



## Mobile Deposit Agreement

1. **Services and Service Terms.** The following terms and conditions apply to the Services for Mobile Remote Deposit (“MRD”) that **Twin River Bank (“Bank”)** may provide to Depositor. Depositor acknowledges and agrees that the Services or any portion of the Services may be provided by one or more subcontractors. The provisions of Bank’s End User Terms and Depository Agreement and Disclosures (Deposit Agreement) and applicable service terms are incorporated into this Agreement by this reference. Capitalized terms used herein and not otherwise defined shall have the same meaning specified in the Deposit Agreement. In event of conflict among this Agreement and any other agreements between Bank and Depositor, including the Deposit Agreement, the provisions of this Agreement shall control.

**2. Overview and definitions. This Agreement states the terms and conditions by which Bank will deliver to Depositor the Services, as described below.**

2.1. “Authorized User” means Depositor or agent of Depositor.

2.2. “Banking Day” means any day which Bank is open to conduct substantially all of its banking services, but shall not include Saturday, Sunday or bank holidays.

2.3. “Capture Device” means any device acceptable to Bank, that provides for the capture of images from original Items and for transmission through a clearing process.

2.4. “Check” means an Original Check, as defined in Regulation CC and Check 21 and does not include a Substitute Check or a remotely created check.

2.5. “Check 21” means the Check Clearing for the 21st Century Act, as well as Subpart D of Federal Reserve Board Regulation CC, and to the extent applicable, Subpart A.

2.6. “IRD” or “Image Replacement Document” means (a) a Substitute Check as defined in Check 21; or (b) the paper reproduction that will be created when an Item cannot be converted to an Electronic Transaction.

2.7. “Item” means a Check, money order, cashier’s check, official check, U.S. Treasury check, or any other payment instrument drawn on or payable through an Office of a United States financial institution from a Payor to Depositor, in addition to other required information as specified by Bank, it is understood that Depositor will only be transmitting electronic images of the front and back of Items and not any paper Items. In order for an item to be processed for deposit, it must be restrictively endorsed in the proper location on the back of the Item with the following words: “Mobile Deposit, Account # \_\_\_\_\_”, with the correct account number inserted and signed by payee.

2.8. “Payor” means consumers or businesses who make payments to Depositor by means of Items.

2.9. “Service(s)” means the specific service(s) provided by Bank, including electronic check conversion and image archive systems that allow the use of a Capture Device to obtain and transmit the front and back images of Items and accompanying transaction data for the purpose for delivery to Bank for clearing as an IRD. Services also include any applicable support services.

2.10. “Service Start Date” means the date that the Services are first available to the Depositor.

2.11. “Technology” means Bank’s or its subcontractor’s deposit capture applications and processes designed to facilitate the electronic clearing of Items. Said applications are accessed through Capture Devices, utilizing software and hardware provided by or acceptable to Bank, and are proprietary access points to payment processing networks

and systems used to complete the clearing of Items. Technology may include but is not limited to Depositor service support, reports, software, software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof developed or provided by Bank or its subcontractors and used in the provision of Services hereunder. Any software provided by Bank or its subcontractors pursuant to the Service shall be considered Software as defined in the Software License Agreement.

2.12. "Term" shall mean the term of this Agreement beginning as of the Service Start Date until terminated as provided herein.

### **3. Depositor Obligations; Suspension/Cancellation of Service.**

3.1. Hardware and Software Requirements. In order to utilize the Services, Depositor must have the following hardware and software with the indicated specifications:

For Depositing checks, Depositor must have one of the following Phone Make / Operating Systems:

- **Apple iPhone with an Operating System of 5.0 or higher**
- **Android Based with an Operating System of 2.1.1 or higher**

Image quality of the Items must comply with requirements as established by Bank or applicable law and regulatory agencies.

