

## MemberSource Credit Union Mobile Deposit Capture User Agreement

This Mobile Deposit Capture User Agreement (“Agreement”) contains the terms and conditions for the mobile deposit capture services that MemberSource Credit Union may provide to you. The words “we”, “us”, “our” and “Credit Union” mean MemberSource Credit Union. The words “you” or “your” mean each and all those who use the mobile deposit capture services. The word “account” means any one or more deposit accounts you have with the Credit Union. MemberSource Credit Union Account Agreement and Disclosure is hereby incorporated into and made a part of this Agreement upon launching the Mobile Deposit Capture application (“App”) and login feature on your device. In the event of a discrepancy between this Agreement and the App or the Account Agreement and Disclosures, this Agreement will control.

1. **Services.** The mobile deposit capture services (“Services”) are designed to allow you to make deposits to your checking, savings or money market accounts from home or other remote locations by scanning or photographing your checks and electronically transmitting a digital image of your paper checks to us or our designated processor. Original checks are converted to “substitute checks” as such term is defined in the Check Clearing for the 21<sup>st</sup> Century Act and Federal Reserve Board Regulation CC, for deposit with the Credit Union and for processing and presentment to a collecting or paying financial institution. For purposes of this Agreement, a “substitute check” (as defined in Regulation CC) is a check reproduction of an original check that:
  - a. Contains an image of the front and back of the original check;
  - b. Bears a MICR line that contains all the information appearing on the MICR line of the original check at the time the original check was issued and any additional information that was encoded on the original check’s MICR line before an image of the original check was captured;
  - c. Conforms in paper stock, dimension and otherwise with ANSI X9.100-140; and
  - d. Is suitable for automated processing in the same manner as the original check.
2. **Member Eligibility.** You understand that you must have a valid email address and be enrolled in Home Banking to be eligible to enroll in the Services.
3. **Acceptance of These Terms.** Your use of the Services constitutes your acceptance of this Agreement. You agree to comply with the hardware and software requirements set forth herein. We reserve the right to change the terms and charges 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.
4. **Fees and Charges.** Currently, we do not charge a service fee for the use of the mobile deposit capture feature within the mobile banking application for consumers. However, we reserve the right to charge a service fee in the future. If we decide to do so, we will provide you with a notice of change in terms as set forth in this Agreement. Standard data and mobile phone rates from your wireless provider may still apply. You may be charged access rates depending on your carrier. Please contact your mobile device carrier for additional information.

There may be a charge for additional transactions and optional services as disclosed on our Fee Schedule. You agree to pay such charges and authorize us to charge your designated Account or, if sufficient funds do not exist in your designated Account or overdraft source(s), you authorize us to charge the amount of the fees associated with the mobile deposit capture feature to any of your Account(s) at the Credit Union. In addition to the foregoing, you agree to be responsible for any fees and charges assessed by the Mobile Deposit Capture feature arising out of your use of said feature, including but not limited to fees assessed for any return items that are in addition to the fees set forth in our Fee Schedule.

5. **Compliance with Laws.** You agree to comply with all laws, statutes, regulations and ordinances pertaining to your use of these Services, as well as all laws relating to the banking transactions contemplated hereunder. You also agree to be bound by any clearinghouse rules or agreements, operating circulars, image exchange agreements, and other documents to which we are a party that govern the Services we provide. You promise to indemnify and hold us harmless from any damages, liabilities, costs, expenses (including attorneys' fees) or other harm arising out of any violation thereof. This indemnity shall survive termination of your account with us and this Agreement.
6. **Unavailability of Services.** You understand and agree that the Services may at times be temporarily unavailable due to Credit Union system maintenance or technical difficulties including those of the Internet service provider and Internet software. In the event that the Services are interrupted or are otherwise unavailable, you acknowledge that you can deposit original checks in person at a Credit Union branch, at an ATM or by U.S. mail. It is your sole responsibility to verify that items deposited using the Services have been received and accepted for deposit by us. However, a notification of items that are rejected will be sent by the next business day following rejection.
7. **Eligible Items for Deposit.** You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC. You agree that the image of the check transmitted to us shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code as adopted in Texas. For purposes of this Agreement, "check" (as defined in Regulation CC) means a negotiable demand draft that is drawn on:
  - a. Or payable through or at an office of a bank or credit union;
  - b. A Federal Reserve Bank or a Federal Home Loan bank;
  - c. The Treasury of the United States; and/or
  - d. A state or local government that is not payable through or at a bank or credit union.

