

## Terms and Conditions for Mobile Deposit

This Agreement contains the terms and conditions that govern the use of Mobile Deposit provided to you by Axos Bank. By accepting the Terms and Conditions you acknowledge and agree to abide by the rules and requirements for use of Mobile Deposit and other relevant Agreements including, but not limited to Axos Bank Account Agreements. In this Disclosure and Agreement, the words "I," "me," "my," "us" and "our" mean the (consumer) that applied for and/or uses any of the Mobile Deposit Services (the "Services"), provided by Axos Bank as described in this Disclosure and Agreement. The words "we," "you," "your," and "yours" mean Axos Bank. My application for use of the Mobile Deposit Services, your notification of approval of my application, and my Axos Bank Deposit Account Agreement and Disclosures are hereby incorporated into and made a part of this Disclosure and Agreement. In the event of a discrepancy between this Disclosure and Agreement and my Application, your approval, or the Account Agreement, this Disclosure and Agreement will control.

### Use of the Services

Following receipt of your notification approving my use of the Services, I am authorized by you to remotely deposit paper checks I receive to my account with you (the "Account") by electronically transmitting a digital image of the paper check(s) to you for deposit. My use of the Services constitutes my acceptance of the terms and conditions of this Disclosure and Agreement

Upon receipt of the digital image, you will review the image for acceptability. I understand that, in the event I receive a notification from you confirming receipt of an image, such notification does not mean that the image contains no errors or that you are responsible for any information I transmit to you. You are not responsible for any image that you do not receive. Following receipt of the image, you may process the image by preparing a "substitute check" or clearing the item as an image. Notwithstanding anything to the contrary, you reserve the right, within your sole and absolute discretion, to accept or reject any item for remote deposit into my Account. I understand that any amount credited to my Account for items deposited using the Services is a provisional credit and I agree to indemnify you against any loss you suffer because of your acceptance of the remotely deposited check.

In addition I agree that I will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Service, (ii) copy or reproduce all or any part of the technology or Service; or (iii) interfere, or attempt to interfere, with the technology or Service.

### Compliance with Law

I agree to use the Service for lawful purposes and in compliance with laws, statutes, regulations and ordinances pertaining to the services, all laws relating to the banking transactions contemplated hereunder. I warrant that I will only transmit acceptable items for deposit and have the original items in accordance with applicable laws, rules, and regulations. I promise to indemnify and hold the Bank harmless for any damages, liabilities, costs, expenses (including attorneys' fees) or other harm arising out of any violation thereof. This indemnity will survive termination of the Account and this Agreement.

### Check Processing and Requirements

Any image of a check that I transmit to you must accurately and legibly provide all the information on the front and back of the check at the time presented to me by the drawer. Prior to capturing the original check will be transmitted accurately and legibly and will provide, the following information: (1) the information identifying the drawer and the paying bank that is preprinted on the check, including complete and accurate MICR information and the signature(s); and (2) Payee information placed on the check prior to the time an image of the check is captured and properly endorsed on the back of the check and must state "For Axos Mobile Deposit Only" written below your signature. Checks payable to a third party will not be accepted for deposit (i.e. any item that is made payable to another party and then endorsed to the customer by such party). If the check is payable to all account owners, then either customer may endorse the check; unless the check is payable with "and" then all payee's must endorse the check to be accepted for deposit. The image quality for the check will meet the standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

### Deposit Confirmation

I understand that I will receive a notification confirming receipt of my deposit, and that such notification does not mean the image contains no errors or that the item has been accepted for deposit.

### Rejection of Deposit

I understand the Bank reserves the right to reject any item for mobile deposit for any reason, including but not limited to, rejection of a Substitute Check that was created by another financial institution, customer or any other person. I am responsible for any loss or overdraft plus any applicable fees due to an item being returned.

