

# Mobile Deposit User Agreement

## Locations

Arlington  
Austin  
Carrollton  
Dallas  
Fort Worth  
Frisco  
Lubbock  
Round Rock  
San Antonio  
Weatherford

PlainsCapital Bank  
Deposit Support Department  
P.O. Box 271  
Lubbock, TX 79408

Customer Service 866.762.8392  
Fax 866.580.3331  
Voice Banking 866.762.7782

[PlainsCapital.com](http://PlainsCapital.com)



Member FDIC  Equal Housing Lender

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Effective as of December 20, 2012

# Mobile Deposit User Agreement

This Mobile Deposit User Agreement (this “Agreement”) contains the terms and conditions for the use of mobile deposit Services and/or other mobile remote deposit Services that PlainsCapital Bank or its affiliates (“PlainsCapital”) may provide to its deposit account customers (“Customer” or “you” or “your”). The Consumer Deposit Account and Services Agreement and/or the Commercial Deposit Account Agreement and Services Disclosure (collectively, the “Deposit Agreement”) are incorporated by reference and made a part of this Agreement. In the event of conflict or discrepancy between this Agreement and other agreements entered into between you and PlainsCapital regarding the subject matter herein, this Agreement shall take precedence.

**1. Services.** The mobile deposit services (the “Services”) are designed to allow you to make deposits to a qualified PlainsCapital checking, savings or money market savings account from home or other remote locations by scanning checks and delivering the images and associated deposit information to PlainsCapital or a third-party processor designated by PlainsCapital.

**2. Acceptance of these Terms.** Your use of the Services constitutes your acceptance of this Agreement. This Agreement is subject to change periodically unless specifically prohibited by applicable law. PlainsCapital will notify you of any material change either electronically or by physical mail to you at the most current address on record with PlainsCapital. Notices shall be deemed delivered after one (1) business day if delivered electronically, or after three (3) business days if sent by physical mail. Changes to this Agreement will be deemed effective no less than thirty (30) days after delivery (as calculated by the abovementioned standards). You will have the right to terminate this Agreement prior to the effective date of amendment. After the amendment becomes effective, continued use of the Services by you will indicate consent to be bound by the revised Agreement. Further, PlainsCapital reserves the right, at its sole discretion, to change, modify, add, or remove portions from the Services. Your continued use of the Services will indicate your acceptance of any such modifications to the Services.

**3. Limitations of Service.** When using the Services, you may experience technical or other difficulties. PlainsCapital does not assume any responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and PlainsCapital reserves the right to change the qualifications at any time without prior notice. PlainsCapital additionally reserves the right to change, suspend or discontinue the Services, in whole or in part, or Customer’s use of the Services, in whole or in part, immediately and at any time without prior notice to you.

**4. Hardware and Software.** In order to use the Services, Customer must obtain and maintain, at Customer’s expense, compatible hardware and software as specified by PlainsCapital. PlainsCapital is not responsible for any

third party hardware or software you may need to use the Services. Any hardware or 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 the time of download and installation.

**5. Fees.** PlainsCapital may opt to charge a fee for the Service. You are responsible for paying the fees for the use of the Service. PlainsCapital may change the fees for use of the Service at any time pursuant to the section titled “Acceptance of these Terms” above. You authorize PlainsCapital to deduct any such fees from any PlainsCapital account in your name. PlainsCapital is not liable for any costs you may incur from cellular data networks or other related equipment that may result from usage of this Service.

**6. Eligible items.** You agree to scan and deposit only “checks” as that term is defined in Federal Reserve Regulation CC (“Reg. CC”). When the images of the front and back of a check are transmitted to PlainsCapital, they are individually or collectively converted to an electronic 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 containing an alteration on the front of the check or item, 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
- Checks payable jointly, unless deposited into an account in the name of all payees
- Checks drawn on a financial institution located outside the United States
- Checks that are remotely created checks (as defined in Reg. CC)
- Checks not payable in United States currency
- Checks dated more than six (6) months prior to the date of deposit
- Checks or items prohibited by PlainsCapital’s current procedures relating to the Services or which are otherwise not acceptable under the terms of the Deposit Agreement
- Checks payable on sight or payable through Drafts (as defined in Reg. CC)
- 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 service offered at any other financial institution

**7. Endorsements and Procedures.** Unless otherwise instructed by PlainsCapital, you agree that all checks deposited through the Services must (a) be signed by all required payees, and (b) state that they are "Deposit only, PlainsCapital Bank". You agree to follow any and all other procedures and instructions for use of the Services as PlainsCapital may establish from time to time.

