



# *Mobile Deposit Agreement*

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## **Agreement and Disclosure Statement**

The Platinum Bank Mobile Deposit Agreement (the "Agreement") states the terms and conditions that you agree to by accessing or using the Mobile Deposit Service (the "Service"). When you use the Service, you agree to the terms and conditions outlined in this Agreement. The terms "we", "us", "our", and "Bank" refer to Platinum Bank. "You" and "your" mean each person who establishes a Platinum Bank Online Banking Account with us or who uses or is authorized to use a Platinum Bank Online Banking ID and password to access Mobile Banking and Mobile Deposit. This Agreement supplements the Platinum Bank Deposit Account Terms and Conditions, Online Banking Agreement, and other agreements between the Bank and You. In the event of conflict between this Agreement and any other agreements between You and the Bank, this agreement shall prevail, unless otherwise provided herein.

## **TERMS AND CONDITIONS**

**A. Features.** You or someone you have authorized can perform the following transactions: Deposit checks to your Checking Account, Money Market Savings Account, and Savings Accounts from remote locations by capturing the image of a check and delivering the Electronic Items (Electronic Items" means an image of the front and back of a check, all of the information from the Magnetic Ink Character Recognition ("MICR") line on the original check and the enclosed amount and additional information about the original check,) to Platinum Bank.

**B. Fees.** The Service is provided at no charge to you. We may, upon at least 30 days prior notice to you, to the extent required by applicable law, charge a fee for the use of this Service. If you continue to use the Service after the fee becomes effective, you agree to pay the Service fee that has been disclosed to you and may be amended from time to time. If there is a fee, it will be deducted from the account you use in conjunction with the Service (your "Billing Account"). Message and Data Rates may apply for the use of this service. Platinum Bank is not liable for any data charges that may be charged to you by your phone provider from using this Service.

**C. Hardware and Software.** In order to use the Service, you are responsible for obtaining, installing, maintaining, and operating all software, hardware or other equipment necessary for you to access and use the Service at your expense. This responsibility includes, without limitation, your utilization of up-to-date mobile phones and/or access devices and the best commercially available encryption, antivirus, anti-spyware, and internet security software. Platinum Bank is not responsible for any third-party software you may need to use the Service. Any such 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 time of download and installation.

**D. Cut Off Times.** Deposits can be made up to 9:00pm (CST) on any Business Day to be credited on that same Business Day. Deposits performed after 9:00pm (CST) on a Business Day will be processed on the next Business Day. If you transmit your Electronic item(s) to Platinum Bank before the designated cut off time on any Business Day, we shall review and process your Electronic Item(s) on that Business Day if your deposit has been approved. If your deposit needs further review or approval and is submitted between 5:00pm (CST) and 9:00pm (CST), it will not be processed until the next Business Day. If you transmit your Electronic item(s) to us after the designated cut off time on any Business Day, we shall review and process your Electronic item(s) on the next Business Day. Your Electronic item(s) is deemed to have been received by the Bank when the Service generates a confirmation notification to you. The confirmation from the Bank will provide the status of your deposit (See Receipt of Items). Platinum Bank reserves the right to alter the status of a deposit at any time.

**E. Funds Availability Policy.** Checks deposited and approved via the Service by the Bank's stated cut off time will be considered deposited on that business day. Our funds availability policy is to make funds from your deposit available to you on the first business day after the day, we receive your deposit. In some cases, we may delay your ability to withdraw funds beyond the first business day. We will notify you if we delay your ability to withdraw funds for any reason, and we will tell you when the funds will be available. They will generally be available not later than the seventh business day for your deposit. You acknowledge that all credits given by the Bank for an item are provisional, subject to verification and final settlement. The Bank shall have no liability for the return or refusal of any item.

**F. Limitations of Service.** When using the Service, you may experience technical or other difficulties. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. The Service may have qualification requirements, and we reserve the right to change the qualifications at any time without prior notice. We reserve the right to change, suspend or discontinue the Service, in whole or in part, or your use of the Service, in whole or in part, immediately and at any time without prior notice to you.