3.2. Depositor Responsibilities. Depositor authorizes Bank to convert Items to IRDs or transmit as an image and further authorizes Bank or any other bank to which an item is sent for process. Depositor agrees to, at its sole expense: (a) provide connectivity between the Capture Device and the Technology; (b) maintain the Capture Device in accordance with the instructions provided by Bank, its subcontractors and/or any other Capture Device provider; (c) if applicable, utilize Depositor's software, or Bank software to scan, load, and format Items as needed for transmission to Bank prior to the communicated cut-off-time; (d) process return data and any remittance data delivered by Bank for the purpose of updating Depositor internal systems (which may include electronic and paper return Items); (e) implement and maintain security measures, including firewall protection, in compliance with its obligations under this Agreement;

3.3. Withdrawal of Access/Suspension of Service. Bank reserves the right to deny, suspend or revoke access to the Services immediately, in whole or in part, in its sole discretion, without notice, if Bank believes Depositor and/or its Authorized users are in breach of this Agreement or are otherwise using or accessing the Services inconsistent with the terms and conditions hereof. Further, Bank or its subcontractor shall have the right to suspend the Service immediately in the event of an emergency or in the event of force majeure as set forth in the Service Agreement.

3.4. Handling of Transmitted Items. Depositor shall be responsible for retaining each Original Item in a safe and secure environment in accordance with applicable laws as in effect from time to time within (60) sixty days after transmittal to Bank and receipt of a confirmation from Bank that the image of the Item has been received at which time Depositor shall shred or otherwise destroy all Original Items. Depositor shall properly store the Original Items and take appropriate measures to ensure it is not represented a second time. Depositor will promptly (but in any event within 5 business days) provide any retained Original Item to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any item or as Bank otherwise deems necessary.

3.5. Account Statement Examination. All deposits made through the Services shall be deemed to be correct, unless Depositor notifies Bank of any errors to deposits made through the Services within 60 days after the applicable account statement is mailed or otherwise provided to Depositor.

### **4. Payment Processing.**

4.1. IRD Processing. Items may be transmitted for electronic processing by other banks or converted to IRDs and transmitted to a printing facility for printing and clearing through traditional paper processing channels, at Bank's sole discretion. The IRDs will be created in accordance with Check 21; alternatively, Bank may process Items as photocopies in lieu of originals, under guidelines established between Bank and Depositor and applicable industry standards. Items that fail to satisfy the warranties made to Bank by Depositor, that fail to meet the requirements of Bank or Check 21, or that are otherwise not able to be processed may be charged back to Depositor's account and/or returned to Depositor. Depositor agrees to be bound by any applicable laws, rules and regulations to which Bank is a party.

4.2. Processing of Items. Images of Items transmitted by Depositor are not considered received by Bank until Depositor has received an electronic confirmation of the receipt of the deposit from Bank. However, receipt of the confirmation from Bank does not mean that the transmission was error free or complete. Items transmitted by the Depositor and received by Bank or its subcontractors by 4:00 p.m. Pacific Standard Time (“PST”) Monday through Friday, shall be credited to the Depositor’s applicable account on the same Banking Day. Items received by Bank after 4:00 p.m. PST on any Banking Day shall be credited to the Depositor’s applicable account on the next successive Banking Day. Customer understands and agrees funds from Items deposited under the terms of this Agreement are not subject to Bank’s Funds Availability Policy and will generally be available after processed and once funds are received.

4.3. Depositor Liability. Depositor shall be solely responsible if any Item for which Depositor has been given provisional credit is subject to return or reversal, and neither Bank nor its subcontractors shall be liable or responsible for same. Depositor acknowledges that all credits received for deposit are provisional, subject to verification and final settlement. Any dishonored Items will be returned as an image of the original or a substitute check as the charged-back item. Information and data reported hereunder: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for information purposes only and may not be relied upon. Depositor agrees that Bank shall have no liability for the content of payment-related information.

### **5. Intellectual Property Ownership.**

This Agreement does not transfer to depositor any ownership or proprietary rights in the Technology or any work or any part thereof, and all right, title and interest in and to the Technology will remain solely with Bank or its subcontractors.

