

Capital Bank Individual Online Banking Agreement

What This Agreement Covers

This Agreement between you and Capital Bank, SSB (Capital Bank) governs the use of Online Banking services (the "Agreement"). These services permit Capital Bank customers (consumers, sole proprietors and other business customers) to perform a number of banking functions through the use of a computer or, for some functions, a mobile device (e.g., tablet or smartphone). Unless indicated otherwise by the context, "linked Capital Bank accounts" or "linked accounts" refers to all of your accounts with Capital Bank or its affiliates that you have linked to Online Banking.

Accepting the Agreement

When you use any of the Online Banking services described in this Agreement, or authorize others to use them, you agree to the terms and conditions of this entire Agreement and to those of any related agreements governing any particular services provided through Online Banking.

Relationship with Other Agreements

Your use of Online Banking services may also be affected by the agreements between us for your linked Capital Bank accounts or for other services provided to you by the Bank or its affiliates ("Services"). When you link an account to Online Banking services, you do not change the agreements you already have with us for that account. You should review those agreements for any applicable fees, for limitations on the number of transactions you can make, and for other restrictions that might impact your use of an account with Online Banking.

To the extent that any provision in this Agreement, other than a choice of law or venue provision, conflicts with any provision of any other underlying service or account agreement between us for your linked Capital Bank accounts, the provision in the underlying service or account agreement will be the controlling provision. However, if the choice of law or venue provision in this Agreement conflicts with the choice of law or venue provision in any other underlying Service or Account agreement, the choice of law or venue provision in this Agreement will control.

Online Banking for Consumers and Businesses

You may use Online Banking to:

- Transfer funds between your linked Capital Bank accounts (or between accounts at other institutions) on either a one-time or recurring basis, including as a payment to a linked installment loan or mortgage.
- Transfer funds from your linked Capital Bank Account to Capital Bank deposit accounts of other individuals.
- View current balance information for your linked Capital Bank accounts.
- Review available transactions for your linked accounts.

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- Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, requesting copies of monthly checking or saving statements, stopping payment on checks, changing address and phone, and changing your Online ID and Online passcode.
- Send us secure online mail messages and questions regarding your Online Banking service.

Some of the above services may not be available for certain accounts or customers.

Bill Payment

In addition to the Online Banking features listed above, Capital Bank customers with eligible deposit accounts may also use the optional Bill Payment Service (“Bill Payment”).

If you are a Capital Bank customer with a deposit account, you may use Bill Payment to:

- Make one-time or recurring payments online from your linked checking account(s), and money market deposit account(s) to companies or individuals (“Payees”) that you select.
- Use the e-Bills feature to:
 - Receive bills from participating Payees
 - View Payee bill summary and bill detail information.
- See the Terms and Conditions for Bill Payment at the following link for more detailed information: <https://www.capitalbankep.com/important-disclosures.aspx>

Bill Payment Processing

Capital Bank customers with a deposit account may use Bill Payment in the following manner:

- Payments can be scheduled from linked checking and money market savings accounts.
- Payments can be scheduled from a personal checking or money market savings account maintained at another financial institution that you have added through Bill Payment. By doing so, you certify that any account you add through Bill Payment is an account from which you are authorized to make payments, and any payment you make using the Bill Payment will debit an account that you are legally authorized to use.
- When you add an account maintained at another financial institution, you do not change the agreements you have with that financial institution for that account. You should review those agreements for any applicable fees, for limitations on the number of transactions you can make, and for other restrictions that might limit your use of such an account with the Bill Payment.
- Payments can be entered as a one-time transaction, recurring transactions, or as payments that are automatically scheduled upon the receipt of an e-Bill.

