

## **Digital Banking Terms and Conditions**

This Agreement is the contract, which covers your and our rights and responsibilities concerning the Digital Services offered to you by Firstmark Credit Union ("Firstmark" and "Credit Union"). In this Agreement, the words "you" and "yours" mean those who submit an authorization form for Digital Services. In this Agreement the words "we" and "us" and "our" and "ours" mean Firstmark Credit Union. The word "account(s)" means any one or more savings, checking and loan accounts you have with the Credit Union.

By submitting an application or online enrollment, you agree to the following terms and conditions governing your and our rights and responsibilities concerning: Online Banking, Mobile Banking, Bill Payment, Text Banking, External Transfers, (collectively referred to as Electronic Funds Transfers "EFTs") and Mobile Deposit (Remote Deposit Capture) Services involving your accounts (collectively "Digital Services" or "Services"). These Digital Services permit Firstmark Credit Union members to access and conduct transactions on linked Firstmark accounts and investment accounts with our affiliates, PSCU, and SWBC Investments, Lanvera, respectively. Unless indicated otherwise by the context, "linked Firstmark accounts" or "linked accounts" refers to all of your accounts with Firstmark or its affiliates that you have linked to Online Banking or External Transfers Services. Accounts other than Firstmark accounts will be governed by separate agreements and terms.

The terms of this Agreement apply to both consumer and business members, except as specifically provided in this Agreement. For consumer accounts, the member may enroll in the Services and is responsible for the acts of any joint account holder. Anyone enrolling represents that he or she is the primary account holder and is authorized to enroll in the Services. Anyone using the Services represents that he or she has full authority to use the Services and to engage in any action taken by him or her. For business and organizational accounts, the Services may be established by any authorized user of the account holder. Any joint account holder or an authorized user, acting alone, may effect transactions through the Services.

## 1. Online Banking Services.

**a. Online Banking Services.** Upon approval for the Online Banking service (Online, you may use your web browser-equipped device to access your accounts. You must use your Passcode along with your member Login ID to access your accounts. The Online Service is accessible seven days a week, 24 hours a day. You will need a web browser-equipped device with access to the Internet. The online address for the Online Service [www.firstmarkcu.org](http://www.firstmarkcu.org). You are responsible for the installation, maintenance and operation of your computer. The Credit Union will not be responsible for any errors or failures involving any data or communication service or your computer. At the present time, you may use the Online Service to:

- Transfer funds between your linked Firstmark deposit accounts, on a one-time or recurring basis
- Transfer funds to make loan payments on a linked Firstmark loan account or mortgage
- Transfers funds to another member's account as you authorize
- View current account balance, transaction history on your linked Firstmark accounts.

Transactions involving your deposit accounts, including checking account stop payment requests, will be subject to the terms of your Membership and Account Agreement and transactions involving a Line of Credit account will be subject to your Loan Agreement and Disclosures, as applicable.

**b. Access to Accounts.** By using the Online service, you certify you are an owner, joint owner or custodian on the accounts represented in your Online enrollment. You understand that all owners of your accounts or anyone with whom you share your Passcode or any Login ID or access code will be an Authorized User, and that authority will be considered unlimited in amount and manner with full authority to perform all transactions relating to the stated accounts, until you notify the Credit Union, in writing of the revocation of such authority. You agree that you are and will remain fully responsible for any transactions made by such persons on your accounts except transactions that occur after the Credit Union has been notified of any revocation of authority and has had a reasonable

opportunity to act upon such notice.

**c. Online Service Limitations.** The following limitations on Online transactions may apply in using the services listed above.

**Transfers.** You may make funds transfers to other accounts of yours as often as you like. However, transfers from your savings and money market accounts will be limited to a total of six in any one month. You may transfer or withdraw up to the available balance in your account or up to the available credit limit on a line of credit at the time of the transfer, except as limited under this Agreement or your deposit or loan agreements. Funds transferred into your account via the eBanking Service may not be immediately available for use. Internal transfers initiated through Online are posted to your account the same day. Transfers completed after 2:00 p.m. on a business day, Saturday, Sunday or banking holiday, will be posted on the next business day. The Credit Union reserves the right to refuse any transaction that would draw upon insufficient or unavailable funds, lower an account below a required balance, or otherwise require us to increase our required reserve on the account.

**Account Information.** The account balance and transaction history information may be limited to recent account information involving your accounts. Also, the availability of funds for transfer or withdrawal may be limited due to the processing time for ATM transactions and our Funds Availability Policy.