### Limitations on Frequency and Dollar Amount

I understand and agree that I cannot exceed the limitations on frequency and dollar amounts of mobile deposits that are set forth by you. These maximum limits may not be applicable to all consumers and are subject to change at any time. The maximum deposit limits are:

- "Daily Limit per business day"- \$50,000
- "30-day Rolling Limit" - \$150,000.00

### Items Returned Unpaid

If images of checks deposited are dishonored or otherwise returned unpaid by the drawing bank, or are returned by a clearing agent for any reason, including, but not limited to issues relating to the quality of the image and or duplication. I understand and agree that I maintain the original check or have destroyed the original check and therefore the original check will not be returned. I understand that an image will be in the form of a paper reproduction of the original check or a substitute check. Unless otherwise instructed, I will not deposit the original check and understand that my account will be charged the amount of the item returned along with a return item fee.

### Email Address

I agree to notify you immediately if I change my email address, as this is the email address where you will send me notification of the acceptance of mobile deposit item(s).

### Unavailability of Services

I understand and agree that the Services may at times be temporarily unavailable due to the Bank's system maintenance or technical difficulties including those of the Internet service provider, cellular service provider and Internet software. In the event that the Services are unavailable, I acknowledge that I can deposit an original check by mailing the original check to the mailing address on the Bank's website. It is my sole responsibility to verify that items deposited using the Services have been received and accepted for deposit by you. However, you will email notification of items that are rejected by the next business day following rejection.

### Business Days and Hours

Your business days are Monday through Friday, excluding Federal Holidays. Your business hours are 9:00 a.m. to 5:00 p.m., Pacific Time, each business day. I understand deposits received after 3:00 p.m. will be posted the following business day.

### Funds Availability

I agree that items transmitted through the Services are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. Funds deposited using the Mobile Deposit services will be available the fifth (5<sup>th</sup>) business day after the day of your deposit. The Bank may, but is not required to, make such funds available sooner based on such factors as credit worthiness, the length and extent of my relationship with the Bank, transaction and experience information, and other such factors as the Bank, in its sole discretion, deems relevant.

Deposits received before 3:00 PM (PT) Monday through Friday, excluding Federal Holidays, will post that same day. Deposits received after 3:00 PM (PT) will be posted the following business day. It is the sole responsibility of each customer to verify that items deposited using the Services have been received and accepted for deposit. Customers understand that any amount credited for items deposited using the Services is provisional credit and agree to indemnify the Bank against any loss suffered because of acceptance of the remotely deposited check.

### Internal Controls and Audit

I understand and agree to adhere to the Internal Controls as described in this agreement and further detailed within this section. Furthermore I agree to comply with the Audit requirements prescribed by the Bank within this Agreement. Upon receipt of a confirmation from the Bank that we have received the image of the item, I agree to prominently mark the item as "Electronically Presented" or "Void" and never represent the item.

### Customer's Warranties

I make the following warranties and representations with respect to each image of an original check I transmit to you utilizing the Services:

- Each image of a check transmitted to you is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check;
- The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate;
- I will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid;
- Other than the digital image of an original check that I remotely deposit through your Services, there are no other duplicate images of the original check;

- I have instituted procedures to ensure that each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check;
- The information I provided in my Application remains true and correct and, in the event any such information changes, I will immediately notify you of the change;
- I have not knowingly failed to communicate any material information to you;
- I have possession of each original check deposited using the Services and no party will submit the original check for payment;
- Files and images transmitted to you will contain no viruses or any other disabling features that may have an adverse impact on your network, data, or related systems.

#### Storage and Destruction of Original Check

I must securely store each original check for a period of 30 days after receipt that the file has been accepted. Within those 30 days I will take appropriate security measures to ensure that: (i) the information contained on the check(s) are not to be disclosed, (ii) the checks will not be duplicated or scanned more than one time, and (iii) checks will not be deposited or negotiated in any form. This means the original check(s) must be accessible after a file has been accepted by the Bank. After such period expires, the original check will be destroyed using a cross-cut shredder. I understand that I'm responsible for any loss caused due to their failure to secure the original check(s).

#### Securing Images on Mobile Devices

When using the Service, I understand that check images captured using my mobile device may be stored on the device only until the associated deposit has been successfully submitted. I agree to promptly complete each deposit. In the event that I am unable to promptly complete my deposit, I agree to ensure that my mobile device remains securely in my possession until the deposit has been completed or to delete the associated images from the application.