### **6. WARRANTIES AND DISCLAIMERS.**

6.1. DEPOSITOR WARRANTY. Depositor represents and warrants to Bank: (A) Depositor has the authority to enter into this agreement and perform its obligations hereunder and all information supplied by depositor to Bank is accurate and true; (B) Depositor will provide all reasonable assistance to Bank and its subcontractors in providing the services set forth herein; (C) Depositor and any authorized users will only use the services for lawful purposes and in compliance with all applicable rules and regulations and with Bank’s reasonable instructions, rules, policies, specifications, terms and conditions, and operating procedures and will not violate any law of any country or the intellectual property rights of any third party; (D) Depositor has only transmitted acceptable items for deposit and has handled the original items following transmission to Bank as agreed, directed by with Bank and in accordance with applicable law; (E) Depositor is a person authorized to enforce each item or is authorized to obtain payment of each item on behalf of a person entitled to enforce an item; (F) The items have not been altered; (G) Each item bears all applicable endorsements in a restricted format as directed by Bank; (H) All the warranties set forth in and subject to applicable laws and regulatory agencies; (I) (1) The electronic image portion of each item accurately and legibly represents all of the information on the front and back of the original check as of the time the original check was deposited, (2) The information portion of the item contains a record of all applicable MICR-line information required for a substitute check, and (3) The item conforms to the technical standards for an electronic item as specified by Bank from time to time; (J) Depositor will submit only one accurate and clear image of the front and back of each item to Bank only one time; (K) Depositor will not deposit the original item and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid;

(L) The amount of an item entered by depositor or any authorized user for transmission to Bank is accurate; and (M) Depositor and any authorized users will not (1) Sell, lease, distribute, license or sublicense the technology or services; (2) Modify, change, alter, disassemble or decompile the technology or services in any way for any reason; (3) Provide, disclose, divulge or make available to, or permit use of the technology or services by, any third party; (4) Copy or reproduce all or any part of the technology or services; (5) Interfere, or attempt to interfere, with the technology or services in any way; (6) Engage in spamming, fraudulent, illegal or unauthorized use of the services; (7) Introduce or transmit through the technology or services, without limitation, via any portion of the depositor’s computer system that interfaces with the technology or services, or otherwise, any virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, back door, timer, time bomb, clock, counter or other limiting routine, instruction or design or any other codes or instructions that may be used to access, modify, delete, damage, disable or prevent the use of the technology, services or other computer systems of Bank or its subcontractors; (8) Remove,

obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within the technology or services; or (9) Engage in or allow any action involving the technology or services that is inconsistent with this agreement. Should depositor receive notice of any claim regarding the services, depositor shall promptly provide Bank with a written notice of such claim.

6.2. **BANK WARRANTY.** Bank warrants that: (A) Bank has the authority to enter into this agreement and perform its obligations hereunder; and (B) It has developed each service (other than any portion furnished by a subcontractor or third party vendor) and owns and/or has the right to furnish the same (including any portion furnished by a subcontractor or third party vendor.)

6.3. **DISCLAIMER.** Except as set forth above in Section 6.2, Bank and its subcontractors make no representations or warranties, whether express, implied or statutory regarding or relating to any of the technology or services and/or access to or use of the services or technology provided to depositor hereunder. Bank and its subcontractors specifically disclaim any and all implied warranties or merchantability, fitness for a particular purpose and non-infringement. Bank and its subcontractors also do not guarantee that depositors' access to the services provided under this agreement will be uninterrupted, error free or secure. Bank and its subcontractors also do not guarantee the accuracy of, and specifically disclaim liability for, information or data that is supplied or key-entered by depositor or agents. Bank and its subcontractors do not warrant the accuracy, reliability, completeness or timeliness of the content of internet websites or other data received by depositor or payors via the internet.

## **7. LIMITATION OF LIABILITY/INDEMNIFICATION.**

7.1. **LIMITATION OF LIABILITY.** Notwithstanding anything to the contrary herein, in no event will Bank's liability under this agreement for any damages of any kind exceed an amount equal to the amount of items received by Bank from depositor for the services during the month preceding the date on which the claim first accrued. Bank shall not be liable for any special, indirect or consequential damages, even if it has been advised of the possibility of these damages.

7.2. **INDEMNIFICATION.** In addition to its indemnification obligations in this agreement, and except for losses or expenses attributable to Bank's own lack of good faith or failure to exercise ordinary care, depositor agrees to indemnify Bank for any loss or expense sustained (including interest, costs, attorney's fees and expenses of litigation) resulting from (i) Depositor's lack of authority to make the warranty in subsection 6.1 (E); (ii) any action taken or not taken by Bank within the scope of its authority in handling an item; (iii) any warranty required to be made by Bank with respect to an item under applicable law or regulation; and (iv) breach of the warranties in subsections 6.1(A) through 6.1(M).

## **8. Termination.**

8.1. **Termination.** In addition to the denial, suspension, revocation and termination provisions in this Agreement, Bank may immediately terminate the Service or any portion of the Service if Bank determines that such Service or portion of any Service is in violation of any law or regulation, or in its sole discretion and without notice, decides to cease providing this Service. Depositor may terminate the Service with notice to Bank. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same.

