

# Mobile Deposit Service Agreement



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This Mobile Deposit Service Agreement, ("Agreement") is the contract which covers your and our rights and responsibilities concerning the Mobile Deposit Service ("Service") offered to you by Credit Union 1 ("Credit Union"). By using the Service or clicking "Agree" on the Mobile Deposit terms and condition disclosure page shown on your mobile device, you and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments. The Service is subject to the following terms and conditions and to any instructions, rules and terms in the Deposit or Business Account Contracts, ("Contracts") and incorporated by reference herein.

## 1. Mobile Deposit Service.

### a. Mobile Deposit Capture Process.

If we approve the Service for you, you must use your account number along with your security code number to access your accounts. You may photograph an image of a check with your mobile device creating an electronic image and you may transmit the electronic image that the Credit Union will deposit to your account. The Credit Union's processing agent shall perform an image quality assessment of the imaged checks and may, in its discretion, convert items meeting the Credit Union's required standards into substitute checks to facilitate the deposit and collection of such items. You agree that the manner in which checks are cleared or presented for payment shall be determined by the Credit Union, in its sole discretion. We reserve the right to select the clearing agents through which we clear checks.

### b. Funds Availability.

Generally, funds from items deposited through the Service will be available no later than the 3<sup>rd</sup> business day following our acknowledgment of receipt of the deposit; however, the 1<sup>st</sup> \$250 will be available on the 1<sup>st</sup> business day on which the Credit Union acknowledges receipt of the deposit. There may be additional holds on deposited items as set forth in the Credit Union's Funds Availability Policy disclosure, as amended from time to time, which is incorporated herein by reference. Also, acknowledgment of receipt or delivery does not constitute an acknowledgment by the Credit Union that the transmission of a check or item does not contain errors or that funds will be available.

### c. Deposit Acceptance.

You agree that the Credit Union may at any time, in its sole discretion, refuse to accept deposits of checks from you via the Service. In the event that the Service is interrupted or is otherwise unavailable, you may deposit checks in-person at a Credit Union branch or via night drop, mail, ATM or other contractually acceptable method.

## 2. Member Account.

### a. Member Account.

You must designate a Credit Union savings or checking or loan account as the settlement account to be used for the purposes of settling transactions requested in connection with the Service. We will provide you with details of each specific transaction. You will be responsible for reviewing and balancing any settlement account.

### b. Responsibility for Imaging.

You are solely responsible for imaging deposit items, accessing the Service from the Credit Union and for maintaining your imaging equipment. You will be responsible for the payment of all telecommunications expenses associated with the Service. The Credit Union shall not be responsible for providing or servicing any equipment for you.

### c. Deposit Requirements.

You agree that you will only use the Service to deposit checks drawn on financial institutions within the United States, excluding its territories. For checks not falling within this requirement you must deposit those checks in person, using a night drop facility or by mail. You agree that each check you deposit through the Service will meet the image quality standards directed in the application.

### d. Check Retention & Destruction.

You agree that all checks belong to you and not to the Credit Union and that those items shall be handled in accordance with this Agreement and your Contracts. After our receipt of a deposit transmission we will acknowledge by electronic means our receipt of such transmission. Your electronic transmission is subject to proof and verification. You will retain the original of all imaged

checks that have been deposited via the Service for a reasonable period of time in order to verify settlement and credit or to balance account statements, but in no case beyond forty-five (45) days from the date processed. It is your responsibility to properly destroy and dispose of such original checks after such time. During the period that you maintain any original checks, you understand and agree that you must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including by employees) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service) and (ii) unauthorized use of information derived from the original checks. When you dispose of any original checks, you understand and agree that you must use a high degree of care when selecting and implementing disposal procedures to ensure that the original checks are not accessed by unauthorized persons during the disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed.

