

**REMOTE DEPOSIT
MERCHANT CHECK CAPTURE SERVICES AGREEMENT**

This Merchant Check Capture Agreement (“Agreement”) is between MIDWEST BANKCENTRE (“MBC”) and (each being called a “Company”). MBC and Company agree that the provision by MBC and the use by Company of the Merchant Check Capture Services (“MCCS”) described below shall be subject to the terms and conditions set forth in this Agreement.

WHEREAS, the Company has requested MBC to permit the Company to use the MCCS; and

WHEREAS, MBC is willing to accommodate Company by acting as Converting Bank and Reconverting Bank and processing for ultimate delivery to other financial institutions electronic Entries or Substitute Checks by means of its correspondent banks, participating Image Exchange Networks and the Federal Reserve Bank (“FRB”) to the accounts at Paying Banks of checks presented for payment; and

WHEREAS, MBC is willing to process and transmit the Company’s electronic debit and credit Entries subject to the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual premises contained herein, the Company and MBC agree as follow:

ARTICLE I -- DEFINITIONS

1.1 “Account” means a deposit account at a bank.

1.2 “Agreement” means this Remote Deposit Merchant Check Capture Agreement as it may be amended from time to time.

1.3 “ANS X9” means the standards and specifications for paper-based and imaged-based payments as defined by the American National Standards Institute.

1.4 “Available Funds” means funds on deposit in an Account and available for withdrawal pursuant to Regulation CC and MBC’s applicable funds availability schedule and policies.

1.5 “Bank” means any Person that is located in a State and is chartered by a State or by the United States to engage in the business of banking and includes:

- (a) Any depository institution (as defined in the Federal Reserve Act);
- (b) Any Federal reserve bank;
- (c) Any Federal home loan bank; or
- (d) To the extent it acts as a payor—
 - (i) The Treasury of the United States;
 - (ii) The United States Postal Service;
 - (iii) A State government; or
 - (iv) A unit of general local government as defined in the Expedited Funds Availability Act.

1.6 “Banking Day” has the same meaning as in the Expedited Funds Availability Act.

1.7 “Check” means a draft, payable on demand and drawn on or payable through or at an office of a Bank, whether or not negotiable, that is handled for Forward Collection or return, including a Substitute Check and a traveler’s check; provided that the term “Check” does not include a Noncash Item or an item payable in a medium other than United States dollars.

1.8 “Check 21 Act” means Federal Check Clearing for the 21st Century Act.

1.9 “Check Capture” means the conversion of a paper check or deposit document to electronic format by the means of a check scanning device and software.

1.10 “Check Image” means an electronic or digital image of the front and back of an original check or Substitute Check that is created by a depositor, a bank or other participants in the check collection process.

1.11 “Collecting Bank” means any bank handling a check for collection except the paying bank.

1.12 “Converting Bank” means any bank that has Truncated the original check or Substitute Check to a digital image.

1.13 “Company” means a Person having an account with a bank.

1.14 “Entry” means an order or request for the transfer of money.

1.15 “Exposure Limit” means the maximum dollar amount of daily deposits of collected and uncollected checks and Substitute Checks that may be made by the Company. The Exposure Limit will be disclosed to Company by the Bank in a separate document and may be changed at MBC’s sole discretion upon at least one Banking Day prior notice to the Company.



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- 1.16** “Forward Collection” means the transfer by a bank of a check to a Collecting Bank for settlement or the paying bank for payment.
- 1.17** “Image Exchange Network” means a Company, bank, FRB or other entities that operate networks for the purpose of receiving and forwarding check images and Substitute Checks for collection.
- 1.18** “MCCS” means the software, hardware and procedures that allow the Company to electronically capture checks and deposits using a check scanning device and convert the checks and deposits into electronic images, balance the checks and deposits captured, electronically inspect images for quality and transmit the images to MBC for deposit and Forward Collection.
- 1.19** “MICR line” and “magnetic ink character recognition line” mean the numbers, which may include bank routing number, account number, check number, check amount and other information, that are printed near the bottom of a check in magnetic ink in accordance with the American National Standard Specifications ANS X9 and its specifications as may be amended from time to time.
- 1.20** “Noncash Item” has the same meaning as in the Expedited Funds Availability Act.
- 1.21** “Paying Bank” means—
- (a)** The Bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or
 - (b)** The Bank at or through which a check is payable and to which the check is sent for payment or collection.
- 1.22** “Person” means a natural Person, corporation, unincorporated Company, partnership, government unit or instrumentality, trust or any other entity or organization.
- 1.23** “Reconverting Bank” means—
- (a)** The Bank that creates a Substitute Check; or
 - (b)** If a Substitute Check is created by a Person other than a bank, the first bank that transfers or presents such Substitute Check.
- 1.24** “Returning Bank”—means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.
- 1.25** “State” has the same meaning as in the Federal Deposit Insurance Act.
- 1.26** “Substitute Check” means a paper reproduction of the original check that—
- (a)** Contains an image of the front and back of the original check;
 - (b)** Bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks;
 - (c)** Conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for Substitute Checks; and
 - (d)** Is suitable for automated processing in the same manner as the original check.
- 1.27** “Truncate” means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a Substitute Check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.
- 1.28** “UCC” means the Uniform Commercial Code in effect in the State of Missouri.