8.2. **Obligations upon Termination.** Upon the termination of this Agreement for any reason: (a) Depositor's access to, and use of, the Services will terminate; (b) Depositor will return to Bank any and all Bank Services, equipment, software, documentation, Technology or other deliverables provided to Depositor by Bank, including any copies thereof held by Depositor; (c) Bank will deliver to Depositor all Depositor documentation and other materials stored by Depositor on Bank's or its subcontractor's network; and (d) each party shall return any and all Confidential Information in its possession to the party that disclosed such Confidential Information or destroy same, and provide written verification of same. Notwithstanding the foregoing, Bank's obligations with respect to subsections (c) and (d) shall be subject to Bank's record retention policies and applicable laws and regulations. The provisions of sections 6, 7, 8 and 9 shall survive termination of this Agreement.

## **9. Confidentiality.**

9.1. Bank Information. Depositor acknowledges that the Technology and Service contain valuable trade secrets, which are the sole property of Bank or its subcontractors ("Bank Confidential Information"), and Depositor agrees to hold same in strict confidence and disclose only to those agents whose duties reasonably require access to same, provided that all such agents are informed of such use or disclosure restrictions as set forth herein. Depositor agrees to use no less than reasonable care to prevent other parties from learning of these trade secrets. Depositor will take no less than all reasonable steps to prevent the unauthorized use, disclosure, duplication or access to the Bank Confidential Information.

9.2. Depositor Information. Bank acknowledges that Depositors' information may contain information regarding its Depositors, which are the sole property of Depositor ("Depositor Confidential Information," and, collectively with Bank Confidential Information, "Confidential Information"), and Bank agrees to hold same in confidence and will protect Depositor Confidential Information pursuant to Bank's Privacy Policy.

9.3. Exceptions. The obligations of this Section 9 shall not apply to any information that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party (the "Receiver"), generally known or available; (b) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records; (c) is hereafter furnished to the Receiver by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by the Receiver without reference to or use of the disclosing party's information; or (e) is required to be disclosed by law or in connection with a legal or administrative proceeding, provided that the party to whom the information belongs is given prompt prior written notice of such proposed disclosure, if not otherwise prohibited.

9.4. Unauthorized Use. Both parties acknowledge that the unauthorized use, disclosure or duplication of trade secrets or other confidential information belonging to each party shall constitute a material breach of this Agreement and is likely to cause irreparable injury to the owner, for which there is no adequate remedy at law. Accordingly, Bank and Depositor each hereby agree that the other party may seek injunctive relief against it to prevent or remedy any breach of the confidentiality obligations described herein without the other party being required to post bond, or if bond is required, only nominal bond.

## **10. Miscellaneous Provisions.**

10.1. Relationship of Parties. Bank and Depositor are independent parties and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Bank and Depositor. Neither Bank nor Depositor will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.2. Notices. Depositor agrees that any notices required or permitted under this Agreement or the Service Agreement may be given electronically.

10.3. No Waiver. The failure of either party to enforce at any time any provision of this Agreement or to exercise any right herein provided shall not in any way be construed to be a waiver of such provision or right, and shall not in any way affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of either party to subsequently enforce any provision or exercise any right hereunder.

10.4. Severability. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision.

10.5. Governing Law. This Agreement is entered into in Pennsylvania, and shall be governed by the laws of Pennsylvania and of the United States, and any rule or regulation of Pennsylvania or a federal agency having jurisdiction over Bank. A determination that any provision of this Agreement is unenforceable or invalid shall not render any other provision of this Agreement unenforceable or invalid. The rights of Bank under this Agreement are cumulative of all other rights Bank may have by law or otherwise.

10.6. Amendments. Unless applicable law provides otherwise, this Agreement may be amended by notice sent electronically or by mail to Depositor at Depositor's last address known to Bank to be effective not less than thirty (30) days after the day transmitted or mailed. Bank shall not be bound by any modification of this Agreement unless

Bank expressly agrees to the modification in writing. Depositor shall have the right to terminate the Agreement prior to the effective date of amendment. This Agreement supersedes all prior agreements and amendments.

10.7. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all existing agreements and all other related communications, written or oral.