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- Payments entered on our system before 5:00 p.m. MST on a bank business day will be scheduled and begin processing on the same bank business day. Payments that are entered after this cut-off time or on a day that is a non-bank business day will be scheduled and processed the next bank business day.
- Scheduled recurring payments that fall on a weekend or a non-bank business day will be processed on the prior bank business day.
- You authorize us to make payments in the manner we select from the following methods, among others:
 - Electronic Transmission
 - Electronic-to-Check Payment
 - Laser Draft Payment
- For all details relating to terms and conditions of Bill Payment, please visit the following link: <https://www.capitalbankep.com/important-disclosures.aspx>

E-Bills

E-Bills is a feature of Bill Payment that enables you to receive bills electronically from participating Payees.

- Approval of e-Bills
 - Participating Payees establish their own criteria for reviewing requests to receive e-Bills and have sole discretion to accept or decline your request. We do not participate in this decision.
- Accessing e-Bills from a Third Party
 - In some cases we obtain the e-Bill from the web site of the Payee. To do so, we will ask you for information needed for this purpose, such as any required password. When you provide this information, you authorize us to access the third party web site to retrieve the account information on your behalf, and you appoint us your agent for this limited purpose.
- Timely Delivery and Content of e-Bills
 - We take no responsibility if (a) a Payee does not provide the necessary data to forward an e-Bill in a timely manner, or (b) the content or data contained in the e-Bill is not accurate or complete. If you do not receive an e-Bill, or if the e-Bill contains inaccurate or incomplete information, it is your responsibility to contact the Payee directly. We are not responsible for any late charges or other adverse consequences. Any questions regarding the contents of your e-Bill should be directed to your Payee.
- Stop e-Bills

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- All parties have the right to cancel the service at any time. We will notify you if Capital Bank or a Payee discontinues e-Bills. If you request that an e-Bill be discontinued, we require seven (7) bank business days for the Payee to receive and process the request.
- Privacy
 - When you establish e-Bills with a participating Payee you will provide certain information that will be forwarded onto the Payee to complete your enrollment. If you have concerns about the future use of this information you should contact your Payee directly.

Participation by Payees

Occasionally a Payee may choose not to participate in Bill Pay, or may require additional information before accepting payments. If the Payee refuses to accept an electronic or check payment from the Bank, or if we determine that the Payee cannot process payments in a timely manner, we may decline future payments to this Payee. In the unlikely event that this occurs, we will promptly send you a notice. Any obligations that you wish to pay through Online Banking with Bill Pay must be payable in U.S. dollars to a Payee located in the United States. We reserve the right to restrict categories of Payees to whom payments may be made using the service. You should not use the service to make:

- Tax payments
- Court-ordered payments
- Payments to settle securities transactions

PopmoneySM

In addition to the services listed above, PopmoneySM allows you to send money from your Capital Bank checking or savings account to another Capital Bank customer or a customer of another U.S.-based bank by using a recipient's email address or mobile phone number. Another Capital Bank customer or a customer of a different U.S. based bank may also send money to your personal or small business account using your email address or mobile phone number. Please note that there are dollar amount and other limits for these transfers that may differ from the other Services.

- For more detailed information on PopmoneySM, please see the following Terms and Conditions at the link provided here: <https://www.capitalbankep.com/important-disclosures.aspx>

Description of PopmoneySM Service and Consent

PopmoneySM allows you to send money from your Capital Bank personal checking or savings

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account to another Capital Bank customer or a customer of another U.S.-based bank by using a recipient's email address or mobile phone number. Another Capital Bank customer or a customer of a different U.S.-based bank may also send money to your personal or small business account using your email address or mobile phone number. In order to send or receive money transfers, you must register through Online Banking from your computer or Mobile Banking from your mobile device. Recipients of your money transfers must also register with Capital Bank or another bank participating in PopmoneySM. Once registered, you may send a money transfer using Online Banking by entering the email address or mobile phone number of the recipient. In addition, money sent to your email address or mobile number will be deposited into the personal or small business account you designated when you registered for the service. By participating in PopmoneySM, you are representing to us that you are the owner or you have the authority to act on behalf of the owner of the mobile phone number or email address you are using to send or receive messages regarding money transfers.