**8. Receipt of Items.** PlainsCapital reserves the right to reject any item transmitted through the Services, at PlainsCapital's discretion and without liability. PlainsCapital is not responsible for items PlainsCapital does 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 PlainsCapital that PlainsCapital has received the image. Receipt of such confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. PlainsCapital further reserves the right to charge back to Customer's account at any time any item that PlainsCapital or its affiliates subsequently determine was not an eligible item. You agree that PlainsCapital is not liable for any loss, costs, or fees you may incur as a result of a chargeback of an ineligible item.

**9. Availability of Funds.** You agree that items transmitted using the Services are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. Generally, and except as otherwise provided herein, items transmitted using the Services will be available subject to the terms specified in the Deposit Agreement. If you make a deposit using the Services before 5:00 p.m. on a business day that PlainsCapital is open, PlainsCapital will consider that day to be the day of your deposit. However, if you make a deposit using the Services after 5:00 p.m. or on a day that we are not open, PlainsCapital will consider that deposit to have been made on the next business day that PlainsCapital is open. PlainsCapital may make such funds available sooner based on such factors as creditworthiness, the length and extent of your relationship with PlainsCapital, transaction and experience information, and such other factors as PlainsCapital, in its sole discretion, deems relevant. You acknowledge that all credits given by PlainsCapital for an item are provisional, subject to verification and final settlement. PlainsCapital shall have no liability for the return or refusal of any item.

**10. Disposal of Transmitted Items.** Upon your receipt of a confirmation from PlainsCapital that PlainsCapital has received an image that you have transmitted, you agree to retain the check in safekeeping in a secure environment for at least thirty (30) calendar days from the date of the image transmission. After thirty (30) days, you agree to destroy the check that you transmitted as an image, mark it "VOID"; or otherwise render it incapable of further transmission, deposit, or presentment. Image quality is reviewed by PlainsCapital after submission; however, if the receiving bank does not accept the image, you may be required to present the original check for payment. During the time the retained check is available, you agree to promptly provide it to PlainsCapital upon request. PlainsCapital assumes no liability for losses you may incur if the receiving bank does

not accept your image and you are unable or unwilling to present the original check for payment.

**11. Deposit Limits.** PlainsCapital may establish limits on the dollar amount and/or number of items or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, PlainsCapital may reject your deposit. If PlainsCapital permits you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and PlainsCapital will not be obligated to allow such a deposit at other times. The current daily dollar limit is \$2,000.00 per business day per account. There is currently no daily or monthly statement cycle limit on the number of items, as long as the respective dollar limits are not exceeded. Daily and monthly deposit limits may vary for users of other services provided by PlainsCapital or its affiliates.

**12. Presentment.** The manner in which the items are cleared, presented for payment, and collected shall be in PlainsCapital's sole discretion, subject to the Deposit Agreement or other agreements governing your account.

**13. Errors.** You agree to notify PlainsCapital of any suspected errors regarding items deposited through the Services right away, and in no event later than fourteen (14) days after the applicable PlainsCapital account statement is sent. Unless you notify PlainsCapital within fourteen (14) days, such statement regarding all deposits made through the Services shall be deemed correct, and you are prohibited from bringing a claim against PlainsCapital for such alleged error.

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

**15. Image Quality.** The image of an item transmitted to PlainsCapital using the Services must be legible, as determined in the sole discretion of PlainsCapital. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by PlainsCapital, ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association. PlainsCapital accepts no liability and makes no guarantee that its image standards will be acceptable to other banks when presented for payment.

**16. CUSTOMER REPRESENTATIONS AND WARRANTIES.** CUSTOMER REPRESENTS AND WARRANTS TO PLAINSCAPITAL: (A) CUSTOMER HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER AND ALL INFORMATION SUPPLIED BY CUSTOMER TO PLAINSCAPITAL IS ACCURATE AND TRUE; (B) CUSTOMER WILL PROVIDE ALL REASONABLE ASSISTANCE TO PLAINSCAPITAL AND ITS SUBCONTRACTORS IN PROVIDING THE SERVICES SET FORTH HEREIN; (C) CUSTOMER AND ANY AUTHORIZED USERS WILL ONLY USE THE SERVICES FOR LAWFUL PURPOSES AND IN COMPLIANCE WITH ALL APPLICABLE RULES AND REGULATIONS AND WITH PLAINSCAPITAL'S REASONABLE INSTRUCTIONS, RULES, POLICIES, SPECIFICATIONS, TERMS

