

**XYZ FEDERAL CREDIT UNION**  
**1234 Smith Street**  
**Yourtown, NJ 00000**

**REMOTE DEPOSIT CAPTURE AGREEMENT**

"My Deposit Services Agreement" ("Agreement") is the contract which covers your and our rights and responsibilities concerning the My Deposit services offered to you by \_\_\_\_\_ Credit Union ("Credit Union"). The words "we," "us," and "our" mean the \_\_\_\_\_ Credit Union. The word "account" means any one or more deposit accounts you have with the Credit Union. The words "My Deposit" mean the remote deposit capture service offered by the Credit Union. By using the My Deposit service or clicking the electronic signature "acceptance" below, member and any joint owners or authorized users ("you"), jointly and severally, agree to the terms and conditions in this Agreement, and any amendments.

My Deposit Services are offered for the purpose of converting original checks to substitute checks, as such term is defined in the Check Clearing for the 21st Century Act and Federal Reserve Board Regulation CC ("Check 21"), for deposit with the Credit Union and for processing and presentment to a collecting or paying financial institution. My Deposit service is subject to the following terms and conditions and to the instructions, rules and terms contained in the My Deposit Help File, provided to you via a link within the service and incorporated by reference herein.

**I. My Deposit Service**

- a. **My Deposit Capture Process.** You will scan checks or drafts ("items") with an image capture device (scanner) creating an electronic image and will transmit an electronic file of such electronic images that we will deposit to your account. The Credit Union's processing agent shall perform an image quality assessment of scanned checks or items and shall convert items meeting our required standards into substitute checks to facilitate the deposit and collection of such items. You agree that the manner in which these items (e.g., substitute check, image exchange, Automated Clearing House ("ACH")) 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 items are to be cleared. You agree to be bound by any clearinghouse agreements, operating circulars and image exchange agreements to which the Credit Union is a party.
  
- b. **Funds Availability.** Funds from deposited items will be available according to our Regulation CC funds availability disclosure, as amended from time to time, which is incorporated herein by reference. For purposes of determining the availability of funds, checks deposited via My Deposit are considered received by the Credit Union when the My Deposit capture system expressly indicates that the checks were received by or delivered to us. You agree that the scanning and transmitting of checks does not constitute receipt by the Credit Union. Checks scanned and transmitted via My Deposit will be considered received by us on the day of receipt. For the purpose of establishing funds availability, your deposits via My Deposit session are deemed to be received by the Credit Union at the time the system indicates a successful transaction is completed. Acknowledgment of receipt or delivery does not constitute an acknowledgment by us that the transmission of a check or items does not contain errors.

- c. **Deposit Acceptance.** You agree that we may at any time, at our sole discretion, refuse to accept deposits of checks from you via My Deposit. In the event that the capture services are interrupted or are otherwise unavailable, you may, at your option, deposit checks in-person at a Credit Union branch or via night drop or mail or other contractually acceptable method.