**Electronic Instructions.** You agree that all electronic instructions that we receive through Online or otherwise in connection with the Services, such as those directing us to take action with respect to your account, that match Access Information or other identity information you have provided when enrolling in or using the Services will be deemed valid, authentic, and binding obligations. Pursuant to law and regulations, these electronic instructions therefore will be given the same legal effect as your written and signed paper instructions, shall be considered writing or in writing and shall be deemed for all purposes (i) to have been signed and (ii) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

## 2. Mobile Banking Services.

Mobile Web Banking (Mobile Web) is a personal financial information management service that allows you to access account information and make financial transactions as offered using compatible and supported mobile phones and/or other compatible and supported wireless devices (including phones, "Wireless Devices"). We reserve the right to modify the scope of the Mobile Web services at any time. We reserve the right to refuse to make any transaction you request through Mobile Web. You agree and understand that Mobile Web may not be accessible or may have limited utility over some mobile telephone networks, such as while roaming. The most up-to-date list of services which you may be able to access through Mobile Web is posted on the Mobile Web page on our website at [www.firstmarkcu.org](http://www.firstmarkcu.org). When you register for Mobile Web, designated accounts and payees (or billers) linked to your account through Online will be accessible through the Mobile Web service.

**a. Use of Services.** At the present time, you may use the Mobile Web Service to:

- Transfer funds between your linked Firstmark deposit accounts, on a one-time or recurring basis
- Transfer funds to make loan payments on a linked Firstmark loan account or mortgage
- Transfers funds to another member's account as you authorize
- View current account balance, transaction history on your linked Firstmark accounts.
- Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, requesting copies of monthly checking or savings statements, stopping payment on checks, changing address and phone information and changing your Login ID and Online passcode.
- Sending us secure online mail messages and questions regarding the Online Banking service

Mobile Web will not work unless you use it properly. You accept responsibility for making sure that you understand how to use Mobile Web before you actually do so, and you use Mobile Web in accordance with the online instructions posted on our website. You also accept responsibility for making sure that you know how to properly use your wireless device and the Credit Union Mobile App required to use the

Service. The Mobile App is provided by a service provider not affiliated with the Credit Union and you are solely responsible for entering a license agreement to use the software. We will not be liable to you for any losses caused by your failure to properly use the Mobile Web service, the Software or your wireless device. You may experience technical or other difficulties related to the Mobile Web service that may result in loss of data, personalization settings or other Mobile Access service interruptions. We assume no responsibility for the timeliness, deletion, misdelivery or failure to store any user data, communications or personalization settings in connection with your use of the Mobile Web service. We assume no responsibility for the operation, security, or functionality of any wireless device or mobile network which you utilize to access the Mobile Web service. Financial information shown on the Mobile Web service reflects the most recent account information available through the Mobile Web service. You agree that we will not be liable for any delays in the content, or for any actions you take in reliance thereon. If you need current account information you agree to contact us directly.

**b. Access to Accounts.** By using the Mobile Web service, you certify you are an owner, joint owner or custodian on the accounts represented in your Online enrollment. You understand that all owners of your accounts or anyone with whom you share your Passcode or any Login ID or access code will be an Authorized User, and that authority will be considered unlimited in amount and manner with full authority to perform all transactions relating to the stated accounts, until you notify the Credit Union, in writing of the revocation of such authority. You agree that you are and will remain fully responsible for any transactions made by such persons on your accounts except transactions that occur after the Credit Union has been notified of any revocation of authority and has had a reasonable opportunity to act upon such notice.

**c. Relationship to Other Agreements.** You agree that when you use Mobile Web, you will remain subject to the terms and conditions of all your existing agreements with us or any service providers of yours; including service carrier or provider and that this Agreement does not amend or supersede any of those agreements. You understand that those agreements may provide for fees,

limitations and restrictions which might impact your use of Mobile Web (for example, your mobile service carrier or provider may impose data usage or text message charges for your use of or interaction with Mobile Web, including while downloading the Software, receiving or sending Mobile Web text messages, or other use of your Wireless device when using the Software or other products and services provided by Mobile Web), and you agree to be solely responsible for all such fees, limitations and restrictions. You agree that only your mobile service carrier or provider is responsible for its products and services. Accordingly, you agree to resolve any problems with your carrier or provider directly with your carrier or provider without involving us. You also agree that if you have any problems with Mobile Web, you will contact us directly.