#### Customer's Indemnification Obligation

I understand and agree that I am required to indemnify you and hold you harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from my use of the Services and/or breach of this Disclosure and Agreement. I understand and agree that this paragraph shall survive the termination of this Agreement.

I understand and agree that I am required to indemnify your technology partners, including but not limited to Intuit, Inc. (Intuit) and Vertifi Software, LLC (Vertifi), and hold harmless Intuit, its affiliates, officers, employees and agents, as well as Vertifi, its affiliates, officers, employees, and agents, from and against any third party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to financial institution or End User's use of the Services, Vertifi or Intuit Applications, unless such claim directly results from an action or omission made by Intuit or Vertifi in bad faith. I understand and agree that this paragraph shall survive the termination of this Agreement.

#### In Case of Errors

In the event that I believe there has been an error with respect to any original check or image thereof transmitted to you for deposit or a breach of this Agreement, I will immediately contact you regarding such error or breach as set forth below.

Telephone you at: 877-541-2634 or e-mail you at [customerservice@axosbank.com](mailto:customerservice@axosbank.com)

#### Limitation of Liability

I understand and agree that you are not responsible for any indirect, consequential, punitive, or special damages or damages attributable to my breach of this Disclosure and Agreement.

#### Charges for Use of the Services

All charges associated with the Services are disclosed in your Schedule of Deposit Account Fees and Terms which accompanies this Disclosure and Agreement.

#### DISCLAIMER OF WARRANTIES

I AGREE THAT MY USE OF ANY REMOTE BANKING SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT MY RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF ANY REMOTE BANKING SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT ANY REMOTE BANKING SERVICE WILL MEET OUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN ANY REMOTE BANKING SERVICE OR TECHNOLOGY WILL BE CORRECTED.

### LIMITATION OF LIABILITY

I AGREE THAT YOU WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES INCURRED BY ME OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF ANY REMOTE BANKING SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY LAW.

### Change in Terms

You may change the terms and charges for the Services indicated in this Disclosure and Agreement by notifying me of such change in writing and may amend, modify, add to, or delete from this Disclosure and Agreement from time to time. My use of the Services after receipt of notification of any change by you constitutes my acceptance of the change.

### Relationship to Other Disclosures

The information in these Disclosures applies only to the Services described herein. Provisions in other disclosure documents, as may be revised from time to time, remain effective for all other aspects of the Account.

### Governing Law

I understand and agree that this Disclosure and Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the internal laws of the State of California notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. I also agree to submit to the personal jurisdiction of the courts of the State of California.

### Periodic Statement

Any remote deposits made through the Services will be reflected on my monthly account statement. I understand and agree that I am required to notify you of any error relating to images transmitted using the Services by no later than **60 days** after I receive the monthly periodic statement that includes any transaction I allege is erroneous. I am responsible for any errors that I fail to bring to your attention within such time period.

### Unacceptable Deposits

I understand and agree that I am not permitted to deposit the following items using the Services:

- Any item that is stamped with a "non-negotiable" watermark;
- Any item that contains evidence of alteration to any of the information on the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner for the account on which the check or item is drawn;
- Any item issued by a financial institution in a foreign country;
- Any item that is incomplete;
- Any item that is "stale dated" or "postdated";
- Savings Bonds;
- Any item that is not payable in US Dollars;
- Any third party check, i.e., any item that is made payable to another party and then endorsed to me by such party.

### Confidentiality

I acknowledge and agree that confidential data relating to your Services, marketing, strategies, business operations and business systems (collectively, "Confidential Information") may come into my possession in connection with this Disclosure and Agreement. I understand and agree that I am prohibited from disclosing and agree to maintain the confidentiality of your Confidential Information.

### Waiver

The failure of either party to seek a redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms or of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

### Termination of Services

I may, by written request, terminate the Services provided for in this Disclosure and Agreement. You may terminate my use of the Services at any time upon written notice. In the event of termination of the Services, I will remain liable for all transactions performed on my Account