



**Mobile Banking Service Agreement  
Addendum to Online Banking Service Agreement**

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**AGREEMENT AND DISCLOSURES**

This Mobile Banking Service Agreement, as amended by Amegy Bank N.A. (“Amegy”) from time to time (this “**Agreement**”), governs your use and Amegy’s provision to you of Amegy’s Mobile Banking Services, as defined below. The terms “**you**” and “**your**” refer to the Personal Customer entering into this Agreement for Mobile Banking Services with Amegy. Amegy may be referred to in this Agreement as “**we**” or “**us**”. Unless we have agreed otherwise in writing, the Mobile Banking Services are intended solely for use by Personal Customers and not by Business Customers. The term “**Mobile Banking**” means any service or services that we provide, and that you subscribe to, enabling you to make banking or other financial transactions with Amegy through your Mobile Device. The term “**Mobile Device**” means a cellular telephone or similar wireless communication device onto which you have downloaded software provided by us (“**Mobile Banking Software**”) for the purpose of permitting Mobile Banking. A “Mobile Device” may also include a cellular telephone or similar wireless communication device that, if in the future we permit, is capable of conducting banking transactions at our Mobile Banking site through text (SMS) messaging, Wireless Application Protocol (WAP), or other protocols that we select or approve. The term “**Online Banking Agreement**” means the Internet Banking Services Agreement that you accepted when enrolling in Amegy Online Banking, as that agreement is amended by Amegy from time to time. This Agreement is a part of the Online Banking Agreement. Initially capitalized terms that are not defined in this Agreement are defined in your Online Banking Agreement.

Before using Mobile Banking, you must both (a) consent to receive notices and disclosures electronically, and (b) read and accept this Agreement. You must evidence that consent and acceptance by selecting the box declaring your acceptance at the time you enroll to receive your Mobile Banking activation code. In addition, you are deemed to automatically renew that consent and acceptance each time you log in as a user of Amegy’s Mobile Banking and use Mobile Banking to conduct any transaction. This Agreement can also be viewed within Online Banking in the Agreement Center.

**1. CONSENT TO RECEIVE DISCLOSURES ELECTRONICALLY AND NOTICES ELECTRONICALLY**

By accepting this Agreement, you consent to receiving notices and disclosures concerning Mobile Banking, Online Banking, and your enrolled Accounts electronically, including by email or text message. You must enter your electronic address for such disclosures and notices when first subscribing to Mobile Banking, and you are solely responsible for immediately updating your electronic address if it changes. You must update your electronic address by logging into Mobile Banking, accessing the electronic page for managing your Mobile Banking account, and entering your new electronic address. All disclosures and notices by us shall be deemed given and received by you immediately upon being sent to the electronic address you have most recently updated. Many disclosures and notices may also appear in your account statement. Unless specifically required by law, we are not obligated to provide any disclosure or notice to you by regular mail or by any means other than electronic transmission. If you withdraw our right to provide you with electronic communications as described in this section, we may terminate your Mobile Banking.

In order to keep notices and disclosures sent to you electronically, you must have the ability to save them to your mobile device or computer, or to print them. You may also request a paper copy of an electronic notice or disclosure at no additional charge by calling our Customer Service Center at 1-800-287-0301.

## **2. MOBILE BANKING SERVICE AGREEMENT**

We endeavor to provide you with superior Mobile Banking services. To access Mobile Banking, your phone or other mobile communication device must be Internet enabled, able to receive SMS text messages and connected to the Internet through your mobile communication service provider. To use Mobile Banking, you must first be enrolled in Online Banking with Amegy and then subscribe to Mobile Banking. The same credentials (Login ID and Password) that are in place for your Online Banking service apply to Mobile Banking.

### **A. Mobile Banking Functions**

You may determine which Mobile Banking functions are available for Mobile Devices at any time by logging into Mobile Banking. Mobile Banking functions (e.g., viewing balances, searching for transactions, viewing transactions, specific types of funds transfers) may be added, reduced or modified by us from time to time without prior notice. We may also modify, reduce or expand the geographic areas in which we offer Mobile Banking or any of its functions or services. We reserve the right to refuse to make any transaction you request through Mobile Banking.

Not all functions that are described in your Online Banking Agreement or available at the Online Banking website may be available with Mobile Banking. All terms and conditions in your Online Banking Agreement and on the Online Banking website that limit or govern your use of Online Banking functions will also limit and govern your use of those functions through Mobile Banking.

