

## **Terms and Conditions – Mobile Deposit Capture**

The Mobile Deposit Capture service (Mobile Deposit Capture) provides you the ability to access and make deposits to your designated eligible accounts using the Software. Mobile Deposit Capture is designed to take advantage of The Check Clearing for the 21st Century Act and its regulations (collectively "Check 21"). Mobile Deposit Capture enables you to use a compatible handheld device to scan an image of an original paper check ("Original Check") that is drawn on or payable through United States financial institutions (each a "Check Image") and to electronically submit the Check Image and associated deposit information to ProGrowth Bank from your home or other remote locations using the Software for deposit into a designated eligible account for collection thereafter by ProGrowth Bank. A Check Image submitted to ProGrowth Bank electronically for deposit is not deemed received until ProGrowth Bank accepts and confirms receipt of your Check Image deposit.

Your use of Mobile Deposit Capture constitutes your acceptance of these Mobile Deposit Capture Terms and Conditions ("Terms"). These Terms may be revised periodically. You agree that ProGrowth Bank may provide you with all disclosures, notices, and other communications about Mobile Deposit Capture, and any future amendments or changes or additions to this Agreement, in electronic form. ProGrowth Bank will provide all future updates to the Agreement by posting the updated Agreement on the website. At your request, ProGrowth Bank agrees to provide you with a paper copy of this Agreement. You may request paper copies of this Agreement by calling ProGrowth Bank Customer Service at 888-244-3490. Your consent to receive notices and updates in electronic form only will apply for as long as you use Mobile Deposit Capture. You may withdraw your consent at any time by choosing to cancel Mobile Deposit Capture. ProGrowth Bank may amend or change the terms and conditions stated in this Agreement (including changes in the fees and charges hereunder) by giving you notice as required by law or regulation before the effective date of the amendment or change. Amendments may include adding new terms or conditions and deleting existing terms and conditions. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of Mobile Deposit Capture or the safety of ProGrowth Bank's relationship with you or is otherwise required immediately by law or applicable regulation. ProGrowth Bank shall thereafter promptly advise you of any such change in writing.

Your use of Mobile Deposit Capture is subject to the following requirements:

- To access Mobile Deposit Capture you must have or acquire and maintain a compatible handheld device and a wireless plan from a compatible wireless carrier.
- You must request access to, qualify for and receive approval from ProGrowth Bank to use Mobile Deposit Capture.
- You may scan and submit Check Images for deposit to ProGrowth Bank within the dollar limits ("Deposit Limits") established for you by ProGrowth Bank. ProGrowth Bank reserves the right to limit the frequency and dollar amount of deposits submitted through Mobile Deposit Capture. If you exceed the Deposit Limits established for you, ProGrowth Bank may in its sole discretion accept or refuse the Check Image deposit. If at any time ProGrowth Bank accepts a Check Image deposit that exceeds your Deposit Limits, ProGrowth Bank will have no obligation to do so in the future. ProGrowth Bank may at any time at its sole discretion raise or lower your Deposit Limits.
- By requesting access to Mobile Deposit Capture, you authorize ProGrowth Bank to provide you with access to all of the eligible accounts you designate to participate in Mobile Deposit Capture. The following account types are currently eligible for Mobile Deposit Capture: Checking, Savings, and Money Market Accounts.

## **Fees**

All fees and charges related to any account you access with Mobile Deposit Capture as stated in the applicable Service Fee Schedule for the account will remain in effect when using Mobile Deposit Capture. The monthly fees and charges, if any, for the use of Mobile Deposit Capture are found in the applicable Service Fee Schedule. Your mobile carrier may charge access fees depending upon your individual plan. Check with your carrier for specific fees and charges that may apply.

If a check that was deposited with Mobile Deposit Capture is returned to ProGrowth Bank for any reason, such as for non-sufficient funds, you agree that we may charge your account for any returned item fees as listed in the Service Fee Schedule.