In addition, you are consenting to the receipt of emails or automated text messages from Capital Bank, or its agent, including text messages initiated by an auto-dialer, regarding the transfers. You represent to us that you have also obtained the consent of the recipients of your intended transfers to the receipt of such emails or automated text messages, including text messages initiated by an autodialer.

For more detailed information concerning PopmoneySM, please visit the following link to view all Terms and Conditions of PopmoneySM: <https://www.capitalbankep.com/important-disclosures.aspx>

Account Alerts

We provide customizable alerts to share information with you regarding your accounts (“Alerts”).

1. Alerts are sent to you following important account activities or when certain changes are made online to your Online Banking account, such as a change in your email or home address, telephone number, Online ID or passcode, insufficient funds, or irregular card activity. Although you may have the option to suppress some of these Alerts, we strongly recommend that you do not do so, since they provide important information related to your online security or account activities.
2. Alerts are subject to the following:
 - We may add new Alerts from time to time, or cancel old Alerts. We usually notify you when we cancel Alerts, but are not obligated to do so.
 - Alerts will be sent to the email address you have provided as your primary email address for Online Banking. You can also choose to have alerts sent to a secondary email address, a mobile device that accepts text messages, or a mobile device that can receive our Alerts. If your email address or your mobile device's number changes, you are responsible for informing us of that change. While

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Capital Bank does not charge for the delivery of the Alerts, please be advised that text or data charges or rates may be imposed by your carrier. Changes to your primary and secondary email addresses will apply to all of your Alerts.

- You understand and agree that your Alerts may be delayed or prevented by a variety of factors. We do our best to provide Alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any Alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any Alert; for any errors in the content of an Alert; or for any actions taken or not taken by you or any third party in reliance of an Alert.
- Because Alerts are not encrypted, we will never include your passcode or full account number in them. However, Alerts may include your name and some information about your accounts. Depending upon which Alerts you select, information such as your account balance may be included. Anyone with access to your email or mobile device will be able to view the contents of these Alerts.

Transfers

- Processing of Transfer Requests
 - Transfers can be made in two ways, on a one-time or on a recurring basis. One-time transfers may be initiated at the time of the transfer or scheduled for a future date. The recurring transfer feature may be used when a set amount is transferred at regular intervals. For example, a \$100 transfer from a checking to a savings account which occurs every two weeks.
 - One-time transfers can be made from a linked Capital Bank checking, savings, or money market account to most linked Capital Bank accounts.
 - Scheduled and recurring transfers can be made from a linked Capital Bank checking, savings, money market, or credit card account to a linked checking or savings account.
 - Transfers can be made from a linked Capital Bank checking, savings, money market or line of credit account to most of your other checking, savings, or money market accounts.
- Scheduled and Recurring Transfers
 - Transfers scheduled for a weekend or a non-bank business day will be processed on the prior bank business day. All other scheduled and recurring transfers will be processed from the funding account at the beginning of the bank business day requested.

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- For more detailed information on the A2A Transfer Service, please see the following Terms and Conditions at the link provided here:
<https://www.capitalbankep.com/important-disclosures.aspx>

Transfers from Savings and Money Market Deposit Accounts

Federal regulations and your Deposit Account Agreement impose limits on the number of certain types of withdrawals and transfers you can make each month from a savings and money market deposit account. You can make no more than a total of six (6) automatic or preauthorized transfers, telephone transfers, or Online Banking transfers or payments from a savings or money market deposit account during each monthly statement cycle (each month for savings accounts with a quarterly statement cycle). If checks or debit cards are allowed on the account, no more than three of the six (6) transfers may be made by debit card purchase, check, or similar order. If you exceed these limits on more than an occasional basis, we may convert your account to another type of account and your account may no longer earn interest.

Each transfer or payment through the Online Banking services from your savings or money market deposit account is counted as one of the six (6) limited transfers that you are permitted each statement period. We recommend that you not use a savings or money market deposit account as your bill payment account because of these limits on transfers. Please review your Deposit Account Agreement for more information.