### **B. Mobile Banking Service Availability**

We will use reasonable efforts to make Mobile Banking service available for your use on a continuous basis. We do not guarantee functionality of Mobile Banking (or any specific software that we provide with respect to Mobile Banking) on all Mobile Devices, on all communication networks, in all geographic regions, or at all times. Mobile Banking service may be temporarily unavailable for regular or emergency system maintenance. We will endeavor to have our scheduled maintenance occur during non-peak hours, but we may conduct maintenance at any time. In addition, your accessibility to the Mobile Banking service may be interrupted because of conditions beyond our control, including because of outages in Internet availability. We will use commercially reasonable efforts to promptly re-establish Mobile Banking service in those instances, but we do not promise the Mobile Banking service will always be available for your use. We may elect to discontinue Mobile Banking (or any of the services that we provide, from time to time, through Mobile Banking) at any time. If we choose to discontinue Mobile Banking, we will provide you with reasonable notice. In the case of a disaster, your Mobile Banking may be suspended in order to allow emergency and responding personnel to use the cellular networks.

### **C. Fees Charged by Amegy**

Currently, we charge no fees for subscribing to or using Mobile Banking. However, we may assess fees (a) as described in the applicable product or account disclosure statement or fee schedule (including applicable transfer fees), or (b) for products and services purchased online.

We reserve the right to institute or change fees for Mobile Banking by sending you prior notice. See the section "Changes to Fees or Other Terms."

### **D. Mobile Device Requirements**

Using Mobile Banking requires an Internet-enabled Mobile Device that supports 128-bit encryption and accepts text (SMS) messages. Your mobile carrier may charge you for Internet-related use and text (SMS) messages, so please see your mobile carrier for further details about these charges.

You are responsible for providing your own Mobile Device to access Mobile Banking. The Mobile Device that you use may be subject to unauthorized tracking or other manipulation by "spyware" or other malicious code. We are not responsible for advising you of the existence or potential effect of such malicious code, and your use of your hardware and software is at your own risk. You are responsible for all fees and charges you may incur to any mobile communication service provider or other third parties while using Mobile Banking. We are not a party to, and we have no

duty, liability or responsibility with respect to or in connection with (i) your mobile communication service agreement, or (ii) any Mobile Device, hardware, software or other any product or service you may purchase from others relating to your use of Mobile Banking.

#### **E. Mobile Banking License Rights**

Mobile Banking users will be required to download, install and use certain software systems and programs developed by us, our licensors or other third-parties. We are not responsible for any damage to your Mobile Device resulting from those activities, and you will be engaging in those activities at your own risk. In connection with your use of the Mobile Banking software systems and programs, we and our licensors (or other third-parties who have directly or indirectly granted rights in those software systems and programs with respect to Mobile Banking) will require you to agree to the terms and conditions of certain license rights arrangements and/or "end user" license agreements. By subscribing to the portions of the Mobile Banking services relating to those software systems and programs and downloading and installing those software systems and programs, you will be evidencing your acceptance of the terms and conditions of those arrangements and agreements. We may also condition your use of some or all of those software rights and programs on your execution of, agreement to or acknowledgment of, such arrangements and agreements through the use of "I Accept" dialogue box acknowledgements or other affirmative or use-based acknowledgement and agreement systems. We and our service providers (which includes, without limitation, any third-party provider of software used in connection with Mobile Banking) reserve all rights not granted to you in this Agreement and under the terms of those arrangements and agreements. If you obtain a different Mobile Device, you will be required to download and install the software to that different Mobile Device under the same terms set forth in this Agreement, including the provisions of this paragraph E. You agree to delete all such software from your Mobile Device promptly if the license rights granted in this Agreement terminate for any reason. We reserve the right to change, add to or terminate services with our third-party software solutions partners, to substitute different software solutions for the software relating to the operation of Mobile Banking and to enter into arrangements and agreements for the provision of software solutions for Mobile Banking with other licensors and third-parties.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR THE AGREEMENTS GOVERNING THE TERMS OF ANY LICENSE RIGHT RELATING TO THE USE OR OPERATION OF MOBILE BANKING, MOBILE BANKING AND SUCH SOFTWARE ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY OR COMPLETENESS. YOUR USE OF THE MOBILE BANKING SOFTWARE AND MOBILE BANKING SERVICES AND ANY MATERIAL OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED VIA MOBILE BANKING IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

Our primary licensor for the Mobile Banking services is mFoundry, Inc., which has provided us the right to enter into an end user agreement with you for the use of its mBanking software. During such time as we maintain our rights to license the mBanking software, by subscribing to Mobile Banking you agree as follows:

(i) **Ownership.** You acknowledge and agree that mFoundry, Inc. is the owner of all rights, title and interest in and to the mBanking software and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, additions to, 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 "mBanking Software").

