

## Credit Union of the Rockies General Mobile Banking Use Agreement

All terms and conditions applicable to Credit Union of the Rockies Mobile Banking.

Depending on your wireless plan, you may be charged an access fee. Please check with your service provider for details on specific fees and charges.

### Remote Deposit Capture Agreement

This Remote Deposit Capture Services Agreement ("Agreement") is entered into between Credit Union of the Rockies ("Credit Union") and its member ("Member"), in addition to the Membership Account Agreement and accompanying disclosures for the account(s) of Member (collectively known as, "Deposit Account Agreements").

1. **Background.** Credit Union offers the service for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Member to transmit paper checks, converted to Imaged Items to the Credit Union for processing and deposit into the account of Member maintained at Credit Union.
2. **Definitions.** Capitalized terms defined in this Agreement shall have the meanings indicated in this Agreement (including any Appendices).
3. **Services.** Credit Union will provide to Member the services described in this Agreement to enable Member to transmit Imaged Items to Credit Union or the Credit Union's designated processor to be cleared as Substitute Checks or Image Exchange Items. Credit Union and Member will comply with the terms and provisions of this Agreement with respect to the use of the Service.
4. **Implementation.** Member will capture digitized images of Checks using mobile devices owned by member. Any software necessary shall be maintained by Member, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to Credit Union. Member shall transmit its output files as provided in the Documentation.
5. **Member Responsibilities.** In connection with the services, Member shall comply with the following:

#### 5.1. Member's General Responsibilities.

5.1.1. Member shall maintain one or more Credit Union accounts at Credit Union for the receipt of deposits of Items.

5.1.2. Member shall be responsible for its own training in the use of the service. If assistance is needed, please contact the Credit Union.

5.1.3. Member will only submit Checks for processing to Credit Union that meet the definition of "Check" in Appendix A and will ensure that the Checks scanned meet the standards for image quality established by American National Standards Institute (ANSI), The Board of Governors of the Federal Reserve, Regulation CC (subpart D) the Uniform Commercial Code and other pertinent regulatory agencies.

5.1.4. Unless prior approved by Credit Union in writing, Member will not attempt to scan and transmit to Credit Union any Check which is drawn on a deposit account of Member at Credit

Union or any other financial institution, or a deposit account of any business entity of which Member is a principal, officer or authorized signer.

5.1.5. Member will not attempt to scan and transmit to Credit Union any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Credit Union. Notwithstanding the foregoing, Credit Union may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Deposit Account Agreements.

5.1.6. Member will ensure that Checks are restrictively endorsed in the proper location on the back of the Item and include the required endorsement to include:

- The back of each item must legibly include the following:
- The words "For mobile deposit only at Credit Union of the Rockies or CU of the Rockies"
- The Member's full Account Number to which it is being deposited
- The words "RDC" on (today's date) mm/dd/yyyy
- Payee's Endorsement
- Example:     ***For mobile deposit only - CU of the Rockies***

***Acct# 0123456 – RDC on 12/01/2015***

***Payee (Member) Signature***

5.1.7. Member shall be responsible for verifying Credit Union's receipt of Member's transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Credit Union. Transmitting a file does not mean the Credit Union received the file.

5.1.8. Member will retain each Original Check. Member will store Original Checks in a safe and secure environment for a minimum period of 30 days after such Item has been digitized and processed (Retention Period). Member shall take appropriate security measures to ensure that during the Retention Period: (a) only authorized persons shall have access to Original Checks, (b) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Member shall destroy Original Checks upon the expiration of the Retention Period applicable to such Checks.

5.1.9 Member hereby indemnifies Credit Union for, and holds Credit Union harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is (are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the destruction or non-destruction of Original Checks by Member. Members will promptly (but in any event within 5 business days) provide any retained Original Check (or, if the Original

check is no longer in existence, a sufficient copy of the front and back of the Original Check) to Credit Union as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as Credit Union otherwise deems necessary.

5.1.10. Member understands and agrees that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Member and Member's Account charged for the amount of the Item plus any associated fee as disclosed in Credit Union's fees schedule. Credit Union's right to charge the Account of Member will apply without regard to whether the Item is timely returned to Credit Union or whether there is any other claim or defense that the Item has been improperly returned to Credit Union

5.1.11. Member represents, agrees and warrants to Credit Union that (except as otherwise specifically disclosed in writing to Credit Union) Member is not now engaged, and will not during the term of this Agreement engage, in any business that would result in Member being or becoming a "money service business" as defined in the Bank Secrecy Act and its implementing regulations.

