

## Mobile Check Deposit Agreement and Disclosure

Mobile Check Deposit is available as an additional service of Keys Federal Credit Union. This [Mobile Check Deposit](#) Agreement and Disclosure governs your use of the Mobile Check Deposit service (the "Service"). By enrolling to use the Service, or using the Service, you agree to be bound by the terms and conditions contained in this Agreement.

Please read this Agreement carefully and keep it for future reference. In addition to this Agreement, your Account is also governed by the *Terms and Conditions* set forth in your *Membership Information* booklet and our *Fee Schedule* (together, the "Deposit Agreement"). However, in the event of a conflict, the terms and conditions of this Agreement shall supersede the terms and conditions of the Deposit Agreement with respect to the deposits made through the Service. Deposits made through other channels continue to be governed by the Deposit Agreement.

Pursuant to the terms of this Agreement, you may use the Service to deposit items to your account through use of the Mobile Check Deposit function.

### Part I: Definitions

"You" and "your" means a person who has applied for or uses the Mobile Check Deposit.

"Credit Union," "we," "us" and "our" mean Keys Federal Credit Union and its successors or assigns.

"Account" means your deposit account with us to which you are authorized to make a deposit using the Service.

"Check 21" means the Check Clearing for the 21st Century Act.

"Mobile Check Deposit Device" means any device acceptable to us from time to time that provides for the capture of images from items and for transmission through the clearing process. At present, any image scanner or other device that captures a digital image of an item (e.g., a digital camera or smart phone) and permits transmission of that image to us is an acceptable Mobile Check Deposit Device. Supported devices are subject to change without prior notice to you.

"Mobile Check Deposit" means the service described herein by which you may deposit items to your Account by creating an image of the item using a Mobile Check Deposit Device and transmitting that image to us for deposit.

"Image" means the electronic image of the front and back of an item, in addition to other required information, as specified by us, in the format we specify.

"Image Replacement Document" or "IRD" means a substitute check, as defined in Check 21.

An "item" is an original check, cashier's check, official check, U.S. Treasury check, or any other payment instrument, drawn on a financial institution within the United States and payable in U.S. currency that is payable to you. Items are deemed to be "items" under the Uniform Commercial Code and "checks" under The Expedited Funds Availability Act and Regulation CC.

"Online Deposit Items" means items deposited through use of the Online Banking Mobile Check Deposit.

"Service" means the Mobile Check Deposit described herein.

"Tracking ID" means the online-generated tracking number issued by us in connection with an online deposit session in which you use the Online Banking Mobile Check Deposit. The Tracking ID will be populated automatically on each Deposit Receipt issued.

## **Part II: Mobile Check Deposit.**

### **1. Mobile Check Deposit.**

You may use Mobile Check Deposit to deposit items to your Account by creating an image of the item using an Mobile Check Deposit Device, and transmitting that image to us for deposit by means of your Mobile Banking Log On, User ID and Password. You may transmit images to us only from a Mobile Check Deposit Device located in the United States. Although the Credit Union's Electronic Funds Transfer Disclosure governs your use of Mobile Banking and your User ID and Password as they relate to certain features or functions of Mobile Banking, the Electronic Funds Transfer Disclosure does not govern the Mobile Check Deposit or transactions conducted through the Mobile Check Deposit.

You agree to endorse any item transmitted through the Service with your signature and adding the restrictive endorsement "For Mobile Check Deposit only, Keys Federal Credit Union account #\_\_\_\_\_" or as otherwise instructed by us, prior to transmission of the item. You agree to follow any and all other procedures and instructions for use of the Service as we may establish from time to time. You agree Credit Union may, in its sole discretion and without prior notice to you, reject items not endorsed as set forth herein or as otherwise established by us from time to time.

You may complete more than one Mobile Check Deposit as long as the maximum Mobile Check Deposit limit is not exceeded.