(ii) **License.** Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the mBanking 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 mBanking Software. Nothing in this license will

entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the mBanking Software. The license granted under this paragraph may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the mBanking Software in your possession or control.

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

(iv) **Disclaimer of Warranty.** THE MBANKING 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 NON-INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE MBANKING SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE MBANKING SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE MBANKING SOFTWARE AND ANY MATERIAL OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED VIA THE MBANKING SOFTWARE IS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

(v) **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MFOUNDRY OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE MBANKING 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, MFOUNDRY'S LIABILITY ARISING OUT OF THE USE OR INABILITY TO USE THE MBANKING SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

(vi). **U.S. Government Restricted Rights.** The MBanking 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 mBanking Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.

(vii). **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the mBanking Software. The terms of this Agreement relating to the mBanking Software (clauses (i) through (viii) of this paragraph E) 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 that portion 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 mBanking Software 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 with respect to the provisions of clauses (i) through (viii) of this paragraph E.

(viii) **Content and Services.** Neither mFoundry nor the provider of the wireless network is the provider of any financial services available through or related to the mBanking Software, and neither mFoundry nor the provider of the wireless network is responsible for any of the materials, information, products or services made available to you via the mBanking Software.

## **F. Additional Terms and Conditions**

This Agreement is an addendum to your Online Banking Agreement. Your use of Mobile Banking is subject to the terms and conditions of your Online Banking Agreement (as amended from time to time) and your other agreements with us and our affiliates. Without limitation, this Agreement is subject to your Online Banking Agreement's provisions regarding limitations on your liability for unauthorized transfers, contacting us concerning questions or errors, disclaimers of warranties, limitations on our liability, indemnity, amendments, dispute resolution, and definitions. In the event of a specific conflict between this Agreement and the terms of the Online Banking Agreement, the terms of this Agreement will govern. Each account that you access, or through which you conduct a transaction, using Mobile Banking remains subject to the terms and conditions of that account's Account Agreement.

You agree that you will continue to be subject to the terms and conditions of your existing agreements with any unaffiliated service providers for your Mobile Device, such as your service carrier or provider, and that you are still subject to any fees, costs, other charges, limitations or restrictions imposed by those parties under your agreements with them. This Agreement does not amend or supersede any of those agreements. Your mobile service carrier or provider is responsible for its products and services, and you agree to resolve any problems with your carrier or provider directly, without involving us.

## **G. Changes to Fees or Other Terms**

We may change this Agreement at any time by sending notice as described in your Online Banking Agreement; provided, however, that this Agreement governs our right to provide you with that notice electronically. You may choose to accept or decline the change. By continuing to use any Mobile Banking service to which a notice relates, you are deemed to accept the changes relating to that service. Changes to fees applicable to a specific account are also governed by the applicable Account Agreement(s) and any interest or fee schedules pertaining to your account.

## **H. Lost or Stolen Mobile Device or Password; Unauthorized Transfers**

If you believe your Mobile Device, user name (Login ID), password, or other approved access device has been lost or stolen, or that someone has transferred or may transfer funds from your account without your authorization, **contact us AT ONCE at 1-800-287-0301**. For a description of your and Amegy's responsibilities and liability with respect to unauthorized transactions review the appropriate sections of your account's Deposit Agreement.

## **I. In Case of Errors or Questions about Your Account**

Please contact our Customer Service Center at 1-800-287-0301 with respect to errors in, or questions about, your transfers. Refer to your account's Deposit Agreement for a description of how errors and questions on funds transfers are processed. To contact us by mail, please use the following address:

Amegy  
Mobile Banking Support - ZFNB  
ATTN: 581-C  
P.O. Box 30709  
Salt Lake City, UT 84130-0709

Please contact us at 1-800-287-0301 with any questions you may have regarding the above information and disclaimers.