

# Mobile Deposit User Agreement



This Mobile Deposit User Agreement (the “Agreement”) governs your use of the mobile remote deposit capture services that Mabrey Bank (“We” or “Us”) may provide to you (“you” or “your”).

## 1. Description of Remote Capture Services.

Our mobile remote deposit capture services (collectively, the “Service”) allow you to send Us images of checks via your compatible mobile device, together with relevant deposit information, for deposit into your checking, savings, or money market savings accounts. You may only deposit checks [as that term is defined in 12 CFR §229.2(k)] using the Service. Checks submitted to Us remotely must be payable to you and are subject to verification and inspection.

## 2. Other Agreements.

The Service is an addition to your Mobile Internet Banking service. You must be authorized to use Mabrey Bank Online Banking and be authorized to use the Mobile Internet Banking Service to use this Service. All other agreements you have with Us, including, without limitation, the deposit account agreement governing your account with Us; our funds availability policy; Disclosures, and Access Agreement, and the Mobile Banking Agreement remain in full force and effect, are not modified by this Agreement and apply to your use of the Service. You should review your other agreements with Us for any other restrictions that might affect your use of the Service. If there is a conflict between any other agreement you have with Us and this Agreement, the terms and conditions of this Agreement will govern your use of the Service. These agreements, disclosures and policies were provided to you at account opening, when you signed up for the relevant service or as amended. Copies are available on request.

## 3. Image & Endorsements of Checks for Deposit.

You agree to send Us an image of the front and back of each check you deposit using the Service indorsed by you “For Mobile Deposit Only” followed by your signature, then the account number into which you are depositing the item. We reserve the right to reject items that are not endorsed as specified. All images must be legible and meet standards established from time to time by the American National Standards Institute and all laws and regulations that We are required to observe, including those of any regulatory authority or any clearing house, payment system or intermediary. In the event that any image fails to meet these standards, you may be required to send us a new image.

## 4. Receipt of Checks; Presentment.

We reserve the right, at our discretion, to reject any check transmitted to Us via the Service without liability to you. We are not responsible for checks We do not receive or for images that are dropped during transmission. An image of a check shall not be deemed received until you receive a confirmation of receipt from Us. However, your receipt of confirmation does not mean that the check was cleared, presented for payment or collected. The check will be deposited to your account and further processed in accordance with Our normal business practice. The timing and manner in which any check is deposited, cleared, presented for payment and collected shall be in our sole discretion subject to the agreements governing your account.

## 5. User Conduct.

You agree that your use of the Service will at all times be in compliance with applicable law. You agree not to use the Service or the content or information delivered through the Service in any way that would: (a) violate any law, statute, ordinance or regulation; (b) be false, misleading or inaccurate; (c) create liability for Us or our service providers or cause Us to lose (in whole or in part) the services of any of our service providers; (d) potentially be perceived as illegal, offensive or objectionable; (e) interfere with or disrupt computer networks connected to the

Service; (f) interfere with or disrupt the use of the Service by any other user; or (g) have the affect or appearance of conducting, or attempting to conduct, penetration tests, vulnerability scans, or other assessments of the configuration, security posture, or performance characteristics of the Service, our networks or computers. You shall use the Service for your own personal or small business use in accordance with the terms of this agreement. You shall not give your access information to others to make deposits on your behalf.

#### **6. Eligible Checks.**

Not all checks are eligible to be deposited using the Service. We reserve the right, in our sole discretion, to reject any deposit at any time and for any reason. Checks not eligible to be deposited include, but are not limited to, third-party checks, international checks, previously dishonored checks.

#### **7. Returned Items.**

If any item deposited into your account by the use of this Service is returned to Us, the amount of the item will be charged to your account. A return item fee contained in Mabrey Bank's current fee schedule will also be charged to your account.

#### **8. Availability of Funds.**

You agree that items transmitted using the Service are not subject to the funds availability requirements of the Federal Reserve Board Regulation CC. Our general policy is to allow you to withdraw funds deposited in your account on the first business day after the day we receive your deposit. In some cases we may delay your ability to withdraw funds beyond the first business day. Then the funds will generally be available by the second business day after the day of deposit.