ARTICLE II -- RULES

- 2.1** Rules Governing Transactions. Except as otherwise provided in Paragraph 2.2, MBC and Company will transmit and process the electronic Entries initiated by the Company in accordance with the rules of the Check 21 Act, FRB Regulation CC – 12 CFR 229, National Clearing House Association (NACHA), American National Standards X9 specification, Federal Reserve Bank, UCC Article 3 and 4, any network association agreements and any rules or guidelines issued by the Bank, all as are currently in effect and as amended from time to time (the “Rules”) . The Company agrees to be bound by and held subject to the Rules as well as the provisions contained in the Agreement.
- 2.2** Restrictive Rules. In the event that the operating rules of a local or regional check clearing network, or the arrangements between MBC and the Federal Reserve Bank or a correspondent bank are more restrictive than, or are at variance with, the Rules, the Company agrees to be bound by such more restrictive or varying rules.
- 2.3** Regulatory Exposure Review. In connection with MCCS, Company understands that MBC may require certain financial information relating to Company, in which case Company agrees to provide MBC with such information within 10 Banking Days after such information is requested by MBC. If MBC, in its sole judgment, determines that there has been an

adverse change in Company's financial condition, MBC may terminate this Agreement effective immediately with written notice to Company.

2.4 Rule Changes. MBC has no obligation to research and provide Company updates and Rule changes except changes of Rules issued by the Bank which the Bank may change by giving at least 30 days written notice to Company.

ARTICLE III -- EFFECTIVE DATE AND TERM

3.1 Effective Date. This Agreement shall be effective as of the date of last execution by Company and MBC.

ARTICLE IV -- MBC RIGHTS AND RESPONSIBILITIES

4.1 Obligations of Bank. With respect to "on-us" electronic debit and credit Entries, the relationship between MBC and Company will be governed by the Rules and so long as Company has properly and completely fulfilled its obligations and duties under this agreement and the Rules to the extent applicable, MBC agrees to assume all the rights and obligations of a "Converting Bank," "Reconverting Bank" and "Paying Bank," as defined by the Check 21 Act and applicable UCC Article 3 and UCC Article 4.

4.2 Treatment as Collecting Bank. No provision of the Check 21 Act shall be construed as affecting the treatment of a Returning Bank as a Collecting Bank for purposes of Article 4 of the UCC.

4.3 Bank Selects Transaction Routing. MBC will receive, verify and transmit the electronic checks from Company by such means as MBC deems appropriate to convey the Company Entries into and through the necessary Image Exchange Networks and Company agrees that MBC, in its sole discretion, will select correspondent banks, Image Exchange Networks and FRB necessary to electronically deliver Company's electronic checks and deposits.

4.4 Establish Deadlines. MBC reserves the right to change the deadlines for processing as defined in Schedule B as required by correspondent banks, Image Exchange Networks and FRB.

4.5 Return Items. MBC will process and return unpaid items in accordance with published bank guidelines and schedules as governed by the FRB Regulation CC - 12 CFR 229 and will, as necessary, convert check images into Substitute Checks for processing.

4.6 Collection of Checks. MBC is providing an electronic service for the collection of checks and is not responsible for the available balance of any account for which a check is presented.

4.7 Detecting Errors. MBC is not responsible for detecting any Company errors contained in any check or report created and transmitted to bank by Company.