5.1.12. Member will not engage in any activity directly or indirectly related to the use of the Service that is illegal or fraudulent.

5.1.13. Member will not submit for deposit those items listed as non-qualifying items. Credit Union's processing of any Imaged Item that meets the definition on Appendix A ("non-qualifying Items") shall not constitute a waiver by Credit Union or obligate it to process such Non-qualifying Items in the future. Credit Union may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

5.1.14. To ensure accuracy, Member shall balance the dollar amount of each deposit to the sum of the checks prior to transmitting the file. Member may send multiple files to the Credit Union or Processor throughout the day.

#### **MEMBER ELIGIBILITY:**

- Member must be 16 years old or older
- Enabled Home Banking / Mobile Banking
- Email Address provided to Credit Union
- Must be in good standing, for example; no delinquent loan payments, excessive number of returned items or overdrafts, no charge off accounts or shares. Additionally the member must have current Member Identification information that complies with the Bank Secrecy Act on file with the credit union. ie. Legal Name, Date of Birth, Physical Address, and Eligible State or Government Identification number.

## **5.2. Remote Deposit Capture Service.**

5.2.1. Member's Account will be provisionally credited upon Credit Union's acceptance of Imaged Items for deposit which are received by Credit Union from Member through the Service.

5.2.2. Member will create images of Checks via the member's mobile device through the Credit Union mobile banking application. Member will enter all amounts and any other required information correctly.

5.2.3. The Imaged Items will be transmitted by Member to Credit Union, or Credit Union's authorized processor, over the Internet or cellular network.

5.2.4. Credit Union will maintain the appropriate Account for Member to receive credit and provide other specific information required by Credit Union related to the Service. As set forth in paragraph 9.2, all deposits received by Credit Union are accepted subject to Credit Union's verification and final inspection and may be rejected by Credit Union in Credit Union's sole discretion. All deposits are subject to the terms of the Deposit Account Agreements.

**6. Compliance with Law.** Member shall comply with all laws, rules, and regulations applicable to Member, to the business and operation of Member, and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Agreement. Member shall have the responsibility to fulfill any compliance requirement or obligation that Credit Union and/or Member may have with respect to the Service under all applicable U.S. federal and state laws, regulations, rulings, including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

**7. Credit Union Rights and Responsibilities.**

**7.1.** For all Imaged Items processed by Member pursuant to this Agreement, (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Credit Union may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation and as otherwise established by the Credit Union from time to time.

**7.2.** Unless otherwise agreed by Member and Credit Union, Credit Union will process any returned Items in accordance with applicable law and the Deposit Account Agreements.

**7.3.** Subject to Paragraph 8.5 below, availability of credit from Items processed under this Agreement will be subject to the availability schedule of Credit Union, which may be amended without notice.

**7.4.** Credit Union may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Credit Union may from time to time establish exposure limitations and assign them to Member.

**7.5.** In addition to any other rights Credit Union may have as regards the Accounts of Member, Credit Union may hold and use funds in any deposit Account following termination of this Agreement for such time as Credit Union reasonably determines that any Item processed by Credit Union prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Credit Union may be responsible. Without limitation, Member recognizes that under the Rule, the UCC, Regulation CC and the rules of any image exchange network Credit Union's representations and warranties as regards Image Exchange Items and Substitute checks may expose Credit Union to claims for several years following processing of the Image Exchange Item or Substitute Check.

7.6. Credit Union shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Credit Union's control. In the event of any of the foregoing failure or delays, Member acknowledges that it may instead deposit directly with Credit Union any Original Items for processing and presentment provided such Original Items have not been previously imaged and processed in connection with the service. In addition, Credit Union shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Credit Union's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Credit Union's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

## **8. Processing Times.**

8.1. The service is available for use only on business days during the times set forth in the Agreement, except during maintenance periods, or such other hours as established by Credit Union from time to time. Transmissions processed after these hours on a business day, or on any day that is not a business day, are treated as occurring on the next business day.

8.2. Imaged Items processed for deposit through the service will be deemed to have been received by Credit Union for deposit at the time the Imaged Items are actually received and accepted at the location where Credit Union or its designated agent posts the credit to the Account. A deposit of Imaged Items will be deemed to have been received and accepted by Credit Union for deposit when all of the following have occurred: (i) Credit Union has preliminarily verified that the image quality of the Imaged Items is acceptable to Credit Union in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Credit Union has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Credit Union for deposit may be rejected by Credit Union in Credit Union's sole discretion.

