

## Mobile Check Deposit Service Agreement

1. Service and Service Terms. The following terms and conditions apply to BrightStar Credit Union's MOBILE CHECK DEPOSIT CAPTURE SERVICE (Service) that the Credit Union may provide to you. By enrolling to use the Service, or using the Service, you agree to be bound by the terms and conditions contained in this Agreement. You accept and agree that the Service or any portion of the Service may be provided by one or more subcontractors. The provisions of the Credit Union's Consumer Account Disclosures agreement and applicable service terms are incorporated into this Agreement by reference. In case of any conflict between this Agreement and your other agreements with BrightStar Credit Union, specific provisions regarding mobile check deposit capture services in this Agreement control over general provisions.

In this Agreement, "Credit Union", and "we/us/our" refer to BrightStar Credit Union, including our agents and service providers, and "You/your" refer to the Member accepting this Agreement or using the Service.

### Services:

The Credit Union's mobile check deposit capture service ("Service") is designed to allow you to make Eligible Item deposits to your Credit Union checking, savings, or money market savings accounts using an Eligible Device (as defined below) to transmit item images and deposit information to us. Once accepted, your Eligible Items will be either processed electronically or converted to Substitute Checks based on the information you provide. There is currently no charge for the Service. We reserve the right to impose charges for the Service in the future.

2. Overview and definitions. This Agreement states the terms and conditions by which the Credit Union will deliver the Service described below to you.

2.1 "Member" means a person that has a membership with the Credit Union.

2.2 "Member Agreement" means collectively the Consumer Account Disclosures and any other account information provided to you by us from time to time.

2.3 "Business Day" means any day which the Credit Union is open to conduct substantially all of its services, but does not include Saturday, Sunday or Credit Union holidays.

2.4. "Deposit Account" means your Credit Union checking account, savings account, or money market savings account.

2.5. "Eligible Account" means any Credit Union Deposit Account that meets our eligibility criteria and has been enrolled in the Service.

2.6 "Eligible Device" means any device acceptable to the Credit Union which provides for the capture of images from original items and for transmission through a clearing process. This includes scanners and mobile devices with cameras.

2.7 "Eligible Item" means a check, a paper Item, or an electronic Item (i.e. an electronic image of an Item together with information describing that Item) that is payable to you, and is within the meaning of a "check" as defined in Federal Reserve Regulation CC and the Credit Union's deposit guidelines.

Acceptable Items include personal checks, government checks, business checks, money orders, traveler's checks and cashiers or certified checks drawn on a US financial institution and in US funds. It is understood that you will only be transmitting electronic images of the front and back of Items. In order for an Item to be processed for deposit, it must be properly endorsed in the proper location on the back of the Item and signed by the payee.

The following are not Eligible Items:

- 1) Checks/Items payable to others (even if endorsed over to you);
- 2) Demand drafts or remotely created checks/Items (checks lacking the original signature of the person authorizing the check);
- 3) Substitute checks/Items (paper checks/Items created from an electronic image);
- 4) Checks/Items which you know or should know to be fraudulent, altered, unauthorized or missing a necessary endorsement or checks/Items which contain an irregularity of any kind (for example, numerical and written amounts are different);
- 5) Checks/Items previously returned unpaid for any reason;
- 6) Checks/Items that are postdated or more than six (6) months old;
- 7) Checks/Items drawn on a foreign financial institution or payable in a foreign currency;
- 8) Checks/Items exceeding the Deposit Limits set forth below;
- 9) Checks/Items not acceptable under the terms of your Membership Agreement.

2.8 "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.

2.9 "Item" has the same meaning as that term is defined in Article 4 of the Uniform Commercial Code. Any check image transmitted through the Services shall be deemed to be an "item" within that UCC definition.

2.10 "Substitute Check" means a paper check or Item created from an electronic image in accordance with Federal Reserve Regulation CC.

2.11 "Service" means the specific Mobile Check Deposit Capture Service provided by the Credit Union. The Service shall be provided for Items received with a consumer or business purpose being deposited into an account at the Credit Union.

2.12 "Service Start Date" means the date that the Service is first utilized by you.