4.8 MBC's Liability for Failure to Make a Transfer. So long as Company has properly and completely fulfilled its obligations and duties under this Agreement and the Rules, if MBC does not complete a transfer to or from Company's account on time or in the correct amount, when Company has properly instructed MBC to do so, in accordance with the terms of this Agreement and the Rules, MBC will be liable to Company for Company's resulting losses, subject, however, to certain exceptions. The amount of MBC's liability shall be limited as set out in Article VII below. MBC will not in any event be liable to the Company:

- (a) If a legal order directs MBC to prohibit withdrawals from the account;
- (b) If Company submits a transfer debit from a restricted account that does not allow online debits;
- (c) If Company's account is closed, or if it has been frozen;
- (d) If the transfer would cause Company's balance to exceed the Exposure Limit as defined herein;
- (e) If Company, or anyone authorized by Company, commits any fraud or violates any law or regulation;
- (f) If any electronic device, telecommunication device, or any part of the MCCA is not working properly;
- (g) If Company has not provided MBC with correct check capture information;
- (h) If Company has not properly followed the instructions for using MCCA; or
- (i) If circumstances beyond MBC's control (such as fire, flood, interruption in telephone service or other communication lines) prevent the transfer.

ARTICLE V -- COMPANY RESPONSIBILITIES

5.1 Company's Responsibility for Warranty. Company agrees and warrants (regardless of whether the warrantee receives the Substitute Check or another paper or electronic form of the Substitute Check or original check) that no depositary bank, drawee, drawer, or endorser will receive presentment or return of the Substitute Check, the original check, or a copy or other paper or electronic version of the Substitute Check or original check such that MBC, drawee, drawer, or endorser will be asked to make a payment based on a check that MBC, drawee, drawer, or endorser has already paid. The Company will not re-present any Check, either physically or electronically, that has been presented to MBC pursuant to the MCCA except for representment as a result of dishonor of the Check.

- 5.2 Check 21 Act Warranty Policy and Procedures.** Company agrees that it will maintain policies, procedures and audit practices to ensure that the check images captured and transmitted to and through MBC into its correspondent banks, participating Image Exchange Networks and the FRB meet all of the requirements as defined by Check 21 Act and will maintain operating procedures to ensure that the original checks and Substitute Checks transmitted are stored and destroyed to prevent the re-presentation of any Check that has already been presented to MBC pursuant to the MCCA. MBC has the right to inspect the Company's remote deposit procedures and records at any time.
- 5.3 Employee Training.** Company agrees that technical and operational training of its employees with respect to MCCA and equipment is critical to the effectiveness of the system and agrees to provide adequate training for primary and backup employees. Customer agrees to participate in any training programs designated by the Bank from time to time.
- 5.4 Operation and Maintenance of Equipment.** Company shall conduct system and hardware inspections each Banking Day to ensure the system is operating within ANS X9 Standards for quality and resolution and maintain a record of such inspections and the results thereof.
- 5.5 Correctness of Data.** The Company will be responsible for the correctness, both as to content and form, of all information submitted to MBC. If any information is not readable, out of balance or unprocessable, or otherwise inaccurate, incomplete or inadequate, it is the sole responsibility of the Company to correct and resubmit the information to MBC.
- 5.6 Maintain Image Standards.** Company agrees that images that do not meet ANS X9 Standards are not allowed transmission into the check network and MBC, its correspondent banks, participating Image Exchange Networks and the FRB may reject and return to Company any and all items that fail to meet established industry standards without any liability for such rejection and/or return.
- 5.7 Reconciliation Report.** Company agrees that it will maintain a daily control record of all items including transaction counts and dollar amounts and transmit an encrypted copy of the record each calendar day to MBC for reconciliation of files received by MBC from Company.
- 5.8 Daily Item Balancing.** Company agrees that it will balance posted and unposted transactions transmitted from the previous Banking Day and immediately notify MBC of any error discovered. MBC will make every effort to assist Company in resolving transmission and posting errors, but all adjustments will be made in accordance with MBC's Depository Agreement with Company and FRB's Regulation CC – 12 CFR 229.
- 5.9 Maintain Account.** For a period of time ending 60 calendar days after the date of termination of this Agreement, the Company will maintain an Account at MBC for the purpose of providing Available Funds for amounts payable by the Company hereunder and for deposit of received funds in connection with the use of MCCA. The Company will maintain sufficient Available Funds in the Account to support any transaction initiated hereunder and to cover any fees the Company is obligated to pay to MBC under this Agreement. Without limiting the foregoing, MBC may require the Company to maintain a minimum amount of Available Funds in the Account. If at any time there are not sufficient Available Funds in any Account as required herein, the Company will immediately pay to MBC, on demand, the amount of any deficiency. MBC may, without prior notice, charge any other account of the Company at MBC for any amounts payable to MBC under this Agreement. Company authorizes MBC to debit the Account on the day the returned or rejected electronic debit Entry is received by MBC or thereafter.
- 5.10 Contingency Plan.** Company agrees that in the event that communications, equipment or software outages prevent Company from transmitting electronic transactions that Company will transport checks and deposits to closest office of MBC and make deposits until such time that the outage can be identified and resolved.
- 5.11 Inks.** Company agrees that it is solely responsible for the ink quality and usability of all Checks it processes in conjunction with the MCCA System.
- 5.12 Record Retention and Destruction.** Company agrees to maintain original, paper checks for a period of 60 calendar days in a fire-proof container located in an area that restricts the possibility that these paper checks can accidentally be reprocessed and deposited at a future date. At the end of such 60 days the Company must either destroy the paper checks or permanently mark them in such a way to show that they are void. Company agrees to maintain acceptable quality, permanent and electronically accessible records of all transactions in accordance with published state and federal requirements and include check and deposit images, front and back, posting date, amount, serial number and routing and transit numbers, which records shall be made available to MBC or to those regulatory agencies having jurisdiction over MBC or Company upon request. Customer will also implement appropriate document management procedures to insure the safety and integrity of deposited items from the time of receipt until the time of destruction or other voiding. Company will furnish MBC or those regulatory agencies having jurisdiction over MBC with a copy of any Check.
- 5.13 Possession of Check.** Company will not initiate an electronic check Entry with respect to any Customer without first being in possession of a proper check or Substitute Check, which is made payable to Company.