Transfer/Payment Authorization and Sufficient Available Funds

- You authorize Capital Bank to withdraw, debit or charge the necessary funds from your designated account in order to complete all of your designated transfers and payments.
- You agree that you will instruct us to make a withdrawal only when a sufficient balance is or will be available in your accounts at the time of the withdrawal.
- The completion of a transfer or payment is subject to the availability of sufficient funds (including any overdraft protection plans) at the time the transaction is posted. If enough funds to complete the transfer or payment are not available, we may either (i) complete the transaction and overdraw the account or (ii) refuse to complete the transaction. In either case, we may charge an insufficient funds, returned item, overdraft, or similar fee. Please refer to your Deposit Account Agreement for details. If you schedule a payment from an account maintained at another financial institution and there are insufficient funds in that account, you may be charged a fee by that financial institution.
- At our option, we may make a further attempt to issue the payment or process the transfer request.

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- Capital Bank is under no obligation to inform you if it does not complete a payment or transfer because there are insufficient funds or insufficient credit in your account to process the transaction. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Online Banking.

Limitations and Dollar Amounts for Transfers and Payments

Please see the Terms and Conditions of the A2A Transfer Service at the following link for detailed information on limitations for transfers and payments:

<https://www.capitalbankep.com/important-disclosures.aspx>

Stopping Preauthorized Payments

If you have told us in advance to make regular payments out of your account, you can stop any of these payments by calling us at (855) 881-6790, or writing to us at 8700 Montana Avenue, El Paso, TX 79925, to request a payment stop at least three (3) bank business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and send it to us within fourteen (14) days after you call. (We may charge fees for your stop-payment orders).

If your regular payments may vary in amount, we will tell you at least ten (10) days before each payment when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

If you order us to stop one of these payments three (3) bank business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Online Statements

We offer online statements for certain accounts, allowing you, in some cases, to replace your physical statement with an electronic version that you can access via our website. Statements delivered to you “online only” will remain available for eighteen (18) months. Any legal notices or disclosures that normally accompany your physical statement or that we would otherwise deliver to you by mail concerning your account may be delivered to you electronically.

At any time and at no charge, you can change the way we send your account statements by changing your delivery preferences on our website, selecting from among the available options for that account. Available options may vary. When you change your statement delivery option, the change will take effect after we have had a reasonable opportunity to implement the change. When you tell us to stop sending you physical statements, we'll send you an email or Alert every statement cycle to let you know that your current electronic statement is ready to be viewed

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online. Changing the way we send your account statements also authorizes us to send you other disclosures and communications concerning your account using the same method.

We always reserve the right to communicate with you in writing using the U.S. Postal Service, no matter what other options you have chosen. For Accounts that are in default or subject to the automatic stay in bankruptcy, we may, at our sole option, elect to discontinue delivering online statements to you.

Account Statements

We report your Online Banking and Transfers Outside Capital Bank transactions on the monthly statements for your linked accounts. A description of each transaction, including whom you paid, and the date and amount of the transaction will appear on your statement.

Other Charges

In addition to the fees already described in your Deposit Account Agreement, you should note that depending on how you access Online Banking, you might incur charges for:

- Normal account fees and service charges, as described in your Deposit Account Agreement.
- Any Internet service provider fees.
- Any wireless carrier fees.
- Purchase of computer programs such as personal financial management software.
- Payments or transfers made through Online Banking services from a savings or money market account may result in an excess transaction fee. See your Deposit Account Agreement for details. Additionally, fees may be assessed for added self-service features available through Online Banking customer service, such as stop payment requests, check copy orders and account statement copy orders. For additional information, please see your Deposit Account Agreement.
- An insufficient funds, returned item, overdraft or similar fee, as described in your Deposit Account Agreement, may also apply if you schedule payments or transfers and your available balance is not sufficient to process the Online Banking transaction on the date scheduled.

Service Hours

Online Banking services are available 365 days a year and 24 hours a day, except during system maintenance and upgrades and other times when the system is unavailable. When this occurs, a message will be displayed on the site when you sign on to Online Banking. You may also write us at:

Capital Bank
8700 Montana Avenue

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El Paso, TX 79925

Business Days

For Online Banking services, our bank business days are Monday through Friday, excluding bank holidays.