For purposes of this Agreement "item" (as defined in Article 4 of the Uniform Commercial Code) means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment for ACH or wire transfers.

8. **Unacceptable Deposits.** You understand and agree that you will not deposit the following items using the Services:
  - a. Any third party check, i.e., any item that is made payable to another party and then endorsed to you by such party.
  - b. Any item that is drawn on the same account in which the deposit is being made.
  - c. Any item that contains evidence of alteration to the information on the check.
  - d. Any check previously converted to a "substitute check", as defined in Regulation CC.

- e. Any item issued to you by a financial institution in a foreign country.
- f. Any item that is “stale dated” more than six (6) months prior to the date of deposit.
- g. Any item that is “post dated” after the date of deposit.
- h. Any item stamped “non-negotiable” (whether stamped in print or as a watermark).
- i. Any item that has been re-deposited or returned such as “non-sufficient funds” or “refer to maker” or returned for any other reason.
- j. Any item that is incomplete.
- k. Cash.
- l. Savings Bonds.

Deposits of this nature may result in the immediate termination of the Service.

9. **Check Requirements.** Any image of a check that you transmit to us must accurately and legibly provide all of the information on the front and back of the check at the time of presentment to you by the drawer. Prior to electronically transmitting a digital image of the original check, you will restrictively endorse any item transmitted through the Services as your Account Number, Date of Deposit and “RDC” or as otherwise instructed by us. You agree to follow any and all other procedures and instructions for use of the Services as we may establish from time to time. The digital image of the check transmitted to us using the Services must accurately and legibly provide, among other things, the following information:
- a. Your endorsement, and those of any other payees listed on the check;
  - b. The information identifying the drawer and the paying bank that is preprinted on the check, including complete and accurate MICR information and the signatures; and
  - c. Other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

The image quality of the check must comply with the requirements established by the American National Standards Institute (“ANSI”), the Board of Governors of the Federal Reserve Board, including the requirements under federal Regulation CC, or any other regulatory agency, clearing house or association. The image may be rejected for quality purposes if it does not meet the criteria established within the service.

10. **Receipt of Items.** Upon receipt of the digital image of the check, we will review the check image for acceptability and will convert items meeting our requirements into substitute checks to facilitate the deposit and collection of such items. You understand and agree that electronically transmitting a digital image of a check does not constitute receipt by the Credit Union. You understand that, in the event you receive a notification from us confirming receipt of an image, such notification does not mean that the image contains no errors or that we are responsible for any information you transmit to us. We are not responsible for any image that we do not receive. Following receipt of the image, we will process the image by preparing a “substitute check”. Notwithstanding anything to the contrary, we reserve the right, within our sole and absolute discretion, to accept or reject any item for mobile deposit into your account and, in the event we reject an item for mobile deposit, you understand and agree that you must deposit the original item. You understand and agree that even if we do not initially reject an item you deposit through the Services, we may return the substitute check we created because, among other reasons, the paying bank deems the electronic image illegible. Our failure to reject such an item shall not limit your liability to us. You understand that any amount credited to your account

for items deposited using the Services is a provisional credit and you agree to indemnify us against any loss we suffer because of our acceptance of the mobile-deposited check.