8.3. Items will be processed and ready for presentment by Credit Union after Credit Union receives all good digitized images and associated data for any given transmission from Member. Credit Union will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.

8.4. If under Paragraph 8.3 above an Imaged Item is not accepted for deposit, Member may then submit the Original Check to Credit Union for processing or contact the maker to reissue the Check. If Member submits the Original Check for processing, Credit Union reserves the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require Member to have the maker reissue the Check.

## **9. Security Procedures.**

9.1. Member will be solely responsible for establishing, maintaining and following such security protocols as deemed necessary to ensure that output files transmitted directly to Credit Union are intact, secure and confidential until received by Credit Union.

9.2. Member shall comply with instructions for using the service by taking reasonable steps to safeguard the confidentiality and security of any passwords, equipment, and other proprietary property or information provided in connection with the Service.

**9.3.** Credit Union may elect, at Credit Union's discretion, to verify the authenticity or content of any transmission by placing a call to any authorized signer on Member's Account or any other person designated by Member for that purpose. Credit Union may deny access to the Service without prior notice if unable to confirm any person's authority to access the Service or if Credit Union believes such action is necessary for security reasons.

**9.4.** Member warrants each time Imaged Items are transmitted using the service that Credit Union's security procedures are reasonable (based on the normal size, type, and frequency of transmissions). Member agrees to be responsible for any transmission Credit Union receives through this service, even if it is not authorized by Member, provided it includes a password or is otherwise processed by Credit Union in accordance with this security procedure.

**10. Member Representations and Warranties.** Member makes the following representations and warranties with respect to each Item processed by Member pursuant to this Agreement:

**10.1.** The Imaged Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Member converted the Check to an Imaged Item;

**10.2.** The Imaged Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and

**10.3.** All encoding, transfer, presentment and other warranties made under applicable law as Credit Union is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

**10.4.** There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Member assumes responsibility for any such duplicate presentment of any Check.

**10.5.** The Original Check contains no alterations.

**10.6.** All data and other information submitted by Member to Credit Union, including, but not limited, to data contained in the MICR line of each Check is complete and accurate and complies with the requirements of this Agreement.

**11. Member Indemnification.** Member will indemnify and hold harmless Credit Union of the Rockies and each of its subsidiaries and affiliates and their respective officers, directors, employees, members, partners, agents, insurers and attorneys (each and “**Indemnified Party**” and, collectively the “**Indemnified Parties**”) for, and holds each of the Indemnified Parties harmless from and against all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Member, or any person acting on Member's behalf (including without limitation Member's authorized processor, if any), in connection with Member's use of the service or processing of Items under this Agreement, including without limitation (a) the breach by Member of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Member or its Members or any third party on behalf of Member, (c) any misuse of the service by Member, or any third party within the control or on behalf of Member, (d) the failure by Member to comply with applicable state and federal laws and regulations, or

(e) any fine, penalty or sanction imposed on Credit Union by, any clearing house, or any governmental entity, arising out of or connected with any Item processed by Credit Union for Member or at Member's instruction; (ii) any act or omission of Credit Union that is in accordance with this Agreement or instructions from Member; (iii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to Credit Union; (iv) any loss or corruption of data in transit from Member to Credit Union; (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by Member under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or (vi) any claims, loss or damage resulting from Member's breach of, or failure to perform in accordance with, the terms of this Agreement.

**12. Disclaimer.** Credit Union's representations, warranties, obligations and liabilities and Member's rights and remedies, set forth in this agreement are exclusive. Credit Union and each of its parents, subsidiaries and affiliates hereby disclaim and Member hereby waives and releases Credit Union, each of its parents, subsidiaries and affiliates and their respective officer, directors, and employees from all other representations, warranties of any nature, obligations and liabilities, whether express or implied, arising by law or otherwise, with respect to any and all documents, services, information, assistance, software products, or other matters provided under this agreement, including without limitation (i) any implied warranty; (ii) of merchantability, fitness for a specific use, any implied warranty arising from course of performance, course of dealing, or usage of trade; (iii) any warranties of timeliness or quality, accuracy or freedom from error. Notwithstanding the generality of the foregoing, neither Credit Union nor each of its parents, subsidiaries and affiliates warrant that operation of the product will be error-free or that its operation will be uninterrupted.