ARTICLE VI – FEES

6.1 Fees. Company will compensate and agrees to pay MBC for providing the MCCS those amounts provided in this Article and Schedules to this Agreement. These fees may be changed from time to time by MBC upon at least 20 calendar day's prior written notice to the Company. MBC will electronically charge to Company's Account each month MCCS Fees, including without limitation the following:

- (a) MCCS, the monthly charges listed in Schedule A.
- (b) Support Services as requested and billed at MBC's published rate schedule, plus all actual, out-of-pocket costs and expenses, including, without limitation, travel and travel-related expenses, which are incurred by MBC in providing services when incurred at Company's request.
- (c) Any other charges expressly provided in this Agreement or otherwise agreed upon by Company and MBC.

ARTICLE VII -- LIABILITY AND INDEMNITY

7.1 Indemnification and Limitation of Liability. Company will indemnify and hold MBC, its officers, directors, agents and employees harmless from and against any and all liability, claims, losses, damages, suites, costs or expenses, including, attorney's fees, incurred by MBC arising from the acts or omissions of Company in connection with this Agreement or the MCCS. If Company fails to perform according to these terms, MBC will not be liable for any loss that could have been avoided if Company had performed according to such terms. The sole duty of MBC is to exercise ordinary care in the performance of the obligations under this Agreement. Company and MBC agree that clerical errors and mistakes in judgment do not constitute a failure to exercise ordinary care or to act in good faith. The liability of MBC and its officers, directors, agents and employees hereunder shall be limited to the amount of fees paid by the Company to MBC during the 6 months immediately preceding the act or omission giving rise to a claim by the Company. IN NO EVENT SHALL MBC, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES BE LIABLE OR RESPONSIBLE FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS (WHETHER THE CLAIM IS IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER OR NOT MBC WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES). MBC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY OF ANY OF THE MCCS OR SOFTWARE PRODUCTS FOR A PARTICULAR PURPOSE, OR AS TO THE SUITABILITY OR COMPATIBILITY OF MBC'S SOFTWARE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE USED BY COMPANY.

ARTICLE VIII -- AUTHORIZED EQUIPMENT AND SOFTWARE

8.1 Certified Equipment List. Company agrees to purchase and use equipment and software that is compatible with MBC's systems and equipment and that is provided or approved by MBC. MBC shall have the right to require the Company to acquire such equipment from MBC or a supplier designated by MBC. MBC shall have no liability or responsibility for any damages, losses, claims or causes of action experienced by Company as a result of any software or equipment used in conjunction with the MCCS and transactions contemplated by this Agreement, and Company's sole recourse with respect to any such damages, losses, claims or causes of action shall be against the provider of such software and equipment.

ARTICLE IX -- MISCELLANEOUS

9.1 Master Services Agreement; Entire Agreement. All of the terms, conditions, representations, warranties, limitations and waivers made by MBC and the Company in a Master Services Agreement between MBC and Company are incorporated into this Agreement and are made a part of this Agreement as if fully set out herein. This Agreement and the Master Services Agreement contain the entire understanding of the parties and may not be changed orally. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the Company, MBC and their respective successors and assigns; provided, however, that the Company may not assign its rights hereunder without prior written consent of MBC.

