.

2.7 Customer's Representations and Warranties. Customer represents and warrants:

- i. that it will comply with all federal and state laws, and rules and regulations applicable to Online transactions, including those of the National Automated Clearing House for ACH transactions;
- ii. that all Checks scanned through image transport are made payable to Customer;
- iii. that all signatures on each check are authentic and authorized; and
- iv. that each check has not been altered.

In the event Customer breaches any of these representations or warranties, Customer agrees to defend, indemnify and hold 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. Customer further authorizes the Bank to charge its account for the amount of any such demand, claim or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

2.8 Financial Responsibility. Customer is, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds, associated with accessing the Mobile Deposit Capture. The Bank shall not be liable in any manner for such risk unless Bank fails to follow the procedures described in materials for use of the Mobile Deposit Capture. Customer assumes exclusive responsibility for the consequences of any instructions it may give to the Bank, for Customer's failures to access the Mobile Deposit Capture properly in a manner prescribed by the Bank, and for Customer's failure to supply accurate input information, including, without limitation, any information contained in an application.

2.9 Account Reconciliation. Customer will verify and reconcile any out-of-balance condition, and promptly notify the Bank of any errors within the time periods established in the Account Disclosures (exclusive of weekends and applicable holidays) after receipt of the applicable detail report from the Bank. If notified within such period, the Bank shall correct and resubmit all erroneous files, reports, and other data at the Bank's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Bank's error.

3. Bank's Obligations

3.1 Financial Data. The Bank agrees to transmit all the financial data under its control required to utilize the Mobile Deposit Capture selected by Customer and to act on appropriate instructions received from Customer in connection with such Mobile Deposit Capture. The Bank shall exercise due care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the Mobile Deposit Capture by unauthorized persons (and in this connection it is understood and agreed that implementation by the Bank of its normal procedures for maintaining the confidentiality of information relating to its Customers, and where practicable the obtaining by the Bank from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of its obligation so to exercise due care) but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Customer by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the Mobile Deposit Capture. Customer assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the Mobile Deposit Capture or disclosure of any confidential information or instructions of Customer by Customer's employees, agents, or other third parties.

3.2 Mobile Deposit Capture Availability. Customer understands that Mobile Deposit Capture availability is at all times conditioned upon the corresponding operation and availability of those computer Mobile Deposit Capture and systems used in communicating Customer's instructions and requests to the Bank and the Bank's response. The Bank shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by Customer in the event of any failure or interruption of such Mobile Deposit Capture or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Bank.

3.3 Exception Items. When Bank reviews and processes Customer's electronic file, Bank may reject any electronic image that Bank, in its sole discretion, determines to be ineligible for the Mobile Deposit Capture ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. Bank will notify Customer of any Exception Items. Customer agrees that if it wishes to attempt to deposit any Exception Item to any of Customer's account(s) with Bank, Customer shall only do so by depositing the original item on which the Exception Item is based. Customer acknowledges and agrees that even if Bank does not initially identify an electronic image as

an Exception Item, the substitute check created by the Bank therefrom may nevertheless be returned to Bank because, among other reasons, the electronic image is deemed illegible by a paying bank. Bank's failure to identify an Exception Item shall not preclude or limit the obligation of Customer to Bank.

3.4 Reports. Bank shall provide Customer with daily transactions via online banking, detailing items processed, return items, and deposit adjustments.

3.5 Email Notices. If you have provided the Bank your email address for communication, you authorize us to send your Mobile Deposit transaction updates via email including: receipt of a deposit; adjustments of the deposit amount, and rejected deposit transactions.

3.6 Retention of Check Images. Bank will retain any substitute checks it generates for seven (7) years.

4. Mobile Deposit Capture Fees

Currently there is no monthly fee for the Mobile Deposit Capture ("Capture Fee"). Customer agrees to pay all fees and charges for Mobile Deposit Capture (as set forth on the Rate and Fee Schedule). All Mobile Deposit Capture Fees are subject to change by Bank upon thirty (30) days written notice to Customer.

5. Warranties; Disclaimer of Warranties

5.1 Mobile Deposit Capture Warranty. Customer performs the function of converting an original check to a substitute check. Therefore, Customer understands and agrees that it is responsible, to the extent permitted by law, for all warranties and indemnifications set forth in Check 21 applying to any Reconverting Bank and Truncating Bank, as such terms are defined by Check 21, including, without limitation, the obligation to only convert an original check that allows for the creation of a substitute check that clearly and accurately represents the information on the front and back of the original check. Bank and its agents may, but shall have no obligation, to screen items or substitute checks for legal compliance. The Customer agrees to defend, indemnify, and hold Bank and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such substitute checks.

5.2 Disclaimer of Liability. CUSTOMER ACKNOWLEDGES THAT THE MOBILE DEPOSIT CAPTURE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE BANK IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM CUSTOMER'S USE OF THE MOBILE DEPOSIT CAPTURE. THE BANK MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE MOBILE DEPOSIT CAPTURE INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BANK DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE MOBILE DEPOSIT CAPTURE (INCLUDING, WITHOUT LIMITATION, THAT THE MOBILE DEPOSIT CAPTURE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). CUSTOMER FURTHER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND / OR TELECOMMUNICATION LINES OR CIRCUITS. CUSTOMER HEREBY ASSUMES ALL RISKS RELATING TO THE FOREGOING.