**G. Endorsements and Procedures.** You agree to restrictively endorse any item transmitted through the Service. The endorsement shall consist of the signature or endorsement stamp of the person(s) or entity the check is payable to, and below the signature or stamp shall be written: "**For Mobile Deposit Only**" or as otherwise instructed by Platinum Bank. You agree to follow any and all other procedures and instructions for use of the Service as Platinum Bank may establish from time to time. Checks that do not contain

the restrictive endorsement “**For Mobile Deposit Only**” may be rejected. For a check payable to you and any joint owner(s) on your account, the check must be endorsed by all such payees, and you may only use Mobile Deposit to deposit such check into an account jointly owned by all such payees. If check is made payable to you or your joint owner, either of you can endorse and deposit the check into an account jointly owned by all such payees. After you have received confirmation of the deposit, imprint “Electronically Presented” on the front of the check.

**H. Eligible Items.** You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). When the image of the check is transmitted to Platinum Bank it is converted to an 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 previously deposited and returned
- Checks 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 to two or more persons (where one person is not an account holder of the bank)
- Checks that are not in their original form with a signature, such as a substitute check or image replacement document
- Checks drawn on a financial institution located outside the United States.
- Checks not payable in United States currency.
- Checks dated more than 6 months prior to the date of deposit.
- 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 capture service or mobile deposit service offered at any other financial institution.
- Checks that have been deposited in person at any other financial institution
- Items that are in violation of any federal or state law, rule, or regulation
- Savings Bonds
- Cashier's Checks
- Insurance checks
- Government Issues checks
- Travelers checks

**I. Receipt of Items.** We reserve the right to reject any item transmitted through the Service, at our discretion, without liability to you. We are not responsible for items we do 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 the Bank that we have received the image. Receipt of confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. We further reserve the right to charge back to your account at any time, any item that we subsequently determine was not an eligible item. You agree that the Bank is not liable for any loss, costs, or fees you may incur as a result of our chargeback of an ineligible item.

**J. Check Retention.** You shall securely store and retain original checks for a minimum of 7 days after you have received confirmation from the Bank that we have received the image. During the retention period and upon our request, you agree to provide us with the original paper item. After the retention period expires you shall destroy the original checks using a method of destruction that provides commercially reasonable assurance that any sensitive information contained in the checks is protected from unauthorized disclosure.

**K. Deposit Limits.** We reserve the right to and may establish limits on the dollar amount and/or number of items or deposits from time to time.

**L. Errors.** You agree to notify the Bank of any suspected errors regarding items deposited through the Service immediately, and in no event later than 60 days after the applicable Bank account statement is sent. Unless you notify the Bank within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against the Bank for such alleged error.

**M. Errors in Transmission.** By using the Service, you accept the risk that an item may be intercepted or misdirected during transmission. Platinum Bank bears no liability to you or others for any such intercepted or misdirected items or information disclosed through such errors.

**N. Image Quality.** The image of an item transmitted to the Bank using the Service must be legible, as determined in the sole discretion of the Bank. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by the Bank, the American National Standards Institute, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse, or association. You agree that we shall not be liable for any damages resulting from a check or item's poor image quality, including those related to rejection of or the delayed or improper crediting of such a check or item, or from any inaccurate information you supply regarding the check or item.

**O. Returned Checks.** If Electronic Items that are deposited into Your Account(s) are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank for any reason, You understand and agree that the Bank may charge back the amount of the Electronic Item and any related Fees as outlined in Your Deposit Terms and Conditions.