### **2. Hardware and Software Requirements.**

You agree to transmit an image to us using only a Mobile Check Deposit Device expressly authorized by us for your use to transmit images. We may, but are not required to, reject images that you transmit to us with an unapproved Mobile Check Deposit Device or by other means to which we have not given our consent.

Any Mobile Check Deposit Device that you use to transmit images to us pursuant to this Agreement must be approved by us. We may change the list of approved Mobile Check Deposit Devices from time to time.

You are responsible for the security of the Mobile Check Deposit Device and for allowing its use only by individuals authorized by you. You agree to implement and maintain specific internal security controls to

protect the Mobile Check Deposit Device and customer information. We may require that you implement and maintain additional specific controls, and we may notify you of those controls and amend them from time to time.

You are responsible for all costs of using the Service and operating the Mobile Check Deposit Device, including, but not limited to, telephone and internet service charges.

You are responsible for maintaining the system's capacity and connectivity required for use of the Mobile Check Deposit. We shall notify you of those requirements, and we may amend them from time to time.

### **3. Image Quality.**

You are responsible for the image quality of any image that you transmit. If an image that we receive from you or for deposit to your Account is not of sufficient quality to satisfy our image quality standards as we may establish them from time to time, we may reject the image without prior notice to you.

Each image must include the front and back of the item and the following information must be clearly readable: amount, payee name, drawer signature, date, check number, account number, routing and transit number, MICR (Magnetic Ink Character Recognition) line, and any endorsement or other information written on the check.

### **4. Processing Images.**

You authorize us to process any image that you send us or convert an image to an Image Replacement Document. You authorize us and any other financial institution to which an image is sent to handle the image or IRD.

### **5. Limits.**

We may establish limits on the dollar amount and/or number of items or deposits permitted to be deposited by you through use of the Mobile Check Deposit from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of the established limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.

### **6. Deposit of other items; deposits when Service not available.**

You agree that you will not use the Mobile Check Deposit to deposit anything not meeting the definition of an item. If you use the Mobile Check Deposit to transmit anything that is not an item, or if for any reason we are not able to recognize something transmitted as an item, we may reject it without prior notice to you. You agree to make those deposits through other channels that we offer, such as at a Credit Union branch, ATM, or mail. You further agree to use such other channels when the Mobile Check Deposit may not be available.

## **7. Returned items.**

You are solely responsible for any item for which you have been given provisional credit, and any such item that is returned or rejected may be charged to your Account or any other account in your name. You acknowledge that all credits received for deposits made through the Mobile Check Deposit are provisional, subject to verification and final settlement. Any item that we return to you will be returned in the form of an image or an IRD.

## **8. Handling of Transmitted Items.**

You agree not to allow an item to be deposited or presented for payment more than once to the extent that it could result in the payment of the item more than once. You will not allow the transmission of an image of an item that has already been presented to us or to any financial institution by any other means. You will not allow transmission of an image of an item that has already been transmitted through the Service. If an image of an item has been transmitted to us or to any other financial institution, you will not allow the item to be subsequently presented by any other means. If any item is presented or deposited more than once, whether by image or by any other means, we may, at our discretion, reject it or return it and charge it against your Account without prior notice to you.

For any image which you have transmitted, you shall be responsible for preventing the transmission of another image of the item or presentment of the item by any other means. You agree to retain the item for at least 60 calendar days from the date of the image transmission, and thereafter to either destroy any item of which you have transmitted an image, or to otherwise render it incapable of transmission or presentment.

## **9. Cooperation with Investigations.**

You agree to cooperate with us in the review or investigation of any transactions, poor quality transmissions or claims, including, without limitation, by providing, upon request and without further cost, any originals or copies of items in your possession and your records relating to items and transmissions.

## **10. Payment Processing.**

### **a. Item Processing**

At our sole discretion, we may process the images you send to us electronically through other financial institutions, or we may create image Replacement Documents that will be processed through traditional check processing methods. If you send us images that are incomplete, that fail to satisfy our image quality requirements, or otherwise do not allow us to meet the requirements of Check 21 or any image exchange agreement that would cover our further electronic transmission of images that you send us, or we are otherwise unable to process images that you send us, we may charge the images back to your account. You agree to be bound by any clearinghouse agreements, operating circulars, and image exchange agreements to which we are a party.

