

Mobile Deposit Capture Agreement

This Mobile Deposit Capture Agreement (“Agreement”) dated as of _____ is for the Mobile Deposit Capture Product (“MDCP”) described below and provided by **FARMERS-MERCHANTS BANK OF ILLINOIS** (“The Bank”) for _____ (“Customer”). This Agreement includes by reference the terms and conditions set forth in The Bank’s TERMS AND CONDITIONS OF YOUR ACCOUNT governing all Customer Accounts with The Bank. In the event of any inconsistency between a provision of this Agreement and TERMS AND CONDITIONS OF YOUR ACCOUNT, the provisions of TERMS AND CONDITIONS OF YOUR ACCOUNT shall prevail.

The terms “we,” “us” and “our” refer to The Bank. “You” or “your” refer to Customer.

This agreement is governed by and subject to all applicable federal laws and the laws of the State of Illinois, as well as regulations and rules that may be promulgated in accordance with federal and state law. When used in this agreement, the term “applicable law” includes all of the above.

1. DESCRIPTION OF PRODUCT

MDCP includes the software, hardware and processes that allow you to electronically capture an image (or picture) of an eligible check or other item using a mobile capture device, such as a smartphone or similar device, and transmit the item to The Bank for deposit into your designated account from any remote location.

2. ACCEPTANCE OF THESE TERMS

Your use of MDCP and signature on the last page of this Agreement below CUSTOMER ACCEPTANCE constitutes your acceptance of this Agreement. The Bank reserves the right, in its sole discretion, to change, modify, add or remove portions from MDCP as it deems necessary or desirable. The Bank will provide you notice at least thirty (30) days prior to the effective date of the change and will provide a link or written Internet address to a location on The Bank’s website where the change is described. It is your responsibility to read the notice of change. Your continued use of MDCP after notification shall constitute acceptance of any changes.

3. TERM AND TERMINATION

This Agreement shall be effective as of the date it is executed by Customer and The Bank and will continue until terminated in writing by Customer or The Bank.

4. RULES

4.1 Eligible and Ineligible Items. The following lists describe items which may and may not be used with MDCP:

Eligible Items

- Checks drawn on U.S. financial institutions
- Checks payable to multiple parties if account is owned by same
- Money Orders
- Cashier’s Checks

Ineligible Items

- Foreign items
- Savings bonds
- Checks payable to another person
- Items that are missing processing information, such as illegible or missing account or bank routing numbers
- Items that have been previously electronically captured and endorsed
- Bond coupons
- Treasury Tax & Loan (TTL) payments
- Pay on sight items
- Remotely created checks
- Altered checks
- Returned items
- Checks that are postdated or more than six (6) months old
- Traveler’s checks

4.2 Exposure Limit Review. In accordance with applicable law, an exposure limit, which is the largest deposit allowed on a single business day, must be established before MDCP is initiated for Customer, and re-approved annually thereafter. By submitting a signed MDCP Application, you authorize The Bank to obtain any information necessary, including a credit report, to complete the exposure limit review.

- 4.3 Adverse Change.** If The Bank, in its sole judgment, determines that there has been an adverse change in Customer's financial condition, The Bank may terminate this Agreement effective immediately.
- 4.4 Funds Availability.** Items received through MDCP will be subject to the same availability schedule, requirements and restrictions as paper checks deposited in our offices. The availability schedule can be obtained at all offices and online at our website.