11. **Rejection of Deposit.** We are not liable for any service or late charges levied against you due to our rejection of any item. In all cases, you are responsible for any loss or overdraft plus any applicable fees to your account due to an item being returned.
12. **Items Returned Unpaid.** A notice will be sent to you if an item that you deposited is returned to the Credit Union. With respect to any item that you transmit to us for mobile deposit that we credit to your account, in the event such item is dishonored, you authorize us to debit the amount of such item from your account.
13. **Availability of Funds. You agree that Electronic Images submitted via MemberSource Credit Union's Mobile Deposit Capture services from your mobile device are not subject to the funds availability requirements of the Federal Reserve Board's Regulation CC.** For purposes of determining the availability of funds, checks deposited via the Services are considered received by the Credit Union when we notify you of receipt of the image by an email transmitted to the email address you have provided to us. You understand and agree that, for purposes of deposits made using the Services, the place of deposit is Houston, Texas. You understand that we may make provisional funds immediately available depending on factors we at our sole discretion deem relevant, including but not limited to your account history and relationship with MemberSource Credit Union. You also understand that credit is provisional until settlement is final.
14. **Email Address.** You agree to notify us immediately if you change your email address, as this is the email address where we will send you notification of receipt of mobile deposit items.
15. **Check Retention and Destruction.** Upon your receipt of a confirmation from us that we have received the image of an item, you agree to prominently mark the item as "Electronically Presented" to ensure that it is not represented for payment. You agree to securely store each original check that you deposit using the Services for a period of sixty (60) days after transmission to us in order to verify settlement and credit or to balance periodic statements. After such period expires, you agree never to represent a previously deposited check. During the retention period, you will promptly provide any retained check, or a sufficient copy of the front and back of the check, to us as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any check, or for our audit purposes. If you are unable to provide a sufficient copy of the front and back of the check you will be liable for any unresolved claims by third parties.
16. **Hardware and Software Requirements.** In order to use the Services, you must obtain and maintain, at your expense, compatible hardware and software as specified from the Credit Union from time to time. You are solely responsible for electronically transmitting deposit items, accessing the Services from the Credit Union and for maintaining your scanning equipment. You will be responsible for the payment of all telecommunications expenses associated with your use of the Services. The Credit Union shall not be responsible for providing or servicing any equipment for you. Further, we are not responsible for any third party software you may need to use the Services. Any such third party software is accepted by you as is and is subject to the

terms and conditions of the software agreement you enter into directly with the third party software provider at the time of download and installation.

**17. Recommended Browsers.**

Windows Operating System  
Mac Operating System

**18. Periodic Statement and Your Duty to Report Errors.** Any mobile deposits made through the Services will be reflected on your monthly periodic statement. You understand and agree that you are required to immediately notify us of any suspected error relating to the images transmitted using the Services no later than sixty (60) days after the date of the monthly periodic statement that includes any transaction you allege is erroneous. You are responsible for any errors that you fail to bring to our attention within such time period. Periodic statements and your duty to report errors is governed by the Electronic Fund Transfer Disclosure and Agreement incorporated in the MemberSource Credit Union Account Disclosure and Deposit Agreement previously provided to you and hereby incorporated into and made a part of this Agreement.

**19. Ownership and License.** You agree that we retain all ownership and proprietary rights in the Services, associated content, technology, and website. Your use of the Services is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Services. Without limiting the restriction of the foregoing, you may not use the Services:

- a. In any anti-competitive manner;
- b. For any purpose which would be contrary to our business interest; or
- c. To our actual or potential economic disadvantage in any aspect.

You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide the Services.

**20. Accountholder's Warranties.** You make the following warranties and representations with respect to your use of the Services and each image of an original check you transmit to us using the Services:

- a. Each image of a check transmitted to us is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
- b. The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
- c. Each check you submit to us for deposit will not be resubmitted in any format to us or to any other person or financial institution for payment resulting in the same drawer's account to be debited twice.
- d. Other than the digital image of an original check that you remotely deposit through the Services, there are no other duplicate images of the original check.
- e. Each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check.
- f. The information you provided in your Membership Application and Account Agreement is true and correct and, in the event any such information changes, you will immediately notify us of the change.

- g. You have not knowingly failed to communicate any material information to us.
- h. You will retain possession of each original check deposited using the Services for the required sixty (60) day retention period and neither you nor any other party will re-submit the original check for payment.
- i. You will not use the Services and/or your accounts for any illegal activity or transactions.
- j. Files and images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.
- k. Each check you submit for deposit is drawn in United States dollars on a financial institution located within the United States, excluding its territories.