AND CONDITIONS, AND OPERATING PROCEDURES AND WILL NOT VIOLATE ANY LAW OF ANY COUNTRY OR THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; (D) CUSTOMER HAS ONLY TRANSMITTED ACCEPTABLE ITEMS FOR DEPOSIT AND HAS HANDLED THE ORIGINAL ITEMS FOLLOWING TRANSMISSION TO PLAINSCAPITAL AS AGREED TO OR DIRECTED BY PLAINSCAPITAL AND IN ACCORDANCE WITH APPLICABLE LAW; (E) CUSTOMER IS A PERSON AUTHORIZED TO ENFORCE EACH ITEM OR IS AUTHORIZED TO OBTAIN PAYMENT OF EACH ITEM ON BEHALF OF A PERSON ENTITLED TO ENFORCE AN ITEM; (F) THE ITEMS HAVE NOT BEEN ALTERED; (G) EACH ITEM BEARS ALL APPLICABLE ENDORSEMENTS IN A RESTRICTED FORMAT AS DIRECTED BY PLAINSCAPITAL; (H) ALL THE WARRANTIES SET FORTH IN AND SUBJECT TO THE TERMS OF 4-207 OF THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF TEXAS, AND AS MAY BE MODIFIED FROM TIME TO TIME, AS WELL AS ANY OTHER APPLICABLE SECTION THEREOF; (I) THE ELECTRONIC IMAGE PORTION OF EACH ITEM ACCURATELY AND LEGIBLY REPRESENTS ALL OF THE INFORMATION ON THE FRONT AND BACK OF THE ORIGINAL CHECK AS OF THE TIME THE ORIGINAL CHECK WAS TRUNCATED, (2) THE INFORMATION PORTION OF THE ITEM CONTAINS A RECORD OF ALL APPLICABLE MICR-LINE INFORMATION REQUIRED FOR A SUBSTITUTE CHECK, AND (3) THE ITEM CONFORMS TO THE TECHNICAL STANDARDS FOR AN ELECTRONIC ITEM AS SPECIFIED BY PLAINSCAPITAL FROM TIME TO TIME; (J) CUSTOMER WILL SUBMIT ONLY ONE ACCURATE AND CLEAR IMAGE OF THE FRONT AND BACK OF EACH ITEM TO PLAINSCAPITAL ONLY ONE TIME; (K) CUSTOMER WILL NOT DEPOSIT THE ORIGINAL ITEM 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; (L) THE AMOUNT OF AN ITEM, AND SUCH OTHER INFORMATION CONTAINED IN SUCH ITEM WHICH IS ACCURATE AND COMPLETE. CUSTOMER AGREES THAT THESE REPRESENTATIONS AND WARRANTIES SHALL BE TRUE AND CORRECT AS OF THE DATE OF EACH ITEM AND THAT THE SUBMISSION OF EACH ITEM TO PLAINSCAPITAL FOR PROCESSING SHALL BE AN ACKNOWLEDGMENT OF EACH SUCH REPRESENTATION AND WARRANTY AS OF THAT DATE.

**17. Cooperation with Investigations.** You agree to cooperate with PlainsCapital in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, upon request and without further cost, any originals or copies of items deposited through the Services in your possession and your records relating to such items and transmissions.

**18. Termination.** PlainsCapital may terminate this Agreement at any time and for any reason. This Agreement shall remain in full force and effect unless and until it is terminated by PlainsCapital. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use the Services for any unauthorized or illegal purposes or you use the Services in a manner

inconsistent with the terms of your Deposit Agreement or any other agreement with PlainsCapital.

**19. Enforceability.** PlainsCapital may waive enforcement of any provision of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of the Agreement. Any such waiver shall not affect PlainsCapital's rights with respect to any other transaction or modify the terms of this Agreement.

**20. Severability.** In the event that any provision of this Agreement shall be deemed to be invalid, illegal, or unenforceable to any extent, the remainder of the Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**21. Ownership & License.** You agree that PlainsCapital retains all ownership and proprietary rights in the Services, associated content, technology, and website(s). Your use of the Services is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates Customer's right to use the Services. Without limiting the restriction of the foregoing, you may not use the Services (i) in any anti-competitive manner, (ii) for any purpose which would be contrary to PlainsCapital's business interests, or (iii) to PlainsCapital's actual or potential economic disadvantage in any aspect. You may use the Services only in accordance with this Agreement. You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide the Services.