**d. Mobile Web Service Limitations and Conditions.** When you use the Mobile Web service to access accounts, you agree to the following limitations and conditions:

**Account Ownership/Accurate Information.** You represent that you are the legal owner of the accounts and other financial information which may be accessed via Mobile Web. You represent and agree that all information you provide to us in connection with Mobile Web is accurate, current and complete, and that you have the right to provide such information to us for the purpose of operating the Mobile Web service. You agree to not misrepresent your identity or your account information. You agree to keep your account information up to date and accurate.

**Additional Service Limitations.** Neither we nor our service providers can always foresee or anticipate technical or other difficulties related to Mobile Web. These difficulties may result in loss of data, personalization settings or other Mobile Web interruptions. Neither we nor any of our service providers assume responsibility for the timeliness, deletion, misdelivery or failure to store any user data, communications or personalization settings in connection with your use of Mobile Web. Neither we nor any of our service providers assume responsibility for the operation, security, functionality or availability of any Wireless device or mobile network which you utilize to access Mobile Web. You agree to exercise caution when utilizing the Mobile Web application on your Wireless device and to use good judgment

and discretion when obtaining or transmitting information. Financial information shown on Mobile Web reflects the most recent account information available through Mobile Web, and may not be current. You agree that neither we nor our service providers will be liable for any delays in the content, or for any actions you take in reliance thereon. If you need current account information you agree to contact us directly.

### **3. Bill Payment Services.**

The Bill Payment services are offered to consumer and business users and separate Bill Payment platforms will apply based upon the consumer or business use. When you use the bill payment service ("Bill Pay") you must designate your checking account as the account from which payments that you authorize will be deducted. You will be given the ability to set up merchants, institutions or individuals that you would like to pay. You are not permitted to designate governmental agencies or courts. All payees must be in the United States. We reserve the right to not allow the designation of a particular merchant or institution. Your enrollment in Bill Pay may not be fulfilled if we cannot verify your identity or other necessary information. In order to verify ownership of the Payment Account(s) or Billing Account, we may issue offsetting debits and credits to the Payment Account and Billing Account and require confirmation of these transactions from you. Through your enrollment in Bill Pay, you agree that we may request and review your credit report from a credit reporting agency. In addition, you agree that we may obtain financial information regarding your account from a payee or your financial institution to resolve payment posting problems or for verification.

**a. Service Access.** Upon approval, you may use your personal computer to access your accounts. You must use your Login ID along with your password and any required security codes to access your accounts. Online Banking credentials are individually owned. The Bill Payment service is accessible seven (7) days a week, 24 hours a day. However, from time to time, some or all of the Credit Union's Bill Payment services may not be available due to system maintenance. You will need an Internet enabled Device and an appropriate web browser (such as Safari, Google Chrome or Microsoft

Internet Explorer). You are responsible for the installation, maintenance and operation of your computer or other access device. The Credit Union will not be responsible for any errors or failures involving any internet service provider, telephone service or your equipment.

**b. Service Definitions**

"Payee" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills, as the case may be.

"Payment Instruction" is the information provided by you to the Credit Union for a bill payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Scheduled Payment Date).

"Payment Account" is the checking account from which bill payments will be debited.

"Billing Account" is the checking account from which all service fees will be automatically debited.

"Business Day" is every Monday through Friday, excluding Federal Reserve holidays.

"Scheduled Payment Date" is the day you want your Payee to receive your bill payment and is also the day your Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.

"Due Date" is the date reflected on your Payee statement for which the payment is due. It is not the late date or grace period.

"Scheduled Payment" is a payment that has been scheduled through the Bill Pay Service but has not begun processing.

**c. Payment Scheduling.** The earliest possible Scheduled Payment Date for each Payee (typically four (4) or fewer Business Days from the current date) will be designated within the application when you are scheduling the payment. Therefore, you will not be permitted to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Payee. When scheduling payments you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Payee statement unless the Due Date falls on a non-Business Day. If the actual



Due Date falls on a non-Business Day, you must select a Scheduled Payment Due Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates should be prior to any late date or grace period.