#### b. Receipt of items

We reserve the right to reject any image or item transmitted through the Service, at our discretion, without liability to you. We are not responsible for images we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received only when you receive a confirmation from us that we have received the image and accepted your deposit. However, the confirmation that we send you does not mean that the transmission was complete or error free.

#### c. Funds availability

If an image you transmit through the Service is received and accepted before 4:00 p.m. Eastern Time on a business day that we are open, we consider that day to be the day of your deposit. Otherwise, we will consider that the deposit was made on the next business day we are open. You agree, however, that items transmitted through the Service are not subject to the funds availability requirements set forth in the "Funds Availability Policy and Disclosure" section of the Credit Union's Deposit Agreement or Regulation CC of the Federal Reserve Board. We reserve the right to delay availability up to 60 days from the date we receive payment for items transmitted through the Service.

#### d. Errors

You agree to notify us of any suspected errors regarding items deposited through the Service as soon as possible, and in no event later than 60 days after the applicable Credit Union account statement is sent to you. Unless you notify us within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against us for such alleged error.

### **11. Fees.**

You are responsible for paying the fees for use of the Service as the Credit Union may change them from time to time. The Credit Union may change the fees for use of the Service at any time pursuant to the section titled "Amendment" below. You authorize the Credit Union to deduct any such fees from any account in your name.

### **12. Representations and Warranties**

You make the following representations and warranties to us:

- a. You and any user you authorize will use the Service only for lawful purposes and in compliance with all applicable rules and regulations and with our reasonable instructions, rules, policies, specifications, and operating procedures and will not violate any law of any country or the intellectual property rights of any third party.
- b. You will use the Service to transmit and deposit images of items only.
- c. You will transmit only images of items acceptable for deposit through the Service and will handle items as agreed herein.

- d. You are a person authorized to enforce each item or are authorized to obtain payment of each item on behalf of a person entitled to enforce an item.
- e. items submitted for deposit through use of the Service are valid items and you will reimburse and indemnify the Credit Union for all loss, damage, and expenses, including reasonable attorney's fees, incurred in defending any allegation that such items are invalid or fraudulent.
- f. items have not been altered.
- g. Each item bears all required and authorized endorsements.
- h. Each item has been endorsed as "For Mobile Check Deposit only, Keys Federal Credit Union account #\_\_\_\_\_".
- i. All of the warranties set forth in Section 4-207 of the Uniform Commercial Code.
- j. All images accurately and legibly represent all of the information on the front and back of the item.
- k. You will not use the Service to transmit or deposit any item, (i) payable to any person or entity other than you, (ii) drawn or otherwise issued by you or any other person on any of your accounts or any account on which you are an authorized signer or joint account holder, (iii) which you know or should know to be fraudulent, altered, unauthorized, or missing a necessary endorsement, (iv) that is a substitute check or image replacement document, (v) that is drawn on an institution located outside of the United States, (vi) that is not payable in United States currency, (viii) that is dated more than 6 months prior to the date of deposit, or (ix) that is created by you purportedly on behalf of the maker, such as a remotely created check.
- l. No depository financial institution, drawee, drawer, or endorser will receive presentment or return of, or otherwise be charged for, a substitute check, the original check, or a paper or electronic representation of a substitute check or the original check such that that person will be asked to make a payment based on a check that it already has paid.
- m. You will use the Service in the manner required by this Agreement and the Mobile Check Deposit Website Information.
- n. You understand that acceptance of this Agreement is required for use of the Service.
- o. You, if acting on behalf of a small business entity, are fully authorized to execute this Agreement.
- p. All information you provide to us is accurate and true.

You shall be deemed to have repeated each of the foregoing representations and warranties each time you transmit an image through use of the Service.