2.13 "Technology" means the Credit Union's or its subcontractor's deposit capture applications and processes designed to facilitate the electronic clearing of Items. Said applications are accessed through scanners or mobile devices with cameras, utilizing software and hardware provided by or acceptable to Credit Union, and are proprietary access points to payment processing networks and systems used to complete the clearing of items. Technology may include but is not limited to Member service support, reports, software, software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof developed or provided by the Credit Union or its subcontractors and used in the provision of Services hereunder.

2.14 "Access Systems" means all services, hardware, software and other technology (including high speed Internet access service) necessary to access the Service.

2.15 "Subcontractors" means any third party service provider of the Service.

2.16 "Term" shall mean the term of this Agreement beginning as of the Service Start Date until terminated as provided herein.

### 3. Your Obligations; Suspension of Service.

3.1 Hardware, Software and System Requirements. In order to utilize the Service, Member must have the following hardware and software with the indicated specifications:

- High-speed Internet connection
- TWAIN Compliant Document scanner (for Remote Deposit)
- Mobile device with a camera or functionality capable of capturing and transmitting images and Credit Union's Google Android® or Apple iOS® app. (for mobile deposit)
- Java® 6 SE

3.2 Your Responsibilities. Pursuant to the terms of this Agreement, you may use the Service to deposit Items to your Deposit Account by creating an Image of the Item using a Remote Device, and transmitting that Image to us for deposit. You may transmit Images to us only from a Remote Device located in the United States. To access your account(s) with the Credit Union, you must have an eligible checking account with the Credit Union and have an established high speed Internet email address. When using the Service, you shall provide, at your sole cost and expense, all Access Systems and you shall be solely responsible for installing, maintaining, securing and supporting all such Access Systems. You are responsible for providing a valid Internet email address.

The Credit Union is not responsible for any error or failures from any malfunction of any Access Systems, and the Credit Union is not responsible for any computer virus or related problems that may be associated with the access to or use of the Service. The Credit Union does not guarantee that the Service

will be compatible with all computer systems, scanners, mobile devices, and Internet browsers, routers or firewalls. Further, the Credit Union does not and cannot control the flow of data to or from the Credit Union's network, service providers' networks or other portions of the Internet. Accordingly, the Credit Union cannot guarantee that your connection to the Internet will not be impaired or disrupted, and the Credit Union hereby disclaims any and all liability resulting from or related to such events.

**3.3 Withdrawal of Access/Suspension of Service.** The Credit Union reserves the right to deny, suspend or revoke access to the Service immediately, in whole or in part, at its sole discretion with or without notice to you.

**3.4 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 bank 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 Deposit Account without prior notice.

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 14 calendar days from the date of the transmission of an Image of the Item and thereafter destroy any Item of which you have transmitted an Image. You shall be responsible for safekeeping and destruction of original items which are imaged, transmitted electronically and deposited using the Service. You agree to indemnify and hold harmless the Credit Union from any liability with respect to (i) the safekeeping, use or destruction of the original items after they are imaged, transmitted and deposited electronically using the Service, or (ii) for any Items being submitted for deposit or presented for payment more than once.

**3.5 Account Statement Examination.** Unless you notify the Credit Union of any errors to deposits made through the Service within 60 days after the applicable account statement is mailed or otherwise provided to you, such statement regarding all deposits made through the Service shall be deemed to be correct.

**3.6 Processing of Items.** Images of items transmitted by you are not considered received by the Credit Union until you have received an electronic confirmation of the receipt of the deposit from the Credit Union. However, receipt of the confirmation from the Credit Union does not mean that the transmission was error free or complete. Items transmitted by you and received by the Credit Union or its subcontractors by 3:00 p.m. Eastern Time on a Business Day, shall be deemed deposited to your applicable account on the same Business Day. Items received by the Credit Union after 3:00 p.m. Eastern Time on any Business Day shall be considered deposited to your applicable account on the next successive Business Day.

3.7 Image Quality. You are responsible for the image quality of any Image of an Item that you transmit. If an Image that we receive from you or for deposit to your Deposit 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 and Item 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 Item. In addition, Image quality must comply with the requirements established from time to time by ANSI, the Board of Governors of the Federal Reserve, and other regulatory agencies, clearing houses or associations, as applicable.