### **13. Credit Union's Liability.**

**13.1.** Credit Union will not be liable to Member for any of the following: (i) any damages, costs or other consequences caused by or related to Credit Union's actions that are based on information or instructions that Member provides to Credit Union; (ii) any unauthorized actions initiated or caused by Member or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Credit Union has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Image Exchange Item or Substitute Check for any reason (other than the breach of contract, gross negligence or willful misconduct of Credit Union), including without limitation, that the Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) Member's or any other party's lack of access to the Internet or inability to transmit or receive data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems, or (vii) if Member does not follow or comply with the representations or warranties set forth in Section 10 above.

**13.2.** Credit Union's liability for errors or omissions with respect to the data transmitted or printed by Credit Union in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Image Exchange Items or Substitute Checks to the Payor Financial Institution.

**13.3.** Notwithstanding anything to the contrary in this Agreement, Credit Union's aggregate liability for claims related to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, arising during any 12 month period shall be limited to an amount equal to the amount of fees paid by Member to Credit Union under this Agreement for such 12 month period.

**13.4.** Except as otherwise specifically provided in this Agreement, in no event will either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss of use or loss of business, revenue, profits, opportunity or good will, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.

**13.5.** Member and Credit Union acknowledge and agree that the limitations of liability in this Section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in this Section.

## **14. MISCELLANEOUS.**

**14.1. Assignment.** Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Credit Union may assign or transfer this Agreement or any part of it, by operation of law or otherwise, to any of Credit Union's affiliates or to a successor of Credit Union by merger or acquisition and Member hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by this Agreement. Credit Union may subcontract any of the work, services, or other performance required of Credit Union under this contract without the consent of Member.

**14.2. Consent to Breach Not Waived.** Neither party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

**14.3. Notices.** Any notice required shall be given by first class U.S. Mail, postage prepaid, by receipted hand delivery, electronically or by any other means agreed upon by both parties and if, to Credit Union of the Rockies PO Box 926, Golden CO 80402, if to Member, as the most recent address shown for Member in Credit Union's records. If any notice instructions are given, the provisions of such shall govern the method and location for giving notice. Any notice mailed shall be presumed received on the third business day after mailing thereof.

**14.4. Force Majeure.** Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

**14.5. Entire Agreement: Amendment.** Credit Union may amend this Agreement at any time and from time to time as determined in its sole discretion and without prior notice to Member. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.

**14.6. Severability.** If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.

**14.7. Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions, and applicable federal law.

**14.8. Relationship of Parties.** Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.

**14.9. No Third Party Beneficiaries.** This Agreement shall not be construed to confer any rights or remedies upon any person not a party to this Agreement, whether as third party beneficiary or otherwise, against Member or Credit Union, their respective successors, assigns and affiliates.

**14.10. Captions and Headings.** The captions or headings used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof.

**14.11. Use of Trademarks.** Member may not use Credit Union's name or trademarks without the express written consent of Credit Union. If Member is permitted to use any of Credit Union's name, trademarks or promotional materials, Member will not indicate, directly or indirectly, that Credit Union endorses, or is connected in any way with, any of Member's goods or services.

**14.12. Account Reconciliation.** Credit Union will provide notice of receipt of deposits to Member's Account on the periodic statement for such Account. Member is responsible for detecting and reporting to Credit Union any discrepancy between Member's records and the records Credit Union provides to Member. If Member does not detect and notify Credit Union of such a discrepancy within 60 days of Member's receipt of any terminal printout, mailed report or periodic statement (each a "Report"), whichever is received first, then such transactions shall be considered correct, and Member shall be precluded from asserting such error or discrepancy against Credit Union.

**14.13. Contingency Plan.** Member agrees that, in the event member is not able to capture, balance, process, produce or transmit a File to Credit Union, or otherwise comply with the terms hereof or of the Procedures, for any reason, including, but not limited to communications, equipment or software outages, interruptions or failures, Member will transport the originals of all Checks to an office of Credit Union and deposit original Checks with Credit Union until such time that the outage, interruption or failure is identified and resolved. The deposit of original Checks at an office of Credit Union shall be governed by the terms and conditions of the Deposit Agreement and not by the terms of this Agreement.

