

# MEMBERS FIRST CREDIT UNION

## MOBILE CHECK DEPOSIT AGREEMENT

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Members First Credit Union, a state chartered credit union, and “Member” as defined below, hereby enter into, as of the date the Credit Union grants access to the Services (the “effective date”), this Mobile Check Deposit Agreement (“agreement”). The agreement consists of general terms and conditions, exhibits, and any amendments attached hereto or hereafter by mutual consent of the parties, and incorporated by this reference.

### General Terms and Conditions Agreement

This agreement establishes the rules that govern the processing of deposited checks through your account(s) at the Credit Union using Mobile Check Deposit. From time to time, the Credit Union may amend any of the terms and conditions contained in this agreement. Such amendments shall become effective as stated on any notice sent to you, the member. Examples of such notices might include, but are not limited to, newsletters, disclosures, etc. By using the Mobile Check Deposit, you accept all the terms and conditions of this agreement. Please read it carefully. The terms and conditions of member’s Membership Agreement and the Truth-In-Savings Disclosures for member’s deposit accounts and each of member’s loan agreements continue to apply notwithstanding anything to the contrary in this agreement.

### Rules, Laws and Regulations

You agree to abide by and comply with all local, state, and federal rules, laws and regulations. These rules include but are not limited to Regulation CC “Expedited Funds Availability Act”, its Subparts B, C and D (Subpart D implements the Check Clearing for the 21st Century Act), and the Bank Secrecy Act (BSA), and laws administered by the United States of America which are in existence as of the date of this agreement and as amended from time to time.

### Definitions

In addition to all the other terms defined herein, the following terms shall have the following meanings:

- “We”, “Our”, “Us”, and “Credit Union” shall mean Members First Credit Union, its employees, directors, officers, representatives, and agents.
- “You”, “Your”, and “Member” shall mean the account holder authorized by Credit Union to use the Mobile Check Deposit, and any user authorized to exercise control over funds deposited in member’s account through the Mobile Check Deposit program.
- “Account” or “Accounts” shall mean the individual checking, savings share(s) deposited with Credit Union through the Mobile Check Deposit program.
- “Check” or “Checks” shall mean negotiable demand draft(s) drawn or payable through an office of a United States based financial institution, as well as demand

draft(s) drawn on a Federal Reserve Bank or a Federal Home Loan Bank or on the Treasury of the United States. Check(s) include original check(s) and substitute check(s). Check(s) do not include noncash items payable in a medium other than United States dollars. A draft may be a check even though it is described on its face by another term, such as “money order.”

- “Image item” means digitized image(s) of check(s) that are created by you and transmitted to the Credit Union using the services.
- “Services” means any of the Mobile Check Deposit functions offered and or used by you in connection with this agreement, including optional and future services added by an addendum.
- “System” means the program that is maintained by the Credit Union, or other third parties, that you connect to through the internet in order to access the services.
- Mobile Check Deposit may be commonly referred to as Mobile Deposit.

## **Transaction Limitations**

Deposits made via Mobile Check Deposit will be limited to \$5,000 per transaction and \$5,000 per day.

## **Services and Funds Availability**

Once approved for the Mobile Check Deposit program, you may use the services to deposit checks into your account(s) with the Credit Union, subject to the terms of this agreement. Checks deposited through the services will be converted to image items for processing. The services are subject to transaction limitations and the Funds Availability Disclosure, as set forth in the Membership Agreement and Truth-In-Savings schedule, which govern the use of your account. We are notifying you in advance that deposits made by the Mobile Check Deposit program do not fall under the standard provisions of Regulation CC – Expedited Funds Availability Act. As such, longer hold periods may apply.

You agree to receive notice of an extended hold via Secured Messaging provided in our Mobile or Online Banking programs. Checks that are deposited via Mobile Check Deposit will be reviewed and credited to your account, on a case by case basis. Most check deposits will have same day or next business day funds availability. You will receive a notice of an extended hold if funds are held beyond next business day.

## **Returned Deposits**

Any credit to your account using Mobile Check Deposit is provisional. If a check deposited through Mobile Check Deposit is dishonored, rejected, or otherwise returned as unpaid by the drawee bank, or the item is rejected, or returned by a clearing agent or collecting bank, for any reason, including, but not limited to, issues relating to the quality of the image, you agree that an original check will not be returned to you, but that we may charge back the amount of the original check and provide you with an image of the original check, a paper reproduction of the original check or a substitute check. You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned item. You shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to you, without our approval.