21. **DISCLAIMER OF WARRANTIES.** YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR RISK. YOU ALSO UNDERSTAND AND AGREE THAT THE SERVICES AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU UNDERSTAND AND AGREE THAT WE DO NOT MAKE ANY WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICES, EQUIPMENT, SOFTWARE OR INTERNET PROVIDER SERVICE, OR ANY PART OF THEM, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE ALSO MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED FROM USING THE SERVICES WILL BE ACCURATE OR RELIABLE, OR THAT ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED. WE ARE NOT RESPONSIBLE FOR ANY LOSS, INJURY OR DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, CAUSED BY OUR INTERNET PROVIDER, ANY RELATED SOFTWARE OR THE CREDIT UNION'S USE OF ANY OF THEM OR ARISING IN ANY WAY FROM THE INSTALLATION, USE OR MAINTENANCE OF YOUR PERSONAL COMPUTER HARDWARE, SOFTWARE OR OTHER EQUIPMENT.

22. **LIMITATION OF LIABILITY.** YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES RESULTING FROM OR ATTRIBUTABLE TO THE USE OR THE INABILITY TO USE THE SERVICES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR ATTRIBUTABLE TO THE USE OF, INABILITY TO USE, THE TERMINATION OF THE USE OF THE SERVICES, OR YOUR BREACH OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.

23. **Accountholder's Indemnification Obligation.** You agree to indemnify, defend and hold harmless the Credit Union and its directors, officers, employees, members and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not limited to, reasonable attorneys' fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (i) your failure to abide by or perform any obligation imposed upon you under this Agreement; (ii) the willful misconduct, fraud, criminal activity, intentional tort or negligence of you or any of your representatives involving use of the Services; (iii) the actions, omissions or commissions of you, your employees, consultants and/or agents relating to the Services; and (iv) any transmission or instruction, whether or not authorized, acted upon by the Credit Union in good faith. You shall 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 the Credit Union may participate in such defense and settlement with counsel of the Credit Union's own choosing at the Credit Union's own expense. However, you shall have no authority to settle any claim against any Indemnified Party without the prior written consent of Indemnified Party (which consent shall not be unreasonably withheld).

24. **Termination of the Services.** You may, by written request, terminate the Services provided for in the Agreement. We may terminate your use of the Services at any time. In the event of termination of the Services, you will remain liable for all transactions performed on your account. Upon termination, (i) you will immediately cease using the Services and (ii) you shall promptly remit all unpaid monies due under this Agreement, if any. The Credit Union may immediately suspend or terminate your access to the Services in the event that the Credit Union reasonably determines such suspension or termination is necessary in order to protect the Services or the Credit Union from harm or compromise of integrity, security, reputation or operation or that you are in breach of this Agreement or are otherwise using the Services in a manner inconsistent with the terms of this Agreement or with applicable law.
25. **Relationship to Other Disclosures.** The information in this Agreement applies only to the Services described herein. Provisions in other disclosure documents, as may be revised from time to time, remain in effect for all other aspects of your account.
26. **Governing Law.** You understand and agree that this Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the internal laws of the State of Texas, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. You also agree to submit to the personal jurisdiction of the courts of the State of Texas.
27. **Confidentiality.** You acknowledge and agree that confidential data relating to the Services, marketing strategies, business operations and business systems (collectively, "Confidential Information") may come into your possession in connection with this Agreement. Such Confidential Information is the exclusive and confidential property of the Credit Union. You understand and agree that you are prohibited from disclosing and agree to maintain the confidentiality of our Confidential Information.
28. **Waiver.** The failure of either you or us to seek a redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms or of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.
29. **Relationship.** This Agreement does not create, and shall not be construed to create, any joint venture or partnership between you and us. No officer, employee, agent, servant, or independent contractor of either of us shall at any time be deemed to be an employee, servant, agent, or contractor of the other party for any purpose whatsoever.
30. **Force Majeure.** You understand and agree that we are not responsible or liable for any loss, liability, damages, expenses, or cost of any kind resulting from any delay in the Services due to causes beyond our reasonable control.

31. **Other Terms.** You may not assign this Agreement. A determination that any provision of this Agreement is unenforceable or invalid shall not render any other provision of this Agreement unenforceable or invalid.