**14.14. Internet Disclaimer.** Credit Union does not, and cannot, control the flow of any documents, files, data or other information via the Internet, whether to or from Credit Union's network, other portions of the Internet or otherwise. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt Member's connections to the Internet (or portions thereof). Credit Union cannot guarantee that such events will not occur. Accordingly, Credit Union disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall Credit Union be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the Internet infrastructure or Member's or Credit Union's ability or inability to connect to the Internet.

**14.15. Arbitration.** Member and Credit Union agree that the transactions contemplated in this Agreement involve "commerce" under the Federal Arbitration Act ("FAA"). Every controversy, dispute or claim between Member and any Indemnified Party arising out of, or is in any way related to or resulting from, this Agreement, Remote Deposit Capture or any other services provided by Credit Union, whether based in contract, tort or any other legal theory, including claims of fraud, suppression,

misrepresentation and fraud in the inducement, will be resolved by binding arbitration under this arbitration provision and the Commercial Arbitration Rules (“Arbitration Rules”) administered by the American Arbitration Association (“AAA”), and any amendment of them, in the form in effect at the time a Claim is filed. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in that lawsuit by any other party or parties. Any participatory arbitration hearing (other than telephonic hearings) will be held in Colorado, unless both parties agree otherwise. If you would like to obtain a copy of the Arbitration Rules and filing forms, you may contact the AAA by calling 1-800-778-7879. The Arbitration Rules and filing forms also can be obtained from the AAA website at [www.adr.org](http://www.adr.org). All Claims shall be filed at an AAA office. If the applicable Arbitration Rules are modified, superseded, or replaced, an equivalent set of rules of AAA will govern the arbitration. If for any reason AAA is unable or unwilling or ceases to serve as arbitration administrator, we will substitute an equivalent national arbitration organization utilizing a similar code or procedure. There shall be no authority for any Claims to be arbitrated on a class action basis. Further, arbitration can only decide our or your Claim and may not consolidate or join the claims of other persons who may have similar claims. The arbitrator will decide whether you or we will ultimately be responsible for paying any fees in connection with the arbitration. Unless inconsistent with the applicable law, each party shall bear the expense of their respective attorneys', experts' and witness fees, regardless of which party prevails in the arbitration. Both parties fully understand and agree that they will not have a right to litigate any Claim in any court if either party chooses to have the Claim resolved by binding arbitration. Further, in agreeing to arbitrate all Claims you are waiving your right to a jury trial. This arbitration provision and the exercise of any of the rights you and we have under it do not prohibit you or us from exercising any lawful rights either of us has to use other remedies available preserve, foreclose or obtain possession of real or personal property, exercise self-help remedies, including any setoff rights which we may have. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statute of limitations and shall honor claims or privileges recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration provision will survive termination of your use of the Services. Either of us may bring an action to compel arbitration of any Claim and/or stay the litigation in any court having jurisdiction; such motion may be brought at any time in a lawsuit in court, until the entry of a final judgment. If any portion of this arbitration provision is deemed invalid or unenforceable, it should not invalidate the remaining portions of this arbitration provision.

## **Appendix A DEFINITIONS**

"Business Day" means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

"Check" means an Original Check, as defined in Regulation CC, except that Check does not include a Substitute Check or a remotely created check. The Check Item can only be drawn on financial institutions within the United States.

"Confidential Information with respect to either party as recipient" means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or

processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure, (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information. The Documentation and any materials relating to the Documentation will be deemed the Confidential Information of Credit Union for purposes of this Agreement. Any nonpublic personal information regarding Member's Customers shall be deemed the Confidential Information of Member for purposes of this Agreement.

"Documentation" means all documentation, application, user set-up form, system requirements guide, schedule of fees, the user manual, any other user guides/quick references, all instructions (including on-line instructions) relating to the Product and Services which Credit Union may provide to Member from time-to-time in connection with the Product or Services.

"Imaged Item" means the digitized image of a Check that is created by Member and transmitted to Credit Union using the Service.

"Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier, or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

"Image Exchange Item" means a digitized image of an Item cleared and settled directly with a payor Financial Institution without conversion to a Substitute Check.

"Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Member, and includes Original Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States money.

"Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

"Non-qualifying Item" means any Foreign Check Item, Savings Bond (E, EE, HH, etc.), Third Party Check Item (Double Endorsement Check Item), Member's own check issued by and drawn on the Member and/or its affiliates, temporary checks, and stale dated items.

"Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.

"Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.

"Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.

"Software" means any software which may be offered or required by Credit Union for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Credit Union for additional processing.

"Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

"UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Agreement.

"United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.