Joint Accounts

When your Online Banking service is linked to one or more joint bank accounts, we may act on the verbal, written or electronic instructions of any authorized signer. Joint bank accounts using the same Online ID will be identified as one Online Banking account.

Changes to Agreement

We may change this agreement at any time. For example, we may add, delete or amend terms or services. We will notify you of such changes by mail or electronic message. If you initiate any transfer of funds or Bill Payment through your Online Banking services after the effective date of a change, you indicate your agreement to the change. Changes only apply to transactions that occur, and claims that arise, after the date the change becomes effective.

Cancellation

Your Online Banking services remain in effect until they are terminated by you or Capital Bank. You may cancel your service at any time by notifying us of your intent to cancel by:

- Writing to us at 8700 Montana Avenue, El Paso, TX, 79925;
- Contacting us through Online Banking secure email; or
- Calling Online Banking customer service at (855) 881-6790.

Your cancellation applies to your Online Banking services, and does not terminate your Capital Bank accounts. We recommend that you cancel any scheduled payments prior to notifying us that you are discontinuing the service. We may terminate your participation in Online Banking services for any reason, including inactivity, at any time. We will try to notify you in advance, but we are not obligated to do so.

Use of External Email Address

With Online Banking services, we may send messages to your external email address and notify

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you that responses to your payment inquiries or customer service inquiries are available, or as otherwise described within the Online Banking services. We cannot act on instructions sent by you from an external email address. You should only use Online Banking secure mail to send email instructions to Capital Bank. In addition, you should not transmit any account, security credentials, or other confidential information through email because email may be an unsecured means of communication and any information contained in an email is subject to the possibility of error, delay, observation, or receipt by an unintended or unauthorized party. If you send such information by email, you assume all related risks.

Because we may also use external email to send important notices about service and privacy changes, we require that every Online Banking customer provide us with a valid and current external email address. You are responsible for providing us with a valid email address and you may notify us of any changes to your external email address through the Customer Service tab within your Online Banking service. If, for any reason your external email address changes or becomes disabled, please contact Capital Bank immediately so that we can continue to provide you with automated messages.

Unless otherwise required by applicable law, if we are required to provide you with information in writing, we may, at our option, send it electronically either to your email address, post the information on our website and send you a notice a your postal address, email address, or via an Alert (either separately or as part of an account statement) telling you that the information has been posted and providing instructions on how to view it; or, to the extent permitted by law, by solely posting the information to our website.

You agree that we may from time to time make telephone calls and send text messages to you in order for us to: service your accounts, collect any amount you may owe, or discuss our relationship, products, and services with you. The ways we may call you include using prerecorded/artificial voice messages and/or through the use of an automatic dialing device. We may call you and send text messages to you at any telephone number you have provided to us, including mobile/cellular telephone numbers that could result in charges to you. In the event you ever withdraw this consent, and notwithstanding that withdrawal, you expressly authorize us to use any of the methods described above to send you messages confirming your instructions sent to us via SMS text message, including a confirmation from us in the event you withdraw your consent.

Contact by Capital Bank or Affiliated Parties

No Capital Bank, nor any company affiliated with Capital Bank Online Banking, will contact you via email or phone requesting your Online ID or online passcode. In addition, no Payee employee, or anyone affiliated with the Payee should contact you requesting this information. You should not provide this information to anyone in response to an email or phone call. If you are contacted by anyone requesting this information, please contact us immediately.

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Reporting Unauthorized Transactions

To report unauthorized transactions on your account, or if you believe a third party has obtained your Online Banking security credentials without your permission, please call us immediately at (855) 881-6790.

You may also write us at:

Capital Bank
8700 Montana Avenue
El Paso, TX 79925

Initiating Payment Inquiries

To initiate a payment inquiry, you may use Online Banking services to send the request via secure online mail. Or you may contact Online Banking Customer Service by calling (855) 881-6790 and following the voice prompts to speak to a customer service representative.

