

## **BMO Harris Mobile Banking End User Terms**

**Effective as of October 20, 2013**

("END USER TERMS")

Mobile Banking (as defined below) is provided to you by BMO Harris Bank N.A. ("BMO Harris" or "we/us") and powered by a third party ("Licensor") mobile technology solution. Section A of these End User Terms is a legal agreement between you and BMO Harris Bank N.A. Section B of these End User Terms is a legal agreement between you and the Licensor.

### **SECTION A**

#### **Introductory Terms and Conditions**

Thank you for using Mobile Banking. In case of questions, please contact customer service at [onlineservices@harrisbank.com](mailto:onlineservices@harrisbank.com).

You are responsible for any data and messaging fees or other charges that your wireless carrier may charge for any data or message services used in connection with your use of Mobile Banking, including any charges assessed for text messages sent to or received from us.

Mobile Banking is provided by BMO Harris. You are solely responsible for the content transmitted through any text messages sent to and received from us. You must provide source indication in any text messages you send (e.g., mobile telephone number, "From" field in text message, etc.).

To enroll in Mobile Banking, you must be a subscriber to our BMO Harris Online Banking<sup>®</sup> service ("Online Banking"). You acknowledge that you have read and agreed to the terms and conditions of the BMO Harris Online Banking Services Agreement (the "Service Agreement") which applies to these End User Terms. You also acknowledge and agree to these End User Terms which supplement the Service Agreement when you enroll in Mobile Banking.

We are not responsible or liable for the acts, omissions, systems or services provided by the Licensor or any of the provisions of Section B, which is the responsibility of the Licensor (currently, FIS).

We reserve the right to change these End User Terms and any charges for the use of Mobile Banking from time to time. We may terminate Online Banking services as provided in the Service Agreement and may terminate any of our Mobile Banking services at any time for any reason, including if you or your accounts are not eligible for any such service, if we believe you are in breach of the Service Agreement, these End

User Terms, or your account agreement with us, or in the event your mobile service terminates or lapses.

## TERMS AND CONDITIONS FOR MOBILE BANKING

### Terms for All Mobile Banking Services

1. As used in these End User Terms, "Mobile Banking " means our services that allow you to use a mobile device or wireless device (like an iPhone<sup>®</sup>, iPad<sup>®</sup> or Android<sup>™</sup> device) to access the BMO Harris Online Banking service. Mobile Banking includes our mobile banking applications, mobile web access, Text Messaging (as defined below) and Remote Deposit Service (as defined below). A "mobile device" means a device specified by us (not a personal computer) including a mobile phone, tablet or personal digital assistant (PDA) that has text messaging capabilities and/or is Internet (Web) enabled. "Text Messaging" or "SMS" means a process that allows you to send and receive messages from us related to your accounts, of up to 160 characters each, using your mobile device. All account fees and service charges will apply to products and services that are accessible through Mobile Banking.

2. Not all Online Banking services or the functionality on the Online Banking website are available when you use a mobile device. Mobile Banking and functionality available to you may vary based on the type of mobile device you use. We will notify you of which Online Banking services and functionality are available through Mobile Banking, and which are available using your mobile device. Online Banking services available through your mobile device may use different terminology and appear in different formats when viewed through your mobile device. You may be required to follow different instructions to access Online Banking services through your mobile device. Processing of payment and transfer instructions may take longer using Mobile Banking.

3. Your wireless provider's data and messaging rates apply to Internet access, including messaging rates that apply to SMS usage. We do not charge you to access your account information using Mobile Banking; however, downloadable content may incur additional charges from your wireless provider. Please contact your wireless provider for information about your Internet access, data and messaging plans. All such charges are billed by and payable to your wireless provider. You are responsible for any charges from your wireless provider. Your wireless provider may impose limitations on your Internet access and text messages that are outside of our control. We are not responsible for any damages resulting from your failure to comply with any terms and conditions of your wireless provider.