## **Funds Availability**

Scanning and submitting Check Image deposits does not constitute receipt of the deposit by ProGrowth Bank. Generally, Check Image deposits received prior to 2:00 p.m., Central Standard Time are processed on the Business Day of receipt. Any Check Image deposit received after this time or on Saturdays, Sundays, Christmas Eve, and holidays when ProGrowth Bank is closed will be processed on ProGrowth Bank's next Business Day. Acknowledgment that your Check Image deposit has been received by ProGrowth Bank does not mean that the Check Image deposit was received error free.

You may verify receipt and the amount of your Check Image deposit credited to your account by reviewing your transactions online or by calling ProGrowth Bank Customer Service at 888-244-3490.

## **Endorsement**

You agree that you will use Mobile Deposit Capture to scan only Original Checks payable to and properly endorsed by you and intended for deposit by you to your designated account with ProGrowth Bank. All other items may be deposited by alternate methods such as in person or by mail including a completed account deposit slip.

Before capturing a picture of the Original Check, you shall endorse the Original Check with the account owner's name and the legend "For Mobile Deposit Only." Endorsements must be made on the back of the check within 1½ inches from the top edge, although we may accept endorsements outside this space. A check payable to two payees must be endorsed by both payees. If the check is payable to you or your joint account owner, either of you can endorse it. If the check is made payable to you and your joint account owner, both of you must endorse the check. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility.

## **Eligible Items**

You understand that ProGrowth Bank is not obligated to accept for deposit any Check Image that ProGrowth Bank in its sole discretion determines to be ineligible for Mobile Deposit Capture.

Ineligible items include:

- Money Orders, Savings Bonds, Credit Card Advance Checks, or Traveler's Checks
- Third Party Checks (checks originally made payable to a party other than you)
- Checks payable jointly, unless deposited into an account in the name of all payees
- Checks that have been altered, 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
- Check images of items drawn on banks located outside the United States

- Checks that are not payable in US currency
- Check images that are illegible
- Check images previously converted to Substitute Checks (as defined by Check 21)
- Checks that are authorized over the phone and remotely created
- Check images with unreadable magnetic ink character recognition ("MICR") information
- Checks previously returned as unpaid
- Checks with any endorsement on the back other than that specified in this agreement
- Checks that have previously been submitted for deposit through a Mobile Deposit Capture service at any other financial institution or with ProGrowth Bank

The quality of any Check Image must comply with the requirements established from time to time by American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association.

You acknowledge and agree that even if ProGrowth Bank does not identify a Check Image as ineligible, the Check Image may be returned to ProGrowth Bank because, among other reasons, the Check Image or any Substitute Check created from the Check Image is deemed ineligible by the financial institution upon which it is drawn or any intermediate collecting financial institution. ProGrowth Bank's failure to identify a Check Image you transmit to ProGrowth Bank as ineligible shall not preclude or limit your obligations.

#### **Retention**

Upon confirming that the funds have been credited to your account (typically, funds are credited within 24 hours) you agree to clearly mark the original paper check that has been deposited with Mobile Deposit Capture and you agree never to re-present the item. You agree that, 60 days after deposit, you will shred or otherwise properly dispose of the item to ensure that it is not re-presented for payment. During the time the retained check is available, you agree to keep it in a secure location and promptly provide it to ProGrowth Bank as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any item, or for the Bank's audit purposes. If you are not able to provide the check, we reserve the right to reverse the amount of the check from your account. You are responsible if an Original Check is misused following submission by Check Image deposit and its full destruction.

#### **Limitations on Service**

ProGrowth Bank's ability to provide Mobile Deposit Capture is conditioned upon the availability of the wireless or computer services and systems used in transmitting your requests and ProGrowth Bank's response. ProGrowth Bank shall not be liable or responsible for any loss or damage incurred due to the failure or interruption of Mobile Deposit Capture, wireless or computer services, or systems, resulting from the act or omission of any third party or other causes not reasonably within ProGrowth Bank's control. Mobile Deposit Capture has qualification requirements, and ProGrowth Bank reserves the right to change the qualifications at any time without prior notice. ProGrowth Bank reserves the right to change, suspend or discontinue Mobile Deposit Capture, in whole or in part, or your use of Mobile Deposit Capture, in whole or in part, immediately and at any time without prior notice to you.