Disclosure of Account Information

We may disclose information to third parties about you or your transactions in the following instances:

- When it's necessary for completing transfers or bill payments, or to investigate or resolve a problem related to a transfer or payment
- To verify the existence and condition of your account for a third party, such as a credit bureau or merchant
- To comply with a government agency or court orders, or in connection with fraud prevention or an investigation
- If you give us your written permission
- With our affiliates as permitted under Federal and applicable state laws
- On a closed account, if we reasonably believe you have mishandled it

For more information about our privacy and security practices and a link to our Privacy Policy for Consumers go to our Web site at <https://www.capitalbankep.com/important-disclosures.aspx>

In Case of Errors or Questions About Your Electronic Transactions

If you believe that an error or an unauthorized transaction has been made regarding an electronic funds transfer or any Online Banking service, or if you have questions regarding an electronic funds transfer or any Online Banking service, send us a secure online mail message through the Online Banking site or call us at (855) 881-6790.

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You may also write us at:

Capital Bank
8700 Montana Avenue
El Paso, TX 79925

Contact us immediately if you think:

- Your statement or transaction record is wrong
- You need more information about a transaction listed on your statement
- An unauthorized person has discovered your Online Banking passcode
- Someone has transferred or may transfer money from your account without your permission
- Bill payment transactions have been made without your authorization

We must hear from you no later than sixty (60) days after we have sent the FIRST statement on which the problem or error appeared (or ninety (90) days if the problem or error relates to a bill payment from an account maintained at another financial institution).

If you notify us verbally, we may require you to send us your complaint or question in writing or via email within ten (10) bank business days (Online Banking customers may use secure online mail). When you contact us, please provide the following information:

- Your name and account number
- The date and dollar amount of the transaction in question
- The name of the Payee if the transaction in question is a payment
- The transaction number assigned by Online Banking, if available
- A description of the transaction about which you are unsure

Please explain as clearly as you can why you believe there is an error or why you need more information.

We will tell you the results of our investigation within ten (10) bank business days after we hear from you, and we will promptly correct any error we have made. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. In this case, we will provisionally credit your account within ten (10) bank business days for the amount you think is in error, so that you have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing, and we do not receive your letter in ten (10) bank business days, we reserve the right not to provisionally credit your account.

If we conclude there was no error, we will send you a written explanation within three (3) bank business days after we complete our investigation. You may request copies of the documents that we used in our investigation.

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Limitation of Liability for Online Banking Transactions

Tell us at once if you believe your Online Banking passcode has been compromised or if someone has transferred or may transfer money from your account without your permission. The best way to minimize your loss is to call us immediately. The unauthorized use of your Online Banking services could cause you to lose all of your money in your accounts, plus any amount available under your overdraft protection plan. If you tell us within two (2) bank business days after you learn that your security credentials have been compromised or that an unauthorized transfer has taken place, you can lose no more than \$50 if any such unauthorized transfer or use occurred.

If you do not tell us within two (2) bank business days after you learn that your security credentials have been compromised or that an unauthorized transfer has taken place, and we can prove that we could have stopped someone from using your information if you had told us, you could lose as much as \$500 as a result.

You will have no liability for unauthorized transactions if you notify us within sixty (60) days after the statement showing the transaction has been mailed to you (or ninety (90) days if the transaction was from an account maintained at another financial institution). If you do not, you may not get back any of the money you lost from any unauthorized transaction that occurs after the close of the 60-day period (or 90-day period if the transaction was from an account maintained at another financial institution), if we can show that we could have stopped the transaction if you had notified us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we may extend the applicable time periods.

When you give someone your security credentials, you are authorizing that person to use your service, and you are responsible for all transactions that person performs while using your service. All transactions that person performs, even those transactions you did not intend or want performed, are authorized transactions. If you notify us that the person is no longer authorized, then only transactions that person performs after the time you notify us are considered unauthorized.

Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions.

For your protection, sign off after every Online Banking session and close your browser.

Our Liability for Failure to Complete Transactions

If we do not complete a transaction to or from your account on time, or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. For instance, we will not be liable:

- If, through no fault of ours, you don't have enough available funds in your account (or available funds under your overdraft protection plan), or credit to cover the transaction or transfer

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- If Online Banking services weren't working properly, and you knew about the malfunction when you started the transaction or transfer
- If circumstances beyond our control (such as fire or flood) prevented the transaction or transfer, despite reasonable precautions we've taken
- If there are postal delays or processing delays by the Payee
- There may be other exceptions not specifically mentioned here

Acknowledgment of Commercially Reasonable Security Procedures

You will be required to create and maintain security credentials for accessing Online Banking and performing transactions in accordance with procedures that we may establish from time to time. We may also require additional or special security procedures for specific types or classes of transactions, in our sole and absolute discretion. You agree that we have no further obligation to verify the identity of anyone using your security credentials to access Online Banking. You agree that when using Online Banking, or performing transactions through Capital Bank, we may track and record your geographic location. You agree that you are solely responsible for maintaining your computers, equipment, and software in good working order, including using up-to-date firewall and virus protection software, so that you are able to interface with Capital Bank's systems and support Capital Bank's security procedures. By using Online Banking, you acknowledge and agree that the security procedures that we employ are commercially reasonable. You agree to be bound by all instructions issued through Online Banking using your security credentials, whether authorized or unauthorized, which we act on in compliance with our security procedures, unless you have given us prior notice of possible unauthorized use as described above (and we have had a reasonable opportunity to act on such notice).

Limitation of Bank's Liability

If we fail or delay in making a payment or transfer pursuant to your instructions, or if we make a payment or transfer in an erroneous amount that is less than the amount per your instructions, unless otherwise required by law, our liability shall be limited to interest on the amount that we failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or you canceled the instructions. We may pay such interest either to you or the intended recipient of the payment or transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other.

If we make a payment or transfer in an erroneous amount that exceeds the amount per your instructions, or if we permit an unauthorized payment or transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law, our liability will be limited to a refund of the amount erroneously

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paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed (60) days' interest. If we become liable to you for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the Dallas District for each day interest is due, computed on the basis of a 360-day year. **Unless otherwise required by law, in no event will Capital Bank be liable to you for special, indirect or consequential damages including, without limitation, lost profits or attorney's fees, even if we are advised in advance of the possibility of such damages.**

Please note that if you give or make available your security credentials to anyone, you may be liable for any use made of such until you advise us that such person is not authorized to use them.

Severability

If any part of this Agreement is declared invalid or unenforceable, the remainder of the Agreement will not be affected, and this Agreement will be interpreted as if the invalid terms had not been in place.

Governing Law

This Agreement is governed by the laws of the State of Texas, without regard to its conflict of laws provisions (except to the extent that this Agreement can and does vary such laws).

Arbitration

Any disputes arising out of this Agreement will be subject to arbitration administered either by JAMS or the American Arbitration Association. The arbitration shall take place before a single arbitrator, selected pursuant to the applicable commercial or consumer arbitration rules of the arbitrator.

Whoever starts the arbitration procedure will also have the option of resolving our dispute through a less costly manner of binding non-appearance-based arbitration. If such an option is chosen, we agree to the following: (i) that the arbitration may be conducted remotely (for example, by telephone, videoconference, or similar simultaneous communication medium); (ii) no party will be required to travel for such an arbitration unless we mutually agree otherwise; (iii) no discovery is allowed except for what the arbitrator determines is necessary to fairly resolve our dispute; and (iv) no party is permitted to seek attorney's fees in any arbitration claim arising from this Agreement; to the extent such fees are not required to be awarded under applicable law.

In the event of any conflict between or among dispute resolution procedures between this Agreement and any other agreement pertaining to the Services or any other service offered by Capital Bank, the terms and procedures of such other agreement shall control.