9.2 Severability. The invalidity or unenforceability in particular circumstances of any portion of this Agreement shall not extend beyond such provision or circumstance and no other provision of this Agreement shall be affected thereby. If, for any circumstance whatsoever, fulfillment of any provision of this Agreement, or any other document related hereto, or the exercise of any right or remedy whatsoever contained herein or therein or in any other instrument in connection herewith or therewith shall transcend the limit of validity prescribed by applicable statute or law, the obligation to be fulfilled shall be reduced to the limit of such validity.

9.3 Authorized Action. By executing this Agreement, Company represents and warrants that (a) this Agreement has been duly authorized by Company and the individual executing this Agreement on behalf of Company is fully authorized to do so;



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(b) such execution does not, and will not, cause a breach by Company of any other contract, agreement or understanding to which Company is a party; and (c) this Agreement constitutes a valid, fully enforceable and legally binding obligation of Company. Company will maintain this Agreement as an official record of Company continuously from the time of its execution.

9.4 Confidentiality. Company agrees to keep confidential all software, systems, User Guides, procedures and instructions published or made available to Company by MBC (“Confidential Information”). Company agrees to disclose the Confidential Information to Company’s employees and agents only on a need-to-know basis, and Company agrees not to disclose the Confidential Information to anyone else without prior written consent from MBC, except as required by law or as permitted by this Agreement. Upon termination of this Agreement, Company must return all Confidential Information to MBC, together with any reproductions or extracts of the Confidential Information. Prior to execution of this Agreement, Company shall (i) adopt and maintain safeguarding and security policies and procedures that comply with applicable laws, regulations and regulatory pronouncements, including without limitation the Gramm-Leach-Bliley Act and its implementing regulations; (ii) adopt and maintain appropriate disaster recovery and business resumption policies and procedures that comply with applicable laws, regulations and regulatory pronouncements; and (iii) provide MBC with the current copies of all such policies and procedures as requested. Company acknowledges that MBC has no duty to audit, review or approve any security procedures of the Company and that the Company is solely responsible for all damages resulting from the unauthorized or improper transaction. Company shall provide MBC with immediate written notice of any breach of its computer or IT systems or of any unauthorized use or disclosure of, or access to, any confidential information of MBC of which Company becomes aware. Such written notice shall include a reasonably detailed summary of the nature of the unauthorized use, disclosure or access, as well as its affect or anticipated effect on MBC, and any corrective actions taken or to be taken by Company. Company expressly agrees to take appropriate actions promptly upon becoming aware of any such breach or unauthorized use, disclosure or access.

9.5 Headings. Headings to sections of this Agreement or any Addenda or Schedules are included for ease of reference and shall not be deemed to create rights, remedies, claims or defenses arising under this Agreement.

9.6 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Missouri without reference to conflicts of the laws rules.

ARTICLE X -- ELIGIBLE ITEMS

10 Eligible Items: You agree to scan or deposit only checks as that term is defined in Federal Reserve Regulation CC (“Reg CC”). You agree that the image of the check transmitted to us will be deemed an “item” within the meaning of Articles 3 and 4 of the Uniform Commercial Code as adopted in the State of Missouri. You agree that you will not use the Services to scan and deposit the following checks or items:

- Checks or items received not made payable to you directly;
- Checks or items containing obvious alteration to any of the fields 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 or item is drawn;
- Checks payable jointly, unless deposited into an account in the name of all payees;
- Checks or items previously converted to a substitute check, as defined in Reg CC;
- Checks or items drawn on a financial institution located outside of the United States;
- Checks or items that are remotely created checks, as defined in Reg CC;
- Checks or items not payable in the United States currency;
- Checks or items dated more than six (6) months prior to the date of deposit;
- Checks that have previously been submitted through the Services or through a remote deposit capture service offered at any other financial institution; and
- Checks or items prohibited by our current procedures relating to the Services or which are otherwise not acceptable under the terms of your account.

[List names of all parties] _____ *COMPANY NAME*

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SCHEDULE A
MERCHANT CHECK CAPTURE SERVICES

- Mobile Business Monthly Fee \$0.00 (includes up to 60 checks per month) \$1.50 per check over 60
- Deposit Correction: \$0.00 each
- Chargeback: \$10.00 each

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SCHEDULE B
CHECK CAPTURE DEADLINES

Deposits are captured at 7:00 p.m. each Banking Day and processed. Check 21 items will post the same Banking Day during night processing. ACH conversion items will post the next Banking Day by 9:00 a.m. MBC standard funds availability and hold policies apply. In order to verify a deposit has been submitted successfully, all checks must appear in the “approved” section of the home page of the remote deposit website login.

* * *

CUSTOMER NAME