3.8 Endorsement Requirement. Prior to imaging any Item through the Service, you must endorse the back of the original item, using black ink, "Deposit only to account #\_\_\_\_\_".

3.9 Funds Availability. Deposited funds will be available in accordance with the Funds Availability Policy disclosure. Any crediting of your account for Items deposited via the Service is provisional, subject to verification and final settlement. Any dishonored Items will be returned as an image of the original or as a Substitute Check. Any Item that is returned or dishonored may be charged to your Deposit Account or any other account in your name. Any dishonored Item is subject to a fee according to the Credit Union Fee Schedule at the time of the return.

3.10 Deposit Limits. There is a deposit limit of five Items and a total of \$2,500 per day, per account.

3.11 Fees. Please refer to the Credit Union Fee Schedule.

3.12 You agree, warrant and represent that you will:

- Ensure that all information you provide Credit Union is accurate and true.
- Use only Eligible Devices to access the Services.
- Endorse all Items for the Service as instructed above.
- Follow all other instructions we provide you for capturing and transmitting item images and deposit information via the Service.
- Use the Services only for Eligible Items as defined above and that meet our image quality standards.
- Comply with this Agreement and all your Credit Union agreements, as well as all applicable rules, laws and regulations.

3.13 You agree that you will not:

- Transmit duplicate Items, or transmit any individual Item or its Image more than once.
- Make deposits in excess of the Deposit Limits stated in this Agreement for the Service.
- Re-deposit or re-present any Item or Image previously transmitted through the Service.

- Transmit any checks, Items or Images that are not Eligible Items or related deposit information.

3.14 Continuation. You agree that you shall be deemed to have repeated each of the agreements, warranties and representations set forth in Sections 3.12 and 3.13 above each time you transmit an Image of an Item through the Service.

3.14 You agree that we will:

- Have the unrestricted right to reject, return, or refuse to process any item or image that is not an Eligible Item, without liability to you.

3.15 You agree that we will not:

- Have any obligation to process any non-Eligible Item even if we did so on a previous occasion.
- Be responsible for items we do not receive or for images dropped during transmission.
- Be responsible for any technical or other difficulties that you may experience when using the Service, or any damages that might arise therefrom.
- Be responsible for unavailability of the Services or any damages that might arise from unavailability.

#### 4. Warranties and Disclaimers

4.1 You shall not use the Service in any way that could potentially harm Credit Union's network or sites, or the network or sites of its third party service providers. You shall not, and you shall not permit or assist others to, abuse or fraudulently use the Service. You shall not use the Service in any way that: (i) transmits any Item or other materials via the Service that is deceptive or fraudulent; (ii) violates any law, statute, ordinance, or regulation (including without limitation the laws and regulations governing banking and criminal activity); (iii) transmits or distributes any viruses, worms, time bombs, Trojan horses, or other destructive software or devices; (iv) attempts to break or circumvent security or, in fact, breaks or circumvents security of any computer network of Credit Union, its subcontractors or service providers.

4.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN "AS IS" BASIS, AND THE CREDIT UNION DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

#### 5. INDEMNIFICATION AND LIMITATION OF LIABILITY

5.1 INDEMNIFICATION. 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 Substitute Check, (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. This paragraph shall survive the termination of this Agreement for any reason.

5.2 LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER THE CREDIT UNION NOR ANY OF ITS SUBCONTRACTORS OR SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DIRECT, 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 AND ITS SUBCONTRACTORS AND SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY ITS OR THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND ITS OR THEIR 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.

## 6. Termination.

6.1 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 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. You agree that, in addition to any other rights we may have with respect to your Deposit Accounts, we may hold and use funds in any Deposit Account following termination of the Service for such time as we reasonably determine that any Item processed by us prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which we may be responsible.

## 7. Miscellaneous Provisions.

7.1 Notices. You agree that any notices required or permitted under this Agreement may be given electronically.

7.2 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 Broward County, Florida, except as prohibited by applicable law.

7.3 Subcontractors. The Credit Union may use third party service providers to provide some or all of the Service under this Agreement on behalf of Credit Union.

7.4 Amendments. 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.

7.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all existing agreements and all other related communications, written or oral.

7.6 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.

7.7 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.

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

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