We may debit any of your accounts to obtain payment for any item that has been rejected or returned, for any adjustment related to such item or for any warranty claim related to such item, whether or not the rejection, return, adjustment or warranty claim was made timely.

Items deposited using Mobile Check Deposit are subject to our verification and final inspection process. We may at any time deposit an image item or return all or part of a deposit of multiple image items to you without prior notice. We are under no obligation to inspect or verify any image item to determine accuracy, legibility or quality of the image item or MICR line information associated with the image item, or for any other purpose. However, we may correct or amend MICR line information associated with an image item to facilitate processing of the image item or a substitute check created from that image item. We may process and collect an image item or a substitute image item through one or more check clearing houses, Federal Reserve Banks, or other private clearing agreements with other financial institutions. We may hold and use funds in any deposit account of yours following termination of this Agreement and the services for such time as we reasonably determine to be necessary for us to be assured that no image item processed by us prior to termination may be returned, charged back, or otherwise become a source or cause for any loss, liability, cost, exposure or other action for which the Credit Union may be responsible, with such right being in addition to any other rights we may have with respect to your accounts. Without limitation, you recognize that under the Rules, the UCC, Regulation CC and the rules of any image exchange network, our representations and warranties to others with regards to image items and substitute checks may expose the Credit Union to claims for several years following processing of any particular image item or substitute check.

If a payor financial institution returns an image item to us for any reason, we may charge your applicable account for the returned image item, whether or not the return is timely and proper, and we may further either:

- Return the image item to you; or
- Re-present it to the payor financial institution before returning it to you.

Items may be returned as image items, rather than substitute checks, as agreed by the parties. If a payor financial institution or other third party makes a claim against us or seeks a re-credit with respect to any image item processed, we may provisionally freeze or hold aside a like amount in the applicable account pending investigation and resolution of the claim.

## **Member Eligibility**

You understand that you must be a Members First Credit Union member in good standing, to qualify for the services.

## **Access**

To use Mobile Check Deposit, you must have a mobile device that is compatible with our mobile application system and access to telecommunication services necessary for the Mobile Check Deposit service. Application upgrades may be required from time-to-time for continued use of the services. Data rates may apply based on your internet or cellular service provider's rate schedule.

## Equipment or System Failure

In the event of a system failure, you agree that, in order to deposit your checks, you must deliver them directly to a Credit Union branch office for processing. If the checks were scanned prior to the system failure, you must obtain our approval before delivering the checks to a branch office for processing.

## Hours of Access

Services are available 24 hours per day, 7 days per week, although some or all services may not be available occasionally due to emergency or scheduled system maintenance. Transmission deadlines and funds availability terms and conditions apply. We agree to post notice of any extended periods of non-availability on the Mobile Check Deposit and or Credit Union website.

## Transmission Deadlines

Transmissions originate from the Credit Union office in Midland, Michigan. Image item deposits initiated through the System before 2:00 p.m. Eastern Time on a business day are posted to member's account the same day, subject to funds availability. In the event that we receive an image item from you after 2:00 p.m. Eastern Time, or on a day that is not a business day, the Image item is considered as received by us at the opening of the next business day. For the Mobile Check Deposit program a business day is describe as Monday through Friday, except for Federal holidays. You are responsible for understanding and building into your transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

## Authorized Users

The Credit Union shall be entitled to rely on the apparent authority of any person who accesses the services using valid member and user login IDs and passwords, including such persons who may not be signers on member's account. Except as otherwise provided by law, you will indemnify Credit Union and hold it harmless for any loss or expense caused by any person with the apparent authority to access the services. You agree to provide each authorized user a copy of these terms in connection with their use of the services. The Credit Union may elect to verify the authenticity or content of any transmission by placing a call to any authorized signer on your account at our discretion. We may deny your access to the services without prior notice if we are unable to confirm any person's authority to access the services or if we believe such action is necessary for security reasons.

