

Mobile Remote Deposit Capture Agreement

This Mobile Check Deposit User Agreement ("Agreement") contains the terms and conditions for the use of Merchants Bank of Commerce (MBOC) Mobile Check Deposit and/or other remote deposit capture services that MBOC or its affiliates ("us," or "we") may provide to you ("you," or "User").

- 1. Services.** The mobile remote deposit capture services ("Services") are designed to allow you to make deposits to your checking, savings, or money market savings accounts from home or other remote locations by scanning checks and delivering the images and associated deposit information to MBOC or MBOC's designated processor.
- 2. Acceptance of these Terms.** Your use of the Services constitutes your acceptance of this Agreement. This Agreement is subject to change from time to time. We will notify you of any material change via on our website(s), within our mobile app or secure message by providing a link to the revised Agreement. You will be prompted to accept or reject any material change to this Agreement the next time you use the Service after MBOC has made the change. Your acceptance of the revised terms and conditions along with the continued use of the Services will indicate your consent to be bound by the revised Agreement. Further, MBOC reserves the right, in 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 changes to the Services.
- 3. Limitations of Service.** When using the Services, you may experience technical or other difficulties. We will attempt to post alerts on our website or within our mobile banking application to notify you of these interruptions in Service. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and we reserve the right to change the qualifications at any time without prior notice. We reserve the right to change, suspend or discontinue the Services, in whole or in part, or your 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, you must obtain and maintain, at your expense, compatible hardware and software as specified by MBOC from time to time. MBOC is not responsible for any third party software you may need to use the Services. Any such 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 time of download and installation.
- 5. Fees.** A fee may be charged for the Service. You are responsible for paying the fees for the use of the Service. Any fee that is charged will be disclosed prior to your deposit. MBOC may change the fees for use of the Service at any time pursuant to the section titled "Acceptance of these Terms" above. (You authorize MBOC to deduct any such fees from any MBOC account in your name.)
- 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 image of the check transmitted to MBOC is converted to an Image Replacement Document 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 previously converted to a substitute check, as defined in Reg. CC.
- 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 6 months prior to the date of deposit.
- Checks or items prohibited by MBOC's current procedures relating to the Services or which are otherwise not acceptable under the terms of your MBOC account.

- 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 capture service offered at any other financial institution.
- Checks or items that are drawn or otherwise issued by the U.S. Treasury Department.

(a) **General.** The System allows you to check the balance of your Account(s), view Account transaction history, transfer funds between your Accounts (internal or external transfers), order checks, request stop payment(s), view check images, view statements and other electronic notices, change your address, and pay certain bills from your Accounts in the amounts and on the dates you request via the System.

(b) **Changes to or Unavailability of the Services.** We may add or delete any System Service, or add, delete, or change the features or functions of any System Service, at any time in our sole discretion. We may cause any System Service (or the entire System) to be temporarily unavailable, either with or without prior notice, for site maintenance, security, or other reasons, and you should be aware that factors beyond our control, such as telecommunications failure, equipment failure, or other events described in the Agreement may also cause System to be unavailable. If a System Service is unavailable, you are responsible for making alternative arrangements to initiate transactions. You may telephone us to determine if any particular System Service can be provided in some other manner on a temporary basis.

7. **Endorsements and Procedures.** You agree to restrictively endorse any item transmitted through the Services as "For Mobile Deposit only" or as otherwise instructed by MBOC. You agree to follow any and all other procedures and instructions for use of the Services as MBOC may establish from time to time.

8. **Receipt of Items.** We reserve the right to reject any item transmitted through the Services, at our discretion, without liability to you. We are not responsible for items we do 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 MBOC that we have 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. We further reserve the right to charge back to your account at any time, any item that we subsequently determine was not an eligible item. You agree that the Bank is not liable for any loss, costs, or fees you may incur as a result of our chargeback of an ineligible item.

9. **Availability of Funds.** You agree that items transmitted using the Services are subject to the funds availability requirements of Federal Reserve Board Regulation CC. In general, if an image of an item you transmit through the Service is received and accepted before 8:00 p.m. Eastern Time on a business day that we are open, we consider that day to be the day of your deposit. Otherwise, we will consider that the deposit was made on the next business day we are open. Funds deposited using the Services will generally be made available within three business days from the day of deposit. MBOC may make such funds available sooner based on such factors as credit worthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors as MBOC, in its sole discretion, deems relevant.

10. **Disposal of Transmitted Items.** Upon your receipt of a confirmation from MBOC that we have received an image that you have transmitted, you agree to securely retain the check no more than 14 calendar days from the date of the image transmission. You agree to destroy (cross cut shred) the check that you transmitted as an image, mark it "VOID", or otherwise render it incapable of further transmission, deposit, or presentment. During the time the retained check is available, you agree to promptly provide it to MBOC upon request.

11. **Deposit Limits.** We have established limits on the dollar amount and number of items you may deposit. These deposit limits may change at any given time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.

Daily and monthly deposit limits may vary for users of other services, such as MBOC Merchant Remote Deposit Capture Services.

12. **Presentment.** The manner in which the items are cleared, presented for payment, and collected shall be in MBOC's sole discretion subject to the Bank Services Agreement or Commercial Bank Services Agreement governing your account.

13. **Errors.** You agree to notify MBOC of any suspected errors regarding items deposited through the Services right away, but in no event later than 30 days after the applicable MBOC account statement is sent. Unless you notify MBOC within 30 days, such statement regarding all deposits made through the Services shall be deemed correct, and you are prohibited from bringing a claim against MBOC 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. MBOC 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 MBOC using the Services must be legible, as determined in the sole discretion of MBOC. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by MBOC, ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association.
- 16. User Warranties and Indemnification.** You warrant to MBOC that:
- (a) You will only transmit eligible items.
 - (b) You will not transmit duplicate items.
 - (c) You will not re-deposit or re-present the original item at our Institution or any other Financial Institution.
 - (d) All information you provide to MBOC is accurate and true.
 - (e) You will comply with this Agreement and all applicable rules, laws and regulations.
 - (f) You are not aware of any factor which may impair the collectability of the item.
- You agree to indemnify and hold harmless MBOC from any loss for breach of this warranty provision.
- 17. Cooperation with Investigations.** You agree to cooperate with us 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 Service in your possession and your records relating to such items and transmissions.
- 18. Termination.** We 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 us. 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 any other agreement with us.
- 19. Enforceability.** We 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 our rights with respect to any other transaction or to modify the terms of this Agreement. 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.
- 20. Ownership & License.** You agree that MBOC 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 your 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 MBOC's business interest, or (iii) to MBOC's actual or potential economic disadvantage in any aspect. 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.
- 21. DISCLAIMER OF WARRANTIES.** YOU AGREE 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. WE DISCLAIM 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 NONINFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICES (i) WILL MEET YOUR 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.
- 22. LIMITATION OF LIABILITY.** YOU AGREE THAT WE 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 THIS SERVICES, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF MBOC HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.