#### **9. Retention and Disposal of Transmitted Checks.**

You agree to retain any check transmitted to Us using the Service for 10 days after receipt of a confirmation from Us that We have received the image. During such time, you agree to promptly provide the check to Us upon request. After 10 days, you agree to mark the check "VOID" and then destroy it or otherwise render it incapable of further transmission, deposit, or presentment.

#### **10. Deposit Limits.**

You may not make deposits under this Agreement in excess of \$5,000 per day, \$10,000 per month or 100 checks per month. You may not deposit any check more than one time. You agree that We may change these limits from time to time without prior notice to you. We may reject any deposit that exceeds the limits in effect at the time the deposit is made. 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.

#### **11. Errors.**

You agree to carefully review each account statement that you receive from Us. You agree to promptly notify Us, and in no event later than 30 days after the date of the applicable statement, if you believe that there has been an error regarding any check deposited using the Service. Unless you notify Us within such 30 day period, each account statement shall be deemed correct, and you are prohibited from bringing a claim against Us for any alleged error.

#### **12. Misdirected and Intercepted Transmissions.**

You accept the risk that electronic communications may be misdirected or intercepted by third parties when you use the Service, and you agree that We bear no liability to you or others for any such intercepted or misdirected communications.

### **13. Your Representations, Warranties and Covenants.**

The Customer represents and warrants that, with respect to each Check and corresponding Electronic Item processed in connection with the Service:

- (i) The Customer is a person entitled to enforce the Check and corresponding Electronic Item;
- (ii) All signatures on the Check and corresponding Electronic Item are authentic and authorized;
- (iii) Checks must be payable to an account owner
- (iv) Checks must be drawn on a U.S. Bank
- (v) The Check is not a counterfeit item;
- (vi) No Check nor any Electronic Item has been altered;
- (vii) Any Electronic Item is a digitized image of a Check and accurately represents all of the information on the front and back of the Check as of the time the Check was converted to an Electronic Item;
- (viii) No Check, nor any Electronic Item nor other digitized image of a Check, will be presented for payment such that an endorser, depository bank, Payer Financial Institution, or the drawer will be asked to make a payment twice with respect to the Check, including without limitation by placing such restrictive indorsement on Checks, or voiding Checks, as Bank may reasonably require.
- (vii) No Check nor Electronic Item are subject to a defense or claim in recoupment of any party that can be asserted against the Customer;
- (ix) The Customer has no knowledge of any insolvency proceeding commenced with respect to the Customer, or in case of an unaccepted Check, the drawer; and
- (x) Any returned Electronic Item is enforceable against the Customer and the drawer of the corresponding Check. The Customer shall be deemed to have repeated each of the foregoing representations and warranties by the processing of each Check through the Service.
- (xi) The Customer is prohibited from depositing third party checks.

### **14. Waiver; 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 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.

### **15. Interruption of Service**

We are not responsible for any damages or loss of any kind from the use of the Service or inability to use the Service by any party, or in connection with any failure of performance, security lockout, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure, or in any way such damages, losses or expenses, whether based on contract, tort, strict liability or otherwise. You are responsible for all equipment and software required to access and run the Service and all equipment and software used by you in conjunction with the Service.

### **16. Indemnification.**

You agree to indemnify and hold harmless Us and each of our directors, officers, employees, agents, successors and assigns (each, an "Indemnitee") from and against any and all liability, loss and/or damage of any kind (including attorneys' fees and other costs incurred in connection therewith) incurred by or asserted against an Indemnitee in any way relating to or arising out of your (a) breach of any representation, warranty or covenant contained in this Agreement, and/or (b) use of the Service, except to the extent that such liability, loss or damage is proximately caused by the gross negligence or willful misconduct of such Indemnitee.

**17. Termination**

This agreement may be terminated without notice by either party at any time for any reason. Without limiting the foregoing, We may terminate this Agreement if you breach any term of this Agreement or if you use the Service for any unauthorized or illegal purposes. We may also terminate the Mobile Internet Banking service, and the Mabrey Bank Online Banking service, at any time without notice.

**18. DISCLAIMER OF WARRANTIES.**

YOU AGREE THAT YOUR USE OF THE SERVICE AND ALL INFORMATION AND/OR 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 SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT (a) THE SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (b) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, AND/OR (c) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED.

**19. Governing Law.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oklahoma.