## Security

You understand the importance of your role in preventing misuse of your accounts associated with the Mobile Check Deposit program, and you agree to promptly examine your paper or electronic statement for each of your Credit Union accounts as soon as you receive it and notify us of any errors in accordance with your Account Membership Agreement. You agree to protect the confidentiality of your accounts and account number and passwords. Data transmitted via the services is encrypted in an effort to provide transmission security. Mobile Check Deposit utilizes identification technology to verify that

the sender and receiver, of transmissions related to the services can be appropriately identified by each other. Notwithstanding our efforts to ensure the services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the internet and potentially can be monitored and read by others. We cannot, and do not, warrant that all data transfers utilizing Mobile Check Deposit, or e-mail transmitted to and from us will not be monitored or read by others. You agree to notify us immediately if you believe any passwords have been lost, stolen, used without your permission, or otherwise compromised. Call us immediately at our Call Center at the number in the contact information section of this agreement.

We may immediately suspending the services or the system or the processing of any check or corresponding electronic image item if we have reason to believe that there has been a breach in the security of the services or system, fraud involving your account(s) or check(s), or any uncertainty as to the authorization or accuracy of electronic image items, including the right to process electronic image items on a collection basis at any time.

## **Use of Services**

As a condition to using the services, you agree that you are solely responsible for the use of the Services and that you will use the Services in accordance with this agreement. You agree not to attempt to circumvent the security features of the services or the system or make any improper or unauthorized transfer of funds from accounts via the services or the system. You agree that you are prohibited from engaging in conduct that would violate the proprietary rights of the owner(s) of the system and the services as well as accessing or using the system or the services in any other unauthorized manner. You agree to be liable to the Credit Union and its vendors, for any claims, losses, liabilities, damages, expenses or costs arising as a result of the negligent or intentional misuse of the services or the system by you or your authorized users.

You are prohibited from using the services for any activity that:

- Would result in you being or becoming a “money service business” as defined in the Bank Secrecy Act and its implementing regulations;
- Knowingly accepting restricted transactions in connection with another person in unlawful Internet gambling as defined in the Unlawful Internet Gambling Enforcement Act and Regulation GG (Prohibition on Funding of Unlawful Internet Gambling); or
- Directly or indirectly related to the use of the services that is illegal or fraudulent.

## **Deposit of Original Checks**

You agree that no check deposited to the Credit Union shall cause funds to be debited more than once from the account of the maker. You agree that the original check, a duplicate check image, or any copy of the original check or check image will not be deposited by you with the Credit Union (unless we instruct you to do so) or under any circumstances with any other financial institution.

## **Check Retention Period**

You agree that you will preserve the originals of all checks, processed through the services pursuant to this agreement for fourteen (14) calendar days after the day of deposit

("Retention Period"). After you receive the "Deposit Successful" message, write "Mobile Check Deposit" on the check front. The risk of loss due to the unavailability of the original or copy of a check for any reason, during the retention period, shall be exclusively on the member.

## **Destruction of Original Checks**

You will be fully responsible for the destruction of the checks. You agree to use commercially reasonable method(s) to destroy original checks after the required retention period has expired. You agree to destroy and dispose of the original checks with a high degree of care, including selecting and implementing appropriate destruction and disposal procedures. You are required to implement such procedures to ensure that the original checks are not accessed by unauthorized persons during the storage, 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 shredding equipment). The risk of loss associated with the accidental inclusion of a physical check in the check collection process or with a lost, destroyed, stolen or misplaced check shall be exclusively on the member.

## **Member Representations and Warranties**

You represent and warrant that all checks transmitted through the use of the services are made payable to the member, all signatures and endorsements on each check are authentic and authorized, and each check has not been altered.

## **Prohibited Checks**

You agree that checks scanned through the use of the services will not;

- be payable to any person or entity other than you;
- be prohibited by, or received in violation of, any law, rule or regulation;
- have any apparent alteration to the front of the check;
- be known or suspected (or should have known or suspected) as fraudulent or otherwise unauthorized by the owner of the account on which the check is drawn;
- be a check drawn on your checking account with MFCU
- be a check that has been remotely created;
- be a Money Order, Travelers check or any check linked to credit card
- have been previously cashed or deposited;
- be post dated or more than six (6) month old;
- be payable to cash;
- be irregular in any way;
- bear a signature of the person on whose account the check is drawn; or
- be payable in a currency other than U.S. dollars;
- be drawn on financial institutions that are located outside the United States.
- be a third party check

## Endorsement of Checks

You agree to properly endorse each check prior to submitting such check through the use of the services. Checks must be payable to you and endorsed by you with the restrictive legend, "**For MFCU Mobile Check Deposit Only**" consistent with the terms of the MFCU policy applicable to the account to which the deposit is made.