## **5. Unacceptable items.**

You agree that the following items will not be considered an acceptable Online Deposit item. Online deposits of the items described below will result in the immediate reversal of the online deposit to your Account and all subsequent online deposits and may result in the suspension or termination of the Service to you. This means the amount of the items deposited will be removed from your Account and will reduce your Account balance. The reversal may result in a negative Account balance. Unacceptable online deposits include, but are not limited to, the following:

- a. Online Deposit of Credit Union Check— The online deposit of a check that is drawn on any Keys Federal Credit Union account you own is prohibited. Online deposits of this nature will result in the immediate revocation of the Online Banking Mobile Check Deposit.
- b. Non-Negotiable items — The deposit of any item stamped with a "non-negotiable" watermark is prohibited. Online deposits of this nature will result in the immediate revocation of the Online Banking Mobile Check Deposit.
- c. Altered Checks — An altered check is any check that contains a change (correction fluid, crossed out amounts, etc.) to information on the face of the check.
- d. Foreign Checks — A foreign check is any check that is issued to you by a financial institution in any country other than the United States of America.
- e. Incomplete items — An incomplete item is any item that does not contain signatures of the maker, endorsement signatures or is missing any of the information required during key-entry in an online deposit session.
- f. Stale Dated and Post Dated Checks — Certain checks contain instructions such as: "Void 90 days after issue date," "Must be cashed within six months of issue date" or are dated with a date in the future. Members with stale dated checks must get a replacement check from the maker before Credit Union will accept the deposit. Checks are not accepted until on or after the date of the check.
- g. Third-Party Checks — Third-party checks are checks that are made payable to a second party and then signed (endorsed) over to a third party.
- h. Checks with Restrictive Endorsements – checks with restrictive endorsements except as noted in Section 12 h of this Agreement are not acceptable.

## **Part III: General**

### **1. Negative Balances.**

You agree to immediately reimburse the Credit Union for any negative balance in your Account caused by your use of Mobile Check Deposit. If your use of Mobile Check Deposit causes a negative balance in your

Account, you also agree to pay any applicable overdraft fee(s) as stated in Keys Federal Credit Union's Fee Schedule.

The Credit Union will not be liable for negative balances on Accounts caused by the non-payment of checks due to insufficient funds, delays in the mail service or for any action by the member or authorized user of the Account that results in the reversal of a deposit on the Account.

## **2. Use by Authorized Users.**

Except as otherwise required by applicable law, use of Mobile Check Deposit by you and any person to whom any of you deliver your Online/Mobile Banking PIN is subject to the terms and conditions of this Agreement.

## **3. Indemnification and Limitations on Liability.**

In addition to the indemnifications and limitations on liability contained in the Deposit Agreement, you hereby indemnify and hold harmless Credit Union and each of its directors, officers, employees, agents, successors, and assigns ("Indemnitees") from and against all liability, loss, and damage of any kind (including attorneys' fees and other costs incurred in connection therewith) incurred by or asserted against such Indemnitee in any way relating to or arising out of (a) the Service, (b) any image, item or IRD, (c) any failure by you to comply with the terms of this Agreement or breach by you of any representation or warranty contained herein, (d) any failure by you to comply with applicable laws and regulations, or (e) any acts or omissions of you or any third party, including, without limitation, your failure to provide complete and correct information. This paragraph shall survive the termination of this Agreement for any reason.

**YOU AGREE YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS 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 SERVICE (i) WILL MEET YOUR REQUIREMENTS, OR (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. FURTHER, WE MAKE NO WARRANTY THAT (i) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (ii) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED.**

**YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF THE SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF THE CREDIT UNION HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, YOU AGREE FURTHER THE CREDIT UNION SHALL NOT BE LIABLE FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND**

**ITS LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF YOUR ACTUAL DAMAGES OR THE TOTAL IN FEES YOU PAID FOR THE USE OF THE SERVICE DURING THE SIX MONTH PERIOD PRIOR TO THE SUPPOSED ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE FOREGOING SHALL CONSTITUTE CREDIT UNION'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY HEREUNDER.**

#### **4. Intellectual Property**

This Agreement does not transfer to you any ownership or proprietary rights in the Service, the Mobile Check Deposit Device or any associated software or any part thereof. We or our agents retain all intellectual property rights, title and interest in and to the Service, Mobile Check Deposit Device and any associated software.