**22. Security Procedures and Communications.** Certain procedures, including the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, tokens and other security devices, systems and software (the "Security Procedures"), designed to verify the origination (but not errors in transmission or content) of instructions, orders and other communications (each, a "Communication") sent between Customer and PlainsCapital may be used in connection with the Services. Customer agrees that any such mutually agreed-upon Security Procedures shall be deemed commercially reasonable. PlainsCapital shall not be obligated to act on a Communication not transmitted in accordance with the Security Procedures and may refuse to act on any Communication where PlainsCapital reasonably doubts its authorization, authenticity, contents, origination or compliance with the Security Procedures. PlainsCapital shall have no duty to discover, and shall not be liable for, errors or omissions by Customer. If PlainsCapital complies with the Security Procedures in respect of a Communication, PlainsCapital shall be entitled to act on that Communication and shall not be obligated to verify the content of such Communication, establish the identity of the person giving it, or await any confirmation thereof, and PlainsCapital shall not be liable for acting on, and Customer shall be bound by, any Communication sent in the name of Customer, whether or not authorized. Whenever the Security Procedures include the assigning to Customer of any confidential password,



logon identification, identification code, personal or location identification number, repetitive code, token or similar security device, Customer shall not disclose such security device except to employees or agents authorized to act for Customer in connection with Services. Customer shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify PlainsCapital if the confidentiality or integrity of any such security device is breached or threatened. Customer shall be solely responsible for the safekeeping of such security devices and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Customer's negligence or deliberate acts or otherwise. PlainsCapital shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any security devices.

**23. DISCLAIMER OF WARRANTIES.** YOU AGREE THAT YOUR USE OF THE SERVICES 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. PLAINSCAPITAL 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 NON-INFRINGEMENT. PLAINSCAPITAL MAKES NO WARRANTY THAT THE SERVICES (i) WILL MEET CUSTOMER'S REQUIREMENTS, (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.

**24. INDEMNIFICATION.** IN ADDITION TO ITS INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, AND EXCEPT FOR LOSSES OR EXPENSES ATTRIBUTABLE TO PLAINSCAPITAL'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, DEPOSITOR AGREES TO INDEMNIFY PLAINSCAPITAL FOR ANY LOSS OR EXPENSE SUSTAINED (INCLUDING INTEREST, COSTS, ATTORNEYS' FEES AND EXPENSES OF LITIGATION) RESULTING FROM (i) CUSTOMER'S LACK OF AUTHORITY TO MAKE THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN; (ii) ANY ACTION TAKEN OR NOT TAKEN BY PLAINSCAPITAL WITHIN THE SCOPE OF ITS AUTHORITY IN HANDLING AN ITEM; (iii) ANY WARRANTY REQUIRED TO BE MADE BY PLAINSCAPITAL WITH RESPECT TO AN ITEM UNDER APPLICABLE LAW OR REGULATION; AND (iv) YOUR BREACH OF ANY TERMS AND CONDITIONS OF THIS AGREEMENT.

**25. LIMITATION OF LIABILITY.** YOU AGREE THAT PLAINSCAPITAL 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 RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF SERVICES, REGARDLESS OF THE FORM OF ACTION OR

CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF PLAINSCAPITAL HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT WILL PLAINSCAPITAL'S LIABILITY UNDER THIS AGREEMENT FOR ANY DAMAGES OF ANY KIND EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF ITEMS RECEIVED BY PLAINSCAPITAL FROM DEPOSITOR FOR MOBILE DEPOSIT SERVICES DURING THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED. DEPOSITOR AGREES THAT THE DOLLAR LIMITATION DESCRIBED IN THIS SECTION IS REASONABLE, EVEN IF ITS ACTUAL DAMAGES EXCEED THIS LIMITATION.

**26. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**27. Assignment.** PlainsCapital may assign this Agreement or delegate any of its responsibilities hereunder to a third party without notice to or consent from you. You may not assign this Agreement or delegate any of your responsibilities hereunder to a third party without PlainsCapital's prior written consent, which consent may be withheld, conditioned or delayed in the sole and absolute discretion of PlainsCapital.

**28. FORCE MAJEURE.** IN NO EVENT SHALL PLAINSCAPITAL BE LIABLE FOR DELAYS WHICH HAPPEN FOR REASONS BEYOND ITS CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OF CIVIL, MILITARY, OR BANKING AUTHORITIES, NATIONAL EMERGENCIES, RIOTS, WEATHER, UNAVOIDABLE DIFFICULTIES WITH EQUIPMENT, THE UNAVAILABILITY OF THE INTERNET, ANY ERRORS IN INFORMATION PROVIDED, ANY DIFFICULTIES CAUSED BY AN INTERNET OR OTHER SERVICE PROVIDER OR ANY HARDWARE OR SOFTWARE FAILURE, WHETHER CAUSED BY A VIRUS OR OTHERWISE.

**29. Entire Agreement.** This Agreement constitutes the entire agreement between you and PlainsCapital regarding the subject matter herein and supersedes existing agreements and all other related communications, written or oral, regarding the subject matter herein.