#### **e. Deposit Prohibitions.**

You agree not to deposit, or attempt to deposit, or allow others, either directly or indirectly, to deposit, or attempt to deposit, by any means: (i) any substitute check, the original of which has already been presented for deposit via the Service, (ii) any image of a check that has already been deposited either as an original or as a substitute check, or (iii) any original check, the substitute check of which has already been presented for deposit via the Service. In the event that you, or any third party, makes, or attempts to make, a deposit in violation of this Subsection you agree to defend, indemnify, and hold the Credit Union and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such substitute check or original check. You agree that the aggregate amount of any items which are deposited more than once will be debited from your account, and to the extent funds in your account are insufficient to cover such amount, any balance shall be debited by the Credit Union from any other deposit accounts with the Credit Union in its sole discretion. You further acknowledge that you and not the Credit Union are responsible for the processing and handling of any original items which are imaged and deposited utilizing the Service and you assume all liability to the drawer of any item imaged using the Service or liability arising from the Credit Union's printing of any substitute check from those images.

#### **f. Your Representations and Warranties.**

You represent and warrant (i) that you will comply with all federal and state laws, and rules and regulations applicable to deposit and check transactions, including those of the National Automated

Clearing House for ACH transactions; (ii) that all checks deposited through the Service are made payable to you; (iii) that all signatures on each check are authentic and authorized; and (iv) that each check has not been altered.

In the event you breach any of these representations or warranties, you agree to defend, indemnify and hold the Credit Union and its agents harmless from and against all liability, damages and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. You further authorize the Credit Union to charge your account for the amount of any such demand, claim or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

#### **g. Financial Responsibility.**

You understand that you remain solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds associated with accessing the Service. The Credit Union shall not be liable in any manner for such risk unless the Credit Union fails to follow the procedures described in materials for use of the Service. You assume exclusive responsibility for the consequences of any instructions you give to the Credit Union, for your failures to access the Service properly in a manner prescribed by the Credit Union, and for your failure to supply accurate input information, including, without limitation, any information contained in an application.

#### **h. Account Reconciliation.**

You will verify and reconcile any out-of-balance condition, and promptly notify the Credit Union of any errors within the time periods established in the Contracts after receipt of your account statement. If notified within such period, the Credit Union shall correct and resubmit all erroneous files, reports, and other data at the Credit Union's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Credit Union's error.

### **3. Credit Union's Obligations.**

#### **a. Financial Data.**

We will review and process your electronic file through a batch processing one time per day. The Credit Union agrees to transmit all the financial data under its control required to utilize the Service selected by you and to act on appropriate instructions received from you in connection with the Service. The Credit Union shall exercise due care in seeking both to preserve the confidentiality of

the account number, security code number or other code or identifier and to prevent the use of the Service by unauthorized persons (and in this connection it is understood and agreed that implementation by the Credit Union of its normal procedures for maintaining the confidentiality of information relating to its members, and where practicable the obtaining by the Credit Union from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of its obligation to exercise due care) but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by you by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the Service. You assume full responsibility for the consequences of any misuse or unauthorized use of or access to the Service.

#### **b. Service Availability.**

You understand that Service availability is at all times conditioned upon the corresponding operation and availability of the communication systems used in communicating your instructions and requests to the Credit Union. We will not be liable or have any responsibility of any kind for any loss or damage thereby incurred by you in the event of any failure or interruption of such communication systems or services resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union.

#### **c. Exception Items.**

When we review and process your electronic file, we may reject any electronic image that we determine to be ineligible for the Service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on US banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. We will notify you of any Exception Items. You agree that if you wish to attempt to deposit any Exception Item to any of your accounts with the Credit Union, you will only do so by depositing the original item on which the Exception Item is based. You acknowledge and agree that even if the Credit Union does not initially identify an electronic image as an Exception Item, the substitute check created by the Credit Union therefrom may nevertheless be returned to the Credit Union because, among other reasons, the electronic image is deemed illegible by a paying bank. The Credit Union's failure to identify an Exception Item shall not preclude or limit your obligations to the Credit Union.

#### **d. Account Information.**

We will provide you with daily transaction history via the Internet and Online Access detailing items processed, return items, and deposit adjustments.