4. You represent that you are the owner or authorized user of the mobile device you use to receive our Mobile Banking services, and that you are authorized to approve any applicable charges arising from your use of Mobile Banking. You agree that we may send messages through your wireless provider to you and that your wireless provider is acting as your agent when sending and receiving messages. We may use the telephone or mobile phone number, email address or other delivery location we have in our records for you or

other such information as you may provide to us to contact you regarding your use of Mobile Banking.

5. If you use Text Messaging, we will send you a message only once per request.

6. We will not be liable for any delays or failures in your ability to access Mobile Banking service or in your receipt of any text messages. Internet access and messaging are subject to effective transmission from your network provider and processing by your mobile device, as well as delays and interruptions in the Internet. Mobile Banking is provided by us on an AS IS, AS AVAILABLE basis.

7. You understand and agree that messages received using Mobile Banking may not be encrypted and may contain personal or confidential information about you, such as your mobile phone number, your wireless provider's name, account information and activity, and the status of your accounts and other information that you or we may provide. Your wireless provider and other service providers may also collect data from your Mobile Banking usage, and their practices are governed by their own policies. We are not responsible or liable for the acts or policies of such service providers. We will only use the information you provide to us through your use of Mobile Banking in a manner which is consistent with the privacy policy we have previously provided to you in connection with your account. You can find links to our privacy policy at [www.bmoharris.com](http://www.bmoharris.com) or on the log-in page or main menu of our Mobile Banking applications. Subject to applicable law, we reserve the right at all times to disclose any information you provide using Mobile Banking as reasonably necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect our rights or property. When you complete forms online or otherwise provide us with information in connection with Mobile Banking, you agree to provide accurate, complete and true information. We will not be responsible or liable for losses or damages arising from any disclosure of your account information to third parties, non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, the messages sent through Mobile Banking.

8. Our Mobile Banking services, as well as the content and materials you may receive or access through your use of these services, are proprietary to us and our licensors, and are for your personal, non-commercial use only. You will not damage, impair, interfere with, or disrupt our Online Banking service or its functionality.

9. You agree that if you are using Mobile Banking outside the United States, you are responsible for having access to the appropriate wireless and/or telecommunications networks and are responsible for all associated fees and charges.

10. If you have any questions, email [onlineservices@harrisbank.com](mailto:onlineservices@harrisbank.com). For Text Messaging services, you can also text the word HELP to 427747 to get additional information about the service. If you receive a text message from us unexpectedly, you can text the word STOP to 427747 to discontinue your Text Messaging service. We do not charge for help or info messages; however, your normal wireless provider rates apply.

11. Mobile Banking is provided for your convenience and does not replace your periodic account statement, which is the official record of your account. Mobile Banking services, including instructions for payment, transfer and other transactions, may be delayed, interrupted or otherwise negatively impacted by factors relating to your mobile device, your Internet service provider, wireless provider or other parties, or due to other reasons outside of our control. We are not be liable for any such delays, interruptions, or negative impacts to Mobile Banking and you agree that neither we nor our service providers are liable for any errors or delays in the content, or for any actions taken in reliance thereon.

12. You agree to indemnify, defend and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorneys' fees) arising from your use of the Mobile Banking and your provision of a telephone or mobile phone number, email address, or other delivery location that is not your own or your violation of applicable federal, state or local law, regulation or ordinance. Your obligation under this paragraph shall survive termination of Mobile Banking and these End User Terms.

#### Additional Terms for Remote Deposit Service

1. Remote Deposit Service. "Remote Deposit Service" is a Mobile Banking service that allows you to make deposits of the electronic image of a check or substitute check (as defined by federal law) (each an "Item") to your eligible checking, savings, or money market accounts at BMO Harris by capturing an electronic image of the Item with the capture device (such as a camera) on your mobile device and submitting images and information about the Item to us for processing.

2. Eligible Items. You agree that you will not use the Remote Deposit Service to deposit any of the following Items:

- a. Items that have already been presented to, or paid by, another person, company or depository institution;
- b. Items payable to any person or entity other than you;
- c. Items drawn on a financial institution located outside the United States;
- d. Items containing obvious alteration to any of the fields on the front of the Item, or which you know or suspect, or should know or suspect, are fraudulent; or
- e. Items prohibited by our current procedures relating to the Remote Deposit Service or which are otherwise not acceptable under the terms of your applicable checking, savings, or money market account and related agreement with us. You can find information about our current procedures through the Frequently Asked Questions for Mobile Deposit available on our website at: <https://www.bmoharris.com/us/personal-finance/banking/mobile-banking/faq>.