5. BANK RESPONSIBILITIES

- 5.1 Acceptance of Items.** The Bank will credit your account for all qualifying items if received by the deadline in correct and usable form. As set out in detail in Section 6.2 below, The Bank reserves the right to reject any item that is inaccurate or not eligible for processing, and is not responsible for any delays in funds availability as a result of rejected items.
- 5.2 Return Items.** The Bank will process and return unpaid items in accordance with The Bank's published guidelines and schedules, as governed by applicable law, and will as necessary, convert check images into substitute checks for processing.
- 5.3 Reporting.** The Bank will provide MDCP information in appropriate format and media necessary to operate MDCP, including balance information and the ability to display and print any MDCP transaction deposited.
- 5.4 Liability and Disclaimer.** The Bank shall not be liable to Customer other than as required by applicable law when the procedures of The Bank are followed and such procedures are reasonable. The Bank is not responsible for detecting Customer errors contained in any deposit created and transmitted to The Bank by Customer. The Bank is not responsible for loss resulting through error by other banks or other entities involved in the collection process.
- 5.5 Reliance on Information Sent.** The Bank shall be entitled to rely on any information sent via Customer's remote capture device through MDCP. The Bank is not responsible for any losses that may result from the unauthorized use of MDCP.

6. CUSTOMER RESPONSIBILITIES

- 6.1 Documentation Requirement.** Customer agrees to provide information as required by applicable law or by The Bank, when requested.
- 6.2 Ensuring that Data is Accurate and Usable.** The Customer agrees that it is responsible for insuring that all items are correct and usable, both in content and form. Transmitted items will be rejected or may be held for further research and verification if they exceed the exposure limit, if the image quality is unacceptable, if there has been a duplication of items, if the transaction is out of balance, if the check is not properly endorsed or otherwise cannot be processed, is inaccurate, incomplete or inadequate. If rejected, it is the sole responsibility of Customer to correct and resubmit the information to The Bank. Customer is responsible for all delays in funds availability for any items rejected or held.
- 6.3 Receipt of Deposit Verification.** If Customer does not receive a receipt of deposit following a transmission, it is the sole responsibility of Customer to determine why the transmission was not received, and The Bank is not responsible for determining the cause or for processing the deposit.
- 6.4 Daily Item Balancing.** Customer agrees to verify MDCP items, using online banking, deposited on the previous business day and immediately notify The Bank of any error. The Bank will make every effort to assist Customer in resolving transmission and posting errors, but all adjustments will be made in accordance with The Bank's TERMS AND CONDITIONS OF YOUR ACCOUNT and applicable law.
- 6.5 Risk Management.** Customer shall be responsible for protecting against unauthorized access to MDCP information and data in accordance with applicable law, which includes, but is not limited to the following:
- a) Maintaining mobile access device with recommended identification codes, settings, software and parameter updates provided by The Bank and/or your mobile access device vendor;
 - b) Changing passwords periodically or when requested by The Bank;
 - c) Using virus and malware detection software approved by your mobile access device vendor as available;
 - d) Avoiding the use of operating system or access device features that "remember" pass codes or account information;
 - e) Permanently destroying or erasing all memory components, hard drives and all electronic media used with MDCP that have become obsolete, unusable or which are defective.
 - f) Destroying or storing replaced memory cards in a secure environment before activating new access devices; and
 - g) Notifying The Bank immediately of any breach of access device or any unauthorized access to confidential information. Customer further agrees to notify Bank before making any oral or written statements that may be published by newspaper, radio, television or Internet.
- 6.6 Procedural Requirements.** Customer agrees that it has access to updated rules and regulations for MDCP and agrees to follow the procedures defined in information provided to Customer by The Bank.

- 6.7 **Service Disruption.** In the event that a major disruption occurs, the User is instructed to transport the check to the closest office and make the deposit manually. If the problem was caused by the User's Internet or resources that the User is responsible for, adjustments to the deposit will be made per our Agreement.

7. PAYMENT TO BANK

The Bank does not presently charge a fee for the use of MDCP. However, at the bank's sole discretion, a fee may be imposed in the future after you have received at least thirty (30) days' notice. If you agree to the fee, your continued use of MDCP will constitute acceptance. The Bank is not responsible for any fee that may be charged to you by your mobile device provider.