## II. Member Obligations

- a. **Member Account.** You will designate a Credit Union share, share draft, or loan account as the settlement account to be used for the purposes of settling, in aggregate, the financial transactions requested in connection with the My Deposit service. We will provide you with details of the specific transactions that were a result of access to the service. You will be responsible for auditing and balancing of any settlement account.
- b. **Responsibility for Scanning.** You are solely responsible for scanning deposit items, accessing the service, and for maintaining your scanning equipment. You will be responsible for the payment of all telecommunications expenses associated with the service. Credit Union shall not be responsible for providing, servicing, or troubleshooting any equipment for the member.
- c. **Deposit Requirements.** You agree that you will only use the My Deposit services to deposit checks drawn on financial institutions within the United States, excluding its territories. You will deposit checks not falling within this requirement in person, using a night drop facility or by U.S. Mail.
- d. **Check Retention & Destruction.** You agree that all items belong to you and not to the Credit Union, and that those items shall be handled in accordance with this Agreement. After we receive your imaged items transmitted for deposit to your account, we will acknowledge by electronic means our receipt of such electronic transmission. Your electronic transmission is subject to proof and verification. It is your responsibility to retain the original of all imaged items that have been deposited via My Deposit for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond ninety (90) days from the date processed, and you shall properly destroy and dispose of such original checks after such time. During the period that you retain the original checks, you understand and agree that a high degree of care must be used to protect these original checks against security risks. These risks include, but are not limited to (a) 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 My Deposit, and (b) unauthorized use of information derived from the original checks. When you destroy and dispose of the original checks pursuant to the requirements of this Agreement, you understand and agree that you must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent copying equipment).
- e. **Presentment Prohibitions.** You shall not present or attempt to present, or allow others, either directly or indirectly, to present or attempt to present, for deposit by any means (a) any substitute check that has already been presented for deposit via My Deposit check capture service or (b) any original check, the substitute check of which has already been presented for deposit via My Deposit. In the event that you, or any third party, presents or attempts to present, a deposit in violation of this Agreement, 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 us from any other deposit accounts with the Credit Union in our 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 this service, and 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. **Member's Representations and Warranties.** You represent and warrant that:
1. You will comply with all federal and state laws, and rules and regulations applicable to online transactions, including those of the National Automated Clearing House for ACH transactions;
  2. All checks scanned through image transport are made payable to you;
  3. All signatures on each check are authentic and authorized; and
  4. Each check has not been altered.

In the event any of these representations or warranties are breached, 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 us to charge your account for the amount of any such demand, claim or suit, including reasonable attorney's fees and court costs, that constitute a breach of warranty claim under the provisions of the Uniform Commercial Code.

- g. **Financial Responsibility.** You are, and shall remain, solely and exclusively responsible for any and all financial risks associated with accessing the service. We will not be liable in any manner for such risk unless we fail to follow the procedures described in materials for use of the service. You assume exclusive responsibility for the consequences of any instructions you may give to the Credit Union, for your failure to access the service properly in a manner prescribed by us, 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 us of any errors within the time periods established in this Agreement (exclusive of weekends and applicable holidays) after receipt of the applicable detail report from the Credit Union. If notified within such period, we will correct and resubmit all erroneous files, reports, and other data at our then-standard charges, or at no charge, if the erroneous report or other data directly resulted from our error.

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

- a. **Financial Data.** We agree to transmit all the financial data under our control required to utilize the service selected by you and to act on appropriate instructions received from you in connection with such service. We will exercise due care in seeking both to preserve the confidentiality of the account number, password, test key, 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 so 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 the member 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 or disclosure of any confidential information or instructions of yours by your employees, agents, or other third parties.

- b. **Service Availability.** You understand that service availability is at all times conditioned upon the corresponding operation and availability of those computer services and systems used in communicating your instructions and requests to us and our response. We shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by you in the event of any failure or interruption of such services or any part thereof, 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 it, in our sole discretion, 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 U.S. 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 shall only do so by depositing the original item on which the exception item is based. You also acknowledge and agree that even if we do not initially identify an electronic image as an exception item, the substitute check created by us may nevertheless be returned to us because, among other reasons, the electronic image is deemed illegible by a paying bank. Our failure to identify an exception item shall not preclude or limit your obligation to the Credit Union.
- d. **Reports.** We will provide you with a transaction history via the Internet and the Online Banking service detailing items processed, return items, and deposit adjustments.
- e. **Retention of Check Images.** The Credit Union will retain any substitute checks it generates for seven (7) years.
- f. **Services Fees.** Currently there is no monthly fee for the My Deposit service. You agree to pay all fees and charges for deposit services as set forth on the Rate and Fee Schedule. All Service Fees are subject to change by the credit Union upon thirty (30) days written notice to you.