#### **e. Retention of Check Images.**

Credit Union will retain any substitute checks it generates for seven (7) years.

### **4. Services Fees.**

Currently there is no monthly fee for the Service. You agree to pay all fees and charges for deposit services as set forth on the Rate and Fee Disclosures. All Service Fees are subject to change by the Credit Union upon thirty (30) days written notice to you.

### **5. Disclaimer of Warranties.**

YOU ACKNOWLEDGE THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CREDIT UNION IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM YOUR USE OF THE SERVICE. THE CREDIT UNION MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CREDIT UNION DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). YOU FURTHER ACKNOWLEDGE THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND/OR TELECOMMUNICATION LINES OR CIRCUITS. YOU HEREBY ASSUME ALL RISKS RELATING TO THE FOREGOING.

### **6. Credit Union's Liabilities.**

#### **a. Direct Damages.**

THE CREDIT UNION'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY THE MEMBER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE

CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED ONE HUNDRED DOLLARS. IN NO EVENT SHALL THE CREDIT UNION BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT THE CREDIT UNION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE CREDIT UNION'S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO YOU IN CONNECTION WITH ANY MATTER.

#### **b. Your Duty to Report Errors**

You will notify the Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the Service as promptly as practicable, and in any event within one (1) business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to you which reflects the error. Your failure to notify the Credit Union of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve the Credit Union of any liability for such error, omission, or discrepancy.

#### **c. Credit Union's Performance.**

You acknowledge and agree that the Credit Union shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by the Credit Union in performing the Service, in accordance with or unintentional deviation from the terms and conditions of this Agreement. You acknowledge that the Credit Union's systems and procedures established for providing the Service are commercially reasonable.

#### **d. Limitation.**

The Credit Union shall have no liability to you, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Service regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Service provided for in this Agreement, and we shall have no liability for not effecting a transaction, if (i) we receive actual notice or have reason to believe that you filed or commenced a petition or proceeding for relief under any bankruptcy or similar law; (ii) the ownership of funds involving a transaction is in question; (iii) we suspect a breach of the security procedures; (iv) we suspect that your account has been used for illegal or fraudulent purposes; or (v) we reasonably believe that a

transaction is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

The Credit Union will not be liable if you fail to report timely any error or discrepancy reflected in an account statement prepared by the Credit Union, or if you fail to report a breach of a security procedure. If the Credit Union fails to perform under this Agreement in accordance with the standards set herein, the Credit Union's liability for damages, losses, and other compensation owing to you will be limited as set forth above.

### **7. Force Majeure.**

The Credit Union shall not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond the Credit Union's reasonable control.

### **8. Termination.**

Either party may terminate this Agreement upon not less than ten (10) days prior written notice to the other party. Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Agreement, (i) you will immediately cease using the Service, and (ii) you will promptly remit all unpaid monies due under this Agreement. The Credit Union may immediately suspend or terminate your access to the Service in the event that the Credit Union reasonably determines such suspension or termination is necessary in order to protect the Service or the Credit Union from harm or compromise of integrity, security, reputation, or operation.

### **9. Modification of Services.**

The Credit Union reserves the right to modify the Service from time to time without making prior notice to you, provided, however, that the Credit Union will give you at least thirty (30) days notice prior to making any modifications to the Service that would materially alter its functionality.

### **10. Enforcement.**

You agree to be liable to the Credit Union for any liability, loss, or expense as provided in this Agreement that the Credit Union incurs as a result of any dispute involving your accounts or services. You authorize the Credit Union to deduct any such liability, loss, or expense from your account without prior notice to you. This Agreement shall be governed by and construed under the laws of the State of Alaska as applied to contracts entered into solely between residents of, and to be performed entirely in,

such state. In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this agreement, the prevailing party shall be entitled, subject to Alaska law, to payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this agreement be determined illegal or unenforceable in any relevant jurisdiction, then such provision may be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other provision of this Agreement.