3. Image Quality. The image of an Item transmitted using the Remote Deposit Service must be legible and clear. It must not be altered. It must capture all pertinent information from both sides of the Item. Image quality must comply with industry requirements established and updated by the American National Standards Institute (ANSI), Federal Reserve Board and any other applicable regulatory agency.

4. Endorsement. You must endorse all Items before submitting them using the Remote Deposit Service.

5. Processing Time and Availability of Funds. If we receive the image of an Item for deposit on or before 7:00 p.m. Central Time (CT) on a Business Day (as defined in the Service Agreement), we will consider that day the day of deposit. If we receive the image of an Item for deposit after 7:00 p.m. CT or on a weekend or on a non-Business Day, we will consider the next Business Day as the day of deposit. For Items deposited into checking accounts, the first \$200 of the deposit will be available 1 Business Day after the day of deposit. Any amount in excess of \$200 will be available 2 Business Days after the day of deposit. For Items deposited into savings or money market accounts, all funds will be available 2 Business Days after the day of deposit.

6. Disposal of Transmitted Items. You agree to safeguard and keep the original Item for 15 Business Days after you have transmitted the Item. After 15 Business Days following the deposit using the Remote Deposit Service, if you have verified that the funds have been credited to your account, you agree to mark the item as "VOID" and properly dispose of it to ensure it is not presented for deposit again. If you fail to follow these procedures and you or any third party cashes or re-deposits the Item, you may be liable to us for the amount of the Item.

7. Restrictions and Limitations. You agree:

- only Items that originated as paper Items and no third party or electronic checks may be deposited using the Remote Deposit Service;

- after you submit an Item for deposit using the Remote Deposit Service, you will not redeposit or otherwise transfer or negotiate the original Item;

- not to deposit Items into your Account unless you have authority to do so;

- the total amount of deposits that you capture and submit using the Remote Deposit Service will not exceed \$5,000 during any five-Business Day period except as otherwise expressly provided herein;

- after you submit an Item for deposit you are solely responsible for the storage or destruction of the original Item;

- the electronic image of the Item will become the legal representation of the Item for all purposes; and

- any image we receive accurately and legibly represents all of the information on the front and back of the original Item as originally drawn.

8. Minimum Hardware and Software Requirements. In order to use the Remote Deposit Service, you must obtain and maintain, at your expense, compatible hardware and software as specified by BMO Harris, including an Internet enabled mobile device as specified by us to use this service.

9. Eligibility. You must meet our eligibility requirements in order to use the Remote Deposit Service. These eligibility requirements include being a BMO Harris Online Banking customer who has had a BMO Harris deposit account for more than 90 days. We may change the eligibility requirements from time to time in our sole discretion. You can find information about our current eligibility requirements through the Frequently Asked Questions for Mobile Deposit available on our website at: <https://www.bmoharris.com/us/personal-finance/banking/mobile-banking/faq>.

10. Errors. You agree to notify us of any suspected errors related to your deposit made with the Remote Deposit Service immediately and no later than 40 days after the applicable account statement is provided, or as otherwise specified in your deposit account agreement with us. For consumers, the period in which you must notify us may be longer as set forth in the "Substitute Checks and Your Rights as a Consumer" in your deposit account agreement.

## AGREEMENT WITH LICENSOR

### SECTION B

#### END USER LICENSE AGREEMENT TERMS FOR THE DOWNLOADABLE APP

To be Agreed to by End User Prior to Use of the Downloadable App

1. Ownership. You acknowledge and agree that a third party provider or licensor to your financial services provider ("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to Mobile Banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

2 License. Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hardcopy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason.

Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

3. Restrictions. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

4. Disclaimer Warranty. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR , THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights. The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance with 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

7. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed

in accordance with the laws of the state of California excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of California and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation are and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.

8. Content and Services. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

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