

Mobile Deposit Capture Agreement

This Mobile Deposit Capture Agreement (“Agreement”) effective as of December, 9, 2013 is for the Mobile Deposit Capture Product (“MDCP”) described below and provided by **United Texas Bank (“UTB”)** for retail and commercial customers (“Customer”). This Agreement includes by reference the terms and conditions set forth in **UTB’s TERMS AND CONDITIONS OF YOUR ACCOUNT** governing all Customer Accounts with **UTB**. In the event of any inconsistency between a provision of this Agreement and **TERMS AND CONDITIONS OF YOUR ACCOUNT** relating to MDCP, the provisions of the Agreement shall prevail.

The terms “we,” “us” and “our” refer to **UTB**. “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 Texas, 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 Smart Phone, Flat-bed Scanner or similar device, and transmit the item to **UTB** for deposit into your designated account from any remote location.

2. ACCEPTANCE OF THESE TERMS

Your use of MDCP and the services constitutes your acceptance of this Agreement. **UTB** reserves the right, in its sole discretion, to change, modify, add or remove portions from MDCP as it deems necessary or desirable. We will notify you of any material change via e-mail, mail, or on our website(s) by providing a link to the revised agreement or by an online secure message. You will be prompted to accept or reject any material change to this Agreement the next time you use the Service after **UTB** has made the 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 effective date listed above and will continue until terminated in writing by Customer or **UTB**. **UTB** may terminate this Agreement at any time and for any reason.

4. RULES

- 4.1 Restrictions of Service.** The customer may experience technical and/or other difficulties at times. **UTB** does not assume the responsibility of these technical or other difficulties or the resulting damages that could occur. Some of the services related to MDCP have qualification or eligibility requirements, and **UTB** has the right to change the qualifications or eligibility requirements at any time without prior notice. **UTB** also reserves the right to change, suspend or discontinue the MDCP service, in whole or part, or a customer’s use, in whole or part, immediately or at any time without prior notice.
- 4.2 Eligibility Requirements.** The use of MDCP is for retail clients only unless otherwise decided by Executive Management that the proper procedures have been followed for a commercial client to be allowed access to MDCP. In which, the rules and procedures of United Texas Bank’s Cash Management and RDC services must be followed. For existing customers, you may not have returned items/deposits or overdrafts within 6 months prior to using MDCP. For new customers, you must have account opened a minimum of 90 days to use MDCP.
- 4.2 Eligible and Ineligible Items.** You agree to scan and deposit only checks as checks are defined in the Federal Reserve Regulation CC (“Reg. CC”).

The following lists describe items which may not be used with MDCP:

Ineligible Items

- Checks or items drawn on foreign financial institutions or payable other than in United States money
- Savings bonds
- Checks or items payable to another person (i.e. no third party deposits)
- Checks or items that are missing processing information, such as illegible or missing account or bank routing numbers
- Checks or items that have been previously electronically captured and endorsed through MDCP or through a remote deposit service offered at another financial institution
- Bond coupons
- Treasury Tax & Loan (TTL) payments
- Checks payable on sight or payable through drafts (as defined in Reg. CC)
- Checks or items that are remotely created checks (as defined in Reg. CC)
- Checks or items containing apparent alteration to any of the information on the front or back of the check or item or which you suspect are fraudulent or otherwise not authorized by the owner on the account

- Returned checks or items
- Checks or items that are more than 6 months prior to the date of deposit
- Checks or items converted to a substitute check
- Checks or items payable jointly, unless deposited into an account in the name of all payees
- Checks or items prohibited by **UTB's** current procedures relating to MDCP or not acceptable under the terms of a Deposit Agreement