6. Bank's Liabilities

6.1 Direct Damages. THE BANK'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY CUSTOMER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE BANK RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR THE MOBILE DEPOSIT CAPTURE RESULTING IN SUCH LIABILITY IN THE SIX-MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. IN NO EVENT SHALL THE BANK BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR

DAMAGE. THE BANK'S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO CUSTOMER IN CONNECTION WITH ANY MATTER.

6.2 Customer's Duty to Report Errors. Customer shall notify Bank of any errors, omissions, or interruptions in, or delay or unavailability of, the Mobile Deposit Capture as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to Customer which reflects the error. Failure of Customer to notify Bank of any error, omission, or other discrepancy within sixty (60) days from the date of a loss shall relieve Bank of any liability for such error, omission, or discrepancy.

6.3 Bank's Performance. Customer acknowledges and agrees that Bank shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by Bank in performing the Mobile Deposit Capture, in accordance with or unintentional deviation from the terms and conditions of this agreement, including exhibits or addenda. Customer acknowledges that Bank's systems and procedures established for providing the Mobile Deposit Capture are commercially reasonable. Customer shall defend, indemnify, and hold Bank harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to the Mobile Deposit Capture.

6.4 Limitation. Bank shall have no liability to Customer, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Mobile Deposit Capture regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Mobile Deposit Capture provided for in this Agreement, and shall have no liability for not effecting an Entry (an electronic debit or credit determined by the positive or negative money value on the ACH transaction), if:

- i. Bank receives actual notice or has reason to believe that Customer has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- ii. The ownership of funds involving an Entry or the Authorized Representative's authority to transmit an Entry is in question;
- iii. Bank suspects a breach of the Security procedures;
- iv. Bank suspects that the Customer account has been used for illegal or fraudulent purposes; or
- v. Bank reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

Bank will not be liable if Customer fails to report timely any error or discrepancy reflected in a Statement prepared by Bank, or if Customer fails to report a breach of a security procedure. If Bank fails to perform under this Agreement in accordance with the standards set herein, Bank's liability for damages, losses, and other compensation owing to Customer shall be limited to the total fees paid by Customer to Bank for the Bank failure to perform resulting in such liability in the two (2) month period preceding the date the claim accrued. Bank shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control. In no event will Bank be liable for any indirect, consequential, punitive, or special damages. Bank will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

7. Force Majeure

The Bank shall not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond the Bank's reasonable control.

8. Termination

Either party may terminate this Agreement upon not less than ten (10) days prior written notice to the other party. Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Agreement, (i) Customer will immediately cease using the Mobile Deposit Capture, and (ii) Customer shall promptly remit all unpaid monies due under this Agreement. The Bank may immediately suspend or terminate Customer's access to the Mobile Deposit Capture in the event that the Bank reasonably determines such suspension or termination is necessary in order to protect the Mobile Deposit Capture or the Bank from harm or compromise of integrity, security, reputation, or operation.

9. Indemnification

Customer agrees to indemnify, defend and hold harmless the Bank and its shareholders, directors, officers, employees and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not limited to, reasonable attorney fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (a) Customer's failure to abide by or perform any obligation imposed upon Customer under this Agreement, (b) the willful misconduct, fraud, criminal activity, intentional tort or negligence of Customer or any of its representatives involving use of the Mobile Deposit Capture; (c) the actions, omissions or commissions of Customer, its employees, consultants and/or agents relating to the Mobile Deposit Capture; and (d) any transmission or instruction, whether or not authorized, acted upon by the Bank in good faith. Customer shall be provided with prompt notice of any claims and given full authority and assistance (at Customer's expense) for the defense of any such claims; provided that the Bank may participate in such defense and settlement with counsel of the Bank's own choosing at the Bank's own expense; provided, further, however, Customer shall have no authority to settle any claim against any Indemnified Party without the prior written consent of such Indemnified Party (which consent shall not be unreasonably withheld).

10. Modification of Mobile Deposit Capture

Bank reserves the right to modify the Mobile Deposit Capture from time to time without making prior notice to Customer, provided, however, that Bank will give Customer at least thirty (30) days' notice prior to making any modifications to the Mobile Deposit Capture that would materially alter their functionality.

11. Notices

Except as otherwise expressly provided herein, the Bank shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter. Except as otherwise provided herein, any notice under this Agreement must be in writing and delivered by express carrier, faxed, or sent by United States registered or certified mail to the address provided by the Customer concurrent with the execution of this Agreement and, if to the Bank, addressed to Continental Bank, 15 W South Temple, Salt Lake City, Utah 84101.

12. Enforcement

You agree to be liable to the Bank for any liability, loss, or expense as provided in this Agreement that the Bank incurs as a result of any dispute involving your accounts or Mobile Deposit Capture. You authorize the Bank to deduct any such liability, loss, or expense from your account without prior notice to you. This Agreement shall be governed by and construed under the laws of the State of Utah as applied to contracts entered into solely between residents of, and to be performed entirely in, such state. Venue shall be proper in Salt Lake County, Utah in either Federal or State court, at the sole option of Continental. The Parties waive any argument that such courts are improper or inconvenient. Defendants consent to personal jurisdiction of the courts of the State of Utah. **Continental and Defendants waive any right to a jury trial with respect to any matter arising under or in connection with this Agreement.** In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this Agreement, the prevailing party shall be entitled, subject to Utah law, to payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this Agreement be determined illegal or unenforceable in any relevant jurisdiction, then such provision may be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other

provision of this Agreement. The signatories to this Agreement hereby warrant, represent and covenant that they have the authority to enter into this Agreement