**P. Your Representations and Warranties and Indemnity.** You represent and warrant to Bank and agree that:

- Each Electronic item shall have been captured by you from an original check.
- You shall transmit only Electronic Items to Bank for deposit that comply with the provisions of this Agreement
- Each Electronic Item transmitted by You to Bank contains an accurate representation of the front and back of the original check.
- All information submitted by You to Bank is complete and accurate and complies with the provisions of this Agreement.
- All signatures on the original check from which an Electronic Item is derived are authentic and authorized.
- Each Electronic Item transmitted to Bank is an accurate, authentic replica of an original check, and the Electronic Item has not been altered.
- No check from which an Electronic Item is derived is subject to a defense or claim in recoupment of any party that can be asserted against You.
- You have no knowledge of any insolvency proceedings commenced with respect to the maker or acceptor or, in the case of an unaccepted check, the drawer of any checks from which an Electronic Item is derived.
- You shall not knowingly or unknowingly transmit or cause to be transmitted to Bank any computer virus or any malicious code and shall take commercially reasonable steps to prevent such transmissions from occurring.
- You will not: (1) create a duplicate Electronic Item of an original check; (2) transmit a duplicate Electronic Item to Bank or to any other person for collection or presentment; or (3) deposit or otherwise negotiate the original of any check from which an Electronic Item has been created.
- No subsequent transferee of an Electronic Item, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee, or endorser, will be asked to pay an original check from which an Electronic Item was created or to pay a duplicate of an Electronic Item.
- You shall perform your obligations under this Agreement in accordance with, and shall not perform any acts or omissions that would cause Bank to violate, any applicable rules (including but not limited to applicable rules of trade associations, clearinghouses and payment processors), requirements, laws, regulations, sanctions, executive orders and regulatory guidelines including, but not limited to, the following: U.S. federal or state laws and regulations; foreign laws, regulations and/or directives; the sanctions laws, regulations and executive orders administered by the Office of Foreign Assets Control ("OFAC"); laws, regulations and orders administered by FinCEN; any applicable Rules; Federal Reserve Operating Circulars; and any applicable state laws, regulations, orders or regulatory guidelines.
- You warrant to Bank that the legal amount of the original check is correctly entered for each Electronic Item.
- You shall indemnify and defend and hold Bank, its parent, or their shareholders, directors, employees and agents harmless from and against any and all claims, damages, losses, demands, liabilities and expenses (including reasonable attorneys' fees and litigation expenses) arising directly or indirectly from or relating in any manner to: (i) Your failure to satisfy its obligations under this Agreement; (ii) Your failure to exercise ordinary care in connection with its duties under this Agreement; (iii) Your breach of any warranties and representations in this Agreement and/or any provision in this Agreement; (iv) the dishonor or otherwise return unpaid by the drawer bank, or return by a clearing agent, for any reason, of any check and/or Electronic Item presented to Bank by You; or any action taken by the Bank to collect an instrument; (v) any actions or omissions taken by Bank that were reasonably believed to be taken pursuant to this Agreement or any other action taken or omitted by Bank in good faith pursuant to its responsibilities under this Agreement; (vi) any actions by any agent employed by You that result in a breach of this Agreement by You; (vii) to the extent that it involves Bank, any litigation asserting noncompliance on Your part with applicable rules, laws, regulations or other requirements; and (viii) from any claim of any person that Bank is responsible for any act or omission of You or any other person acting on behalf of You.
- You shall be responsible for and shall indemnify against any acts and omissions of Your agents, service providers, affiliates, offices, employees and any other person or party Bank believes in good faith to be acting on behalf of You to the same extent that it is responsible for and must indemnify against its own acts and omissions pursuant to this Agreement.

**Q. Financial Institution Responsibilities, Liability; Limitations on Liability; Indemnity.**

- In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations and warranties provided by You pursuant to this Agreement and shall not be responsible for the accuracy or completeness thereof. Bank shall not be responsible for or liable for detecting any error of You contained in any Electronic Item transmitted by You. Notwithstanding the fact that Bank may have received and accepted for processing an Electronic Item and provisionally credited a Designated Account(s), You shall remain liable to Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against Bank.
- Bank shall be responsible for performing only the services expressly provided for in this Agreement and shall be liable only for its gross negligence or willful misconduct in performing those services, except as otherwise disclaimed herein or specifically required by law. Clerical errors or a mistake in judgment is not failure to exercise ordinary care. Bank shall not be liable for claims, expenses, losses or damages resulting from Your acts or omissions or alleged acts or omissions or those of any other person, including, without limitation, with respect to any check, the drawer, the payee, any endorser and/or any collecting or returning bank, Federal Reserve Bank, Bank, clearinghouse or payment processor.
- In the event Bank shall be liable pursuant to the provisions of this Agreement, Bank shall be liable only for Your actual damages; in no event shall Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage which You may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by Bank and regardless of the legal or equitable theory of liability which You may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement.