## Image Quality

You are responsible for inspecting and verifying the quality of the images associated with image items, thus ensuring that the digitized images of the front and back of original checks are legible for all posting and clearing purposes by the Credit Union. Specifically, you are representing and warranting to Credit Union that:

- The image item is an accurate representation of all information on the front and back of the original check at the time the original check was converted to an image item, and the image item contains all endorsements from the original check necessary to permit Credit Union to:
  - Acquire rights of a holder in due course in the collection process of checks and other items;
  - Handle, process, maintain and destroy original checks; and
  - Ensure that neither Credit Union nor any other financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for a check or image item more than once in any form.
- Each image item (or related electronic data file) contains a record of all MICR line (special characters printed on the bottom of a check) information required for a substitute check and otherwise satisfies all of the requirements of the American National Standards Institute (ANSI) X9.37 standards for image quality required by Check 21 and Regulation CC for the creation and/or transferring of a substitute check created from that Image item.

We may refuse to process any non-conforming image items, including without limitation any image items that do not meet the definition of a "check" set forth herein.

## Adjustments

Adjustments are to correct mistakes in the value of image items deposited, mistakes in encoding, or for missing or illegible image items. You will be notified via email or secured messaging in Mobile or Online Banking if an adjustment has been posted to your account.

## Termination

We are permitted to terminate any or all of the services immediately should you breach any part of this agreement or of the membership agreement. We are also permitted to terminate any or all of the services immediately if we are no longer able to provide such services.

## **Confidentiality**

You acknowledge that we will disclose information to third parties about Your account or the image items you deposit:

- To enable Your access to the services and the system,
- When it is necessary for completing deposits, and
- As required by law.

## **Contact Information**

Notifications required by this agreement are to be directed to us at the address or phone numbers listed below.

Members First Credit Union

PO BOX 2165

Midland, MI 48641

Phone: 855-835-6328

## **Disclaimer of Warranty and Limitation of Liability**

We make no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with the Mobile Check Deposit Services provided to you under this agreement. We do not and cannot warrant that Services will operate without errors, or that any or all services will be available and operational at all times. Except as specifically provided in this agreement, or otherwise required by law, you agree that our officers, directors, employees, agents or contractors are not liable for any indirect, incidental, special or consequential damages under or by reason of any services or products provided under this and or by reason of your use of or access to Mobile Check Deposit Services. The Credit Union shall be responsible only for performing the services expressly provided for in this agreement and shall be liable only for its negligence in performing those services. The Credit Union shall not be responsible for the member's acts or omissions (including without limitation the amount, accuracy, or timeliness of transmittal) or those of any person, including without limitation any Federal Reserve Financial Institution or transmission or communications facility, and no such person shall be deemed the Credit Union's agent. The member agrees to indemnify the Credit Union against any claims, damages, loss liability, or expense (including attorney's fees and expense) resulting from or arising out of any claim of any person that the Credit Union is responsible for any act or omission of the member, or any other person described in this paragraph. In no event shall the Credit Union be liable for any consequential, special, punitive or indirect loss or damage which the member may incur or suffer in connection with this Agreement, including without limitation, loss of damage from subsequent wrongful dishonor resulting from the Credit Union's acts or omissions pursuant to this Agreement. Without limiting the generality of the forgoing provisions, or the provisions of this Agreement, the Credit Union shall be excused from failing to act or from 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 the Credit Union's control. In addition, the Credit Union shall be excused from failing to transmit or delay in transmitting a deposit if such transmittal would

result in the Credit Union violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other United States governmental regulatory authority. Notwithstanding any other provision set forth herein to the contrary, in the event of default under the terms of this agreement by the member, the Credit Union shall have all rights and remedies available at law or in equity.

### **Governing Law**

This Agreement shall be construed in accordance with Michigan law and the laws of the United States of America. We and you agree that jurisdiction over, and venue in any legal proceeding arising out of or relating to this agreement, will exclusively be in the state or federal courts located in Michigan.

### **Severability**

If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future laws, the remaining provisions shall remain in full force and effect.

### **Acceptance**

Your use of the services constitutes your acceptance of this agreement. The credit union reserves the right to change the terms for the services described in this agreement by notifying you of such change in writing and we may amend, modify, add to, or delete from this agreement from time to time. Your continued use of the services will indicate your acceptance of the revised agreement.