- 4.2 Exposure Limit Review and Deposit Limits.** In accordance with applicable law, an Exposure Limit or Deposit Limit, which is the largest deposit allowed on a single business day, may be required before MDCP is initiated for Customer, and re-approved annually thereafter as needed. By accepting this agreement and your use of MDCP, you authorize **UTB** to obtain any information necessary, including a credit report, to complete the Exposure Limit or Deposit Limit review as applicable. **UTB** may establish limits on the dollar amount and/or the number of items or deposits at its discretion. If you attempt to initiate a deposit in excess of the stated limits, **UTB** has the right to reject the deposit. If **UTB**, allows a customer to make a deposit over these limits, the deposit will still be subject to the terms and conditions stated in this agreement and **UTB** will not be obligated to allow a deposit in excess of these limits at another time. The current daily dollar limit is \$2,500 per business day, per account and a \$5,000 30-day rolling limit per account. Daily and monthly deposit limits may vary for users as subject to **UTB's** discretion.
- 4.3 Adverse Change.** If **UTB**, in its sole judgment, determines that there has been an adverse change in Customer's financial condition, **UTB** may terminate this Agreement effective immediately.
- 4.4 Funds Availability and Cut-Off Time.** Items received through MDCP will generally have the same availability schedule, requirements and restrictions as paper checks deposited in our offices. The availability schedule can be obtained at **UTB**. Items transmitted using MDCP before 4:00 p.m. on a business that **UTB** is open; we will consider that day to be the day of your deposit. However, a deposit made using MDCP after 4:00 p.m., or on a day that **UTB** is not open, we will consider that deposit to have been made on the next business day that **UTB** is open. You accept that all credits given to **UTB** for an item are provisional and subject to verification and final settlement.
- 4.5 Disposal.** Upon receipt of confirmation from **UTB** that **UTB** has received an image that you transmitted, you agree to retain the check in safekeeping in a secure environment for at least 30 days from the date of the image transmission. After 30 days, you agree to destroy the check that you transmitted as an image, mark it "Void", or otherwise render it incapable of further transmission, deposit, or presentment. If **UTB** does not accept the image, you may be required to present the original check for payment. During the time the retained check is available, you agree to promptly provide the check to **UTB** at its request.
- 4.6 Endorsement.** You agree that all checks deposited through United Texas Bank's MDCP must be 1) be signed by the required payee, and 2) state that they are "For Deposit Only." You also agree to follow any and all other procedures and instructions for use of MDCP as United Texas Bank may implement at any time.
- 4.7 Re-Deposit and Rejected Items.** If rejected or not deposited for any reason, it is the sole responsibility of Customer to bring the rejected item into the branch address as stated at the end of this agreement. Customer is responsible for all delays in funds availability for any items rejected or held. In the case of a rejected item, **UTB** may contact you by email or phone as applicable.

5. BANK RESPONSIBILITIES

- 5.1 Acceptance of Items.** **UTB** will credit your account for all qualifying items if received by the deadline in correct and usable form. **UTB** 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. An image of an item shall be deemed received when you receive a confirmation from **UTB** that we have received the image. Receipt of an accepted confirmation does not mean that the transmission was error free, complete or will be considered a deposit to your account. **UTB** has the right to return or reject an item at any time that **UTB** determines the item was ineligible. **UTB** is not responsible for any fees that you may incur for return or rejected items.
- 5.2 Return Items.** **UTB** will process and return unpaid items in accordance with **UTB'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.** **UTB** 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.** **UTB** shall not be liable to Customer other than as required by applicable law when the procedures of **UTB** are followed and such procedures are reasonable. **UTB** is not responsible for detecting Customer errors contained in any deposit created and transmitted to **UTB** by Customer. **UTB** 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.** **UTB** shall be entitled to rely on any information sent via Customer's remote capture device through MDCP. **UTB** 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 **UTB**, 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 or otherwise cannot be processed, is inaccurate, incomplete or inadequate. If rejected, it is the sole responsibility of Customer to bring the rejected item into the branch address as stated at the end of this agreement. 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 **UTB** 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 **UTB** of any error. **UTB** will make every effort to assist Customer in resolving transmission and posting errors, but all adjustments will be made in accordance with **UTB'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 **UTB** and/or your mobile access device vendor;
 - b) Changing passwords periodically or when requested by **UTB**;
 - 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 **UTB** 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 annually updated rules and regulations for MDCP and agrees to follow the procedures defined in information provided to Customer by **UTB**.
- 6.7 Errors in Transmission.** A customer using MDCP accepts the risk that an item may be intercepted or misdirected during transmission. **UTB** bears no liability to you or others for any intercepted or misdirected items or information.

7. PAYMENT TO BANK

UTB does not presently charge a fee for the use of MDCP. However, at **UTB'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. **UTB** 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 UTB, 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 **UTB**. **UTB** 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, **UTB** and its respective successors and assigns. Customer may not assign its rights under this Agreement. **UTB** 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 **UTB** 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 **UTB**.
- 10.4 Ownership of System.** Customer agrees that certain MDCP features are provided by **UTB** to Customer under a sublicensing agreement with third-party vendors. Customer agrees that **UTB** 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 **UTB** to Customer may be made by any method selected by **UTB**, including United States Postal Service, email, facsimile or text message. Notices from Customer to **UTB** shall be made through United States Postal Service or email. Customer may advise **UTB** 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 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 Texas.

United Texas Bank
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