Neither you nor any user you authorize will (a) sell, lease, distribute, license or sublicense the Service; (b) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Service or any part of it in any way for any reason; (c) provide, disclose, divulge or make available to or permit use of the Service by any third party; (d) copy or reproduce all or any part of the Service; or (e) interfere, or attempt to interfere, with the Service in any way.

#### **5. Termination**

We may terminate or suspend the Service, or your use of the Service, immediately and at any time with or without notice to you. You may terminate your use of the Service at any time by giving notice to us. Your notice will not be effective until we receive your notice of termination as provided in the Mobile Check Deposit Website Information, as it may be amended from time to time, and we have had a reasonable time within which to act upon it. Notwithstanding termination, any image transmitted through the Service shall be subject to this Agreement.

#### **6. Amendment**

We may change this Agreement at any time. We may add new terms and conditions and we may delete or amend existing terms and conditions. We generally send you advance notice of the change. If a change is favorable to you, however, we may make the change at any time without advance notice. If you do not agree with the change you may discontinue using the Service. However, if you continue to use the Service, your continued use shall be deemed your acceptance of and agreement to the change.

#### **7. Severability**

Any provision of this Agreement that is unenforceable shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of the Service would result in violation of any law, regulation, or governmental policy, this Agreement shall be deemed amended to the extent necessary to comply therewith.

## **8. Entire Agreement**

This Agreement, the Deposit Agreement and the Credit Union's Electronic Fund Transfers disclosures contain the entire agreement between the parties relating to the subject matter addressed herein, and supersede any prior or contemporaneous understandings or agreements, whether oral or written, between the parties regarding the subject matter contained herein. This Agreement is a contract only by and between the Credit Union and you and for the benefit of their successors and assigns as permitted by this Agreement. No other person or party shall be a beneficiary hereof or have any rights hereunder, and no rights are conferred by this Agreement upon any other person or party, whether or not identified in this Agreement.

## **9. Waiver.**

To be effective, any waiver or modification of any term or condition stated in this Agreement must be in writing and signed by an authorized officer of the Credit Union and shall not be considered as a waiver of any future or other obligation or right.

## **10. Force Majeure.**

Notwithstanding anything in this Agreement to the contrary, the Credit Union shall not be deemed to have breached this Agreement or be liable to you or any third party by reason of any delay or failure in Credit Union's performance arising from events beyond its reasonable control, including, but not limited to, failure or errors in any communications lines or systems, acts of God, acts of war, acts of terrorism, riot, epidemic, fire, flood or other natural disasters.

## **11. Headings**

The headings preceding the text of the sections and subsections of this Agreement are used solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

## **12. Assignment**

This Agreement shall not be assigned or delegated by you without the prior written consent of the Credit Union.

## **13. Governing Law**

This Agreement, and your rights and our obligations under this Agreement, are governed by and interpreted according to the laws of the State of Florida and of the United States. In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery. You and we agree any legal action related to this Agreement shall be filed and heard in Monroe County, Florida, except as prohibited by applicable law.

**Electronic Signature:** You consent and agree that your selection of the “I Agree” button below, your enrollment to use the Service or your use of the Service constitutes your signature, acceptance and agreement to the terms and conditions of this Agreement as if actually signed by you in writing. Further, you agree that no certification authority or other third party verification is necessary to the validity of your electronic signature. You agree that the lack of such certification or third party verification will not in any way affect the enforceability of your signature or any resulting contract between you and the Credit Union.

*I AGREE*