- Without limiting the generality of the foregoing provisions, Bank shall not be liable and shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, error in or inoperability of communication equipment or lines, natural disaster, fire, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall not be liable for and shall be excused from failing to provide the Service if such action or omission would result, in Bank's reasonable judgment, in a violation of any rule, law, regulation, executive order or any requirements of any governmental authority, or cause Bank to engage in an unsafe and unsound practice.
- Bank and You acknowledge and agree that the limitation of liability in this section are a bargained for allocation of risk and liability and agree to respect such allocation of risk and liability. Each party acknowledges and agrees that the other party would not enter into this agreement without the limitations of liability set forth in this section.
- Bank's representations, warranties, obligations and liabilities, and Your rights and remedies, set forth in this agreement are exclusive. Bank makes no other warranty or representation of any kind: (i) with respect to the image capability, quality, or timeliness of any electronic item; (ii) with respect to any software, authorized equipment, and other equipment and hardware that may be required to use the services hereunder; (iii) that the electronic item created by You meet all existing or future image quality assessment and other industry technical standards for electronic items or check images; and (iv) that You will be able to retrieve archived records or usage history or any users of the Services hereunder. You hereby waive and release Bank from all other representations warranties or any nature, obligations, and liabilities, whether expressed or implied, arising by law or otherwise, with respect to the software, documentation, authorized equipment and any and all matters arising under or in connection with this Agreement, including without limitation: (i) any implied warranty of merchantability, fitness for a particular use, purpose or application or other implied contractual warranty; (ii) any implied warranty arising from course of performance, course of dealing or usage of trade; (iii) any warranties of timeliness or non-infringement; and (iv) any other warranty with respect to quality, accuracy or freedom from error. Without limiting the generality of the foregoing, neither Bank nor its licensors warrant that operation of the software, or the authorized equipment will be error-free or uninterrupted.
- You acknowledge that any e-mail systems You use to submit information to Bank or that Bank may use to receive e-mails from You may not be secure. As such, You agree that, to the extent you submit any information to Bank in e-mail communications; such e-mail communications shall not contain any confidential or sensitive information.
- Bank shall be entitled to rely on any written notice or other communication believed by it to be genuine and to have been submitted by or signed by you or an Authorized Representative and any such communication shall be deemed to have been signed by such person.

**R. Amendments.** From time to time, Bank may amend any of the terms and conditions contained in this Agreement, including, without limitation, any Cutoff Time, any security requirements, any qualification limits, and deposit limits. Such amendments shall become effective upon thirty (30) days' prior written notice to You or such earlier or later date as may be stated herein or in Bank's notice to You.

**S. Confidentiality.** Without limiting other confidentiality and nondisclosure provisions in this Agreement, You shall hold all nonpublic information obtained pursuant to this Agreement in accordance with its customary and commercially reasonable procedures for handling highly confidential information and in accordance with any applicable laws, regulations and regulatory guidelines and will only use such information in connection with the services provided pursuant to this Agreement, and in any event may only make disclosure of any such information to the extent required by law (including statute, rule, regulation or judicial process), unless You obtain Bank's prior written consent.

**T. Termination.** You may terminate this Agreement upon ten (10) days written notice to the Bank. Bank reserves the right to terminate this Agreement immediately upon providing written notice of such termination to You. Any termination of this Agreement shall not affect any of Bank's rights and Your obligations with respect to any transactions already in process prior to such termination, or the payment obligations of You with respect to services performed by Bank prior to termination. You must keep designated account(s) open for a period of 7 days after termination of this Agreement. You may terminate your mobile deposit service at any time by deleting the Platinum Banking Mobile App.

**U. Governing Law.** Except where federal law applies, the parties agree that this Agreement shall be governed by and construed in accordance with Minnesota law. In any dispute that may arise out of or in connection with this Agreement or in connection with its subject matter shall be adjudicated in the courts located in the state of Minnesota. You consent and agree to personal jurisdiction of the courts in the State of Minnesota, waive any argument that such a venue is inconvenient, and agree that it shall litigate any and all disputes arising in connection with this Agreement in either the District Court of Hennepin County or the United States District Court for the District of Minnesota.

**V. Waiver of Jury Trial.** You KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVE ANY RIGHT TO TRIAL BY JURY in any dispute, whether sounding in contract, tort, or otherwise, arising out of, or related to in any way the Agreement, the transactions contemplated by this Agreement, or any other instrument, document or agreement executed or delivered in connection herewith. Bank may file an original counterpart or a copy of this Agreement with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.