### **User Obligations, Warranties and Indemnification**

By use of Mobile Deposit Capture you make the following representations and warranties:

- You shall not alter any Original Check or Check Image and shall review the Check Image to ensure that it accurately represents all of the information on the front and the back of the Original Check at the time you scanned the Check Image.
- You shall submit to ProGrowth Bank only Check Images that are suitable for processing, including, but not limited to, Check Images that are legible and contain machine-readable MICR data.
- You shall retain and destroy the Original Check as stated above.
- You shall only submit items with the proper endorsement as stated above.
- You shall not submit to ProGrowth Bank or to any other person or entity for deposit or credit any Original Check if a Check Image of the Original Check has already been submitted and accepted for deposit into your account with ProGrowth Bank or which you previously submitted to and was accepted by any other person or entity for deposit.
- You shall not deposit into your account with ProGrowth Bank or any other deposit taking institution, or otherwise negotiate or transfer to anyone, any Original Check that you submitted as a Check Image deposit to ProGrowth Bank, unless following receipt of your submission, ProGrowth Bank notifies you that the Check Image is ineligible and not accepted for deposit or that the Check Image or any Substitute Check created from the Check Image is refused by the financial institution upon which it is drawn.
- You shall indemnify, defend, and hold harmless ProGrowth Bank and its agents from and against all liability, damage and loss arising from any claims, suits, or demands, brought by third parties with respect to any Check Image, Substitute Check, or Original Check processed through Mobile Deposit Capture as described above.
- You shall use Mobile Deposit Capture only for your own personal, home office, or small business use in accordance with the terms of this Agreement. You shall not make Mobile Deposit Capture available or transfer your rights to use Mobile Deposit Capture for the benefit of any third party.

### **The following provisions are applicable to Business Accounts:**

"Business Accounts" mean sole proprietorships, partnerships, limited liability companies, corporations, and other forms of business organizations that are not "consumer" accounts and are not maintained primarily for personal, family, or household purposes.

- For Business Accounts using Mobile Deposit Capture, ProGrowth Bank is not responsible for any loss, injury or damage, whether direct, indirect, special, consequential, exemplary, economic or otherwise, caused by Mobile Deposit Capture or the use of Mobile Deposit Capture except as otherwise expressly provided for in this Agreement or by applicable law. By using Mobile Deposit Capture to access your Business Accounts, you are responsible for any unauthorized use of Mobile Deposit Capture and any loss or damages incurred due to the unauthorized access to your Business Accounts.
- If your deposit activity through Mobile Deposit Capture exceeds your Deposit Limits, ProGrowth Bank reserves the right to disable your access to Mobile Deposit Capture and provide you with information on other business banking electronic deposit options that may be available to you.
- If any person with authorized access through Mobile Deposit Capture to conduct transactions on any Business Account is no longer authorized, it is your responsibility to notify ProGrowth Bank. ProGrowth Bank shall not be liable or responsible to you for any transactions conducted on a Business Account by any person whose authority to conduct transactions is no longer in effect until ProGrowth Bank is expressly notified.

**DISCLAIMER OF WARRANTIES**

YOU AGREE YOUR USE OF MOBILE DEPOSIT CAPTURE 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. PROGROWTH BANK 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. PROGROWTH BANK MAKES NO WARRANTY THAT MOBILE DEPOSIT CAPTURE (i) WILL MEET YOUR REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, (iii) THAT THE RESULTS OBTAINED FROM MOBILE DEPOSIT CAPTURE WILL BE ACCURATE OR RELIABLE, AND (iv) THAT ANY ERRORS IN MOBILE DEPOSIT CAPTURE OR TECHNOLOGY WILL BE CORRECTED. IN NO EVENT WILL PROGROWTH BANK BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGE ARISING OUT OF THE USE, MISUSE OR INABILITY TO USE MOBILE DEPOSIT CAPTURE OR FOR ANY LOSS OF DATA, EVEN IF PROGROWTH BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.