#### **IV. Warranties: Disclaimer of Warranties**

- a. **Service Warranty.** You perform the function of converting an original check to a substitute check. Therefore, you understand and agree that you are responsible, to the extent permitted by law, for all warranties and indemnifications set forth in Check 21 applying to any Reconverting Credit Union and Truncating Credit Union, as such terms are defined by Check 21, including, without limitation, the obligation to only convert an original check that allows for the creation of a substitute check that clearly and accurately represents the information on the front and back of the original check. The Credit Union and its agents may, but shall have no obligation, to screen items or

substitute checks for legal compliance. 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 checks.

- b. **Disclaimer of Liability.** 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 MEMBER'S 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.

#### **V. 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 OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES YOU PAID FOR THE SERVICE RESULTING IN SUCH LIABILITY IN THE SIX MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. 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 WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. OUR LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO YOU IN CONNECTION WITH ANY MATTER.
- b. **Member's Duty to Report Errors.** You shall notify the Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the services as promptly as practicable, and in any event within one 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 the member 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 we will not be liable for any damages or loss of any kind resulting from any unintentional error or omission by us in the performance of these services, 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 services are commercially reasonable, and shall defend, indemnify, and hold us harmless from and against all

liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to the services.

- d. **Limitation.** We shall have no liability to the member, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the services 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 services provided for in this Agreement, and shall have no liability for not effecting an entry, if:
1. We receive actual notice or have reason to believe that you have filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
  2. The ownership of funds involving an entry or the authorized representative's authority to transmit an entry is in question;
  3. We suspect a breach of the security procedures;
  4. We suspect that your account has been used for illegal or fraudulent purposes; or
  5. We reasonably believe that an entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

We will not be liable if you fail to report in a timely manner any error or discrepancy reflected in a statement prepared by us, or if you fail to report a breach of a security procedure. If we fail to perform under this Agreement in accordance with the standards set herein, our liability for damages, losses, and other compensation owing to you shall be limited to the total fees you paid to us for the our failure to perform resulting in such liability in the two (2) month period preceding the date the claim accrued. We shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond our control. In no event will we be liable for any indirect, consequential, punitive, or special damages. We will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

- e. **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 our reasonable control.
- f. **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, (a) you will immediately cease using the service, and (b) you shall promptly remit all unpaid monies due under this Agreement. We may immediately suspend or terminate your access to the service in the event that we reasonably determine such suspension or termination is necessary in order to protect the service or itself from harm or compromise of integrity, security, reputation, or operation.
- g. **Indemnification.** You agree to indemnify, defend and hold harmless the Credit Union and its shareholders, directors, officers, employees and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not

limited to, reasonable attorney fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (a) your failure to abide by or perform any obligation imposed upon you under this Agreement, (b) your willful misconduct, fraud, criminal activity, intentional tort or negligence or any of your representatives involving use of the service; (c) your actions, omissions or commissions of the actions, omissions or commissions of your employees, consultants and/or agents relating to the service; and (d) any transmission or instruction, whether or not authorized, acted upon by the Credit Union in good faith. You will be provided with prompt notice of any claims and given full authority and assistance (at your expense) for the defense of any such claims; provided that we may participate in such defense and settlement with counsel of our own choosing, and at our own expense; provided, further, however, you shall have no authority to settle any claim against any indemnified party without the prior written consent of such indemnified party (which consent shall not be unreasonably withheld).

- h. **Modification of Services.** We reserve the right to modify or terminate the service from time to time without making prior notice to you, provided, however, the Credit Union will give you thirty days prior notice before making any modification to the service that would materially alter its functionality.
- i. **Notices.** Except as otherwise expressly provided herein, we will not be required to act upon any notice or instruction received from you or any other person, or to provide any notice or advice to you or any other person with respect to any matter.
- j. **Enforcement.** You agree to be liable to the Credit Union for any liability, loss, or expense as provided in this Agreement that we incur 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 New Jersey 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 New Jersey 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.