8. LIABILITY AND INDEMNITY

Bank's responsibility and liability to Customer for any liabilities, claims, losses, costs, expenses (including attorney's fees and costs) or damages of any kind, including without limitation direct or indirect, special, incidental, consequential and punitive damages, arising in connection with any aspect of this MDCP, including but not limited to the use or the inability to use any MDCP feature, or any failure, error, omission, interruption, defect, delay in operation or transmission, computer viruses or malware, or any line or system failure related to MDCP, are strictly limited to those expressly provided by applicable law. CUSTOMER AGREES TO HOLD HARMLESS, DEFEND AND INDEMNIFY THE BANK, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND ALL PERSONS IN PRIVITY WITH IT FROM AND AGAINST ANY LIABILITIES, CLAIMS, LOSSES, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS) OR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND PUNITIVE DAMAGES, ARISING IN CONNECTION WITH ANY ASPECT OF MDCP, EVEN IF THE LOSSES RESULTED FROM THE NEGLIGENCE OF THE PARTIES INDEMNIFIED HEREIN. BANK'S LIMITED RESPONSIBILITY AND LIABILITY AS SET FORTH HEREIN CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT IN LIEU OF ALL OTHER REMEDIES, WHETHER EXPRESSED OR IMPLIED AND WHETHER AT LAW OR IN EQUITY, AND BANK HEREBY DISCLAIMS, AND CUSTOMER WAIVES AND RELINQUISHES ITS RIGHT TO ANY OTHER REMEDY AND CLAIMS.

9. AUTHORIZED EQUIPMENT AND SOFTWARE

Customer agrees to purchase and use equipment and software that is compatible with MDCP and approved by The Bank. The Bank shall have no liability or responsibility for any damages, losses or claims by Customer as a result of any software or equipment used in conjunction with MDCP and transactions contemplated by this Agreement, and Customer's sole recourse with respect to any such damages, losses or claims shall be against the manufacturer or provider of such software and equipment.

10. MISCELLANEOUS

- 10.1 Benefits and Assignment of Agreement.** The terms and provisions of this Agreement shall inure to the benefit of and be binding upon Customer, The Bank and its respective successors and assigns. Customer may not assign its rights under this Agreement. The Bank may assign or delegate certain of its rights and responsibilities under this Agreement as it deems necessary.
- 10.2 Entire Agreement.** This Agreement constitutes the entire understanding between the parties as to the MDCP, and supersedes any and all previous agreements with respect thereto.
- 10.3 No Oral Agreements.** No officer or employee of The Bank has authority to orally modify any provision of this Agreement. Customer acknowledges that there are no oral conditions, representations, agreements or commitments affecting the Agreement and that it has not entered into this Agreement in reliance upon any representation made by The Bank.
- 10.4 Ownership of System.** Customer agrees that certain MDCP features are provided by The Bank to Customer under a sublicensing agreement with third-party vendors. Customer agrees that The Bank may in the future contract with additional third-party vendors for development and/or delivery of MDCP features or enhancements as it deems necessary or desirable. Customer agrees that the vendors used are the sole owners and licensors for their MDCP features and that at no time during the term of this Agreement, or after termination, will Customer have any claim or interest in the MDCP, other than Customer's information and data.
- 10.5 Severability.** If any of the provisions of this Agreement are deemed invalid under any applicable law, all remaining provisions shall remain in full force and effect.
- 10.6 Notice.** Notices from The Bank to Customer may be made by any method selected by The Bank, including United States Postal Service, email, facsimile or text message. Notices from Customer to The Bank shall be made through United States Postal Service or email. Customer may advise The Bank by telephone of any issue needing immediate attention, but such notice must be followed up in writing. All such notices will be made to the addresses as set forth following the signatures at the end of this agreement, and shall be effective upon receipt.
- 10.7 Headings.** Headings to sections of this Agreement are included for ease of reference and shall not be deemed to create rights, remedies, claims or defenses arising under this Agreement.

10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.