**d. Bill Pay Transactions.** You authorize us to process Bill Pay transactions from your checking account. You or any persons who you have authorized to use your Bill Pay service or Password can perform the following Bill Pay transactions:

- **Make Bill Payments.** Pay any designated merchant, institution or individual in accordance with this agreement, a fixed recurring amount or a variable amount from your designated checking account.
- **Obtain Information.** Obtain information (payee information, payment status information, etc.) about your bill payment account status.
- **Bill Pay Payment Transactions.** You authorize us to process bill payments from your designated account. You may use the Bill Pay service to initiate different types of payment transactions.
- **Payment Transactions.** You may use Bill Pay to initiate three different types of bill payment transactions:

"Single" payments are one-time payments initiated by setting the payment amount and future payment date. Payments can be canceled or changed through Bill Pay until funds are withdrawn from the account.

"Recurring" payments are payments that reoccur on a preset date with a fixed amount. You have the option in Bill Pay to set recurring payments to continue indefinitely or to stop on a specific date. Payments can be canceled or changed through Bill Pay until funds are withdrawn from the account.

**e. Number and Authorized Payees.** You may schedule payments with payees located in the United States. Except for tax payments you may not make payments to federal, state or local governments or other categories of payees we designate from time to time. When you submit a Bill Pay

transaction, you authorize us to transfer funds from your checking account. We will process Bill Pay transactions only to those payees the Credit Union has designated, payees you authorize and payees for whom the Credit Union has the proper payee member number. The Credit Union will not process any Bill Pay transfer if we know the required transaction information is incomplete. In any event, the Credit Union will not be liable for any transaction that contains incorrect information that the Credit Union was not responsible for entering or knowing. If there are insufficient funds in your account to process the Bill Pay transaction, we may refuse to process the transaction or we may process the transaction and transfer funds from any overdraft protection account you have authorized. The Credit Union reserves the right to refuse to process transactions that reasonably appear to the Credit Union to be fraudulent or erroneous.

**f. Bill Payment Authorization and Payment Remittance.** By providing the Credit Union with names and account information of Payees to whom you wish to direct payments, you authorize the Credit Union to follow the Payment Instructions that it receives through the payment system. In order to process payments more efficiently and effectively, the Credit Union may edit or alter payment data or data formats in accordance with Payee directives.

When the Credit Union receives a Payment Instruction, you authorize the Credit Union and its processing agents to debit your Payment Account and remit funds on your behalf so that the funds arrive as soon as reasonably possible after the Scheduled Payment Date designated by you. You also authorize the Credit Union and its processing agents to credit your Payment Account for payments returned to the Credit Union by the United States Postal Service or Payee, or payments remitted to you on behalf of another authorized user of the Bill Pay Service.

The Credit Union will use its best efforts to make all of your payments properly. However, the Credit Union shall incur no liability if the Credit Union is unable to complete any payments initiated by you because of the existence of any one or more of the following circumstances:

If, through no fault of the Credit Union, your Payment Account does not contain sufficient funds to

complete the transaction or the transaction would exceed the credit limit of your overdraft account;  
The payment processing center is not working properly and you know or have been advised by the  
Credit Union about the malfunction before you execute the transaction; You have not provided the Credit  
Union with the correct Payment Account information, or the correct name, address, phone number, or  
account information for the Payee; and/or,  
Circumstances beyond control of the Credit Union (such as, but not limited to, fire, flood, or interference  
from an outside force) prevent the proper execution of the transaction and the Credit Union has taken  
reasonable precautions to avoid those circumstances.

Provided none of the foregoing exceptions are applicable, if the Credit Union causes an incorrect amount  
of funds to be removed from your Payment Account or causes funds from your Payment Account to be  
directed to a Payee which does not comply with your Payment Instructions, the Credit Union shall be  
responsible for returning the improperly transferred funds to your Payment Account, and for directing  
to the proper Payee any previously misdirected transactions, and, if applicable, for any late payment  
related charges.

**h. Payment Methods.** The Credit Union reserves the right to select the method in which to  
remit funds on your behalf to your Payee. These payment methods may include, but may not be limited  
to, an electronic payment, an electronic to check payment, or a laser draft payment. (funds remitted to  
the Payee are deducted from your Payment Account when the laser draft is presented to your financial  
institution for payment).

**i. Payment Cancellation Requests.** You may cancel or edit any Scheduled Payment (including  
recurring payments) by following the directions within the application. There is no charge for canceling  
or editing a Scheduled Payment. Once the Credit Union has begun processing a payment it cannot be  
cancelled or edited, therefore a stop payment request must be submitted.

**j. Stop Payment Requests.** The Credit Union's ability to process a stop payment request will  
depend on the payment method and whether or not a check has cleared. The Credit Union may also

not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact Customer Service. Although the Credit Union will make every effort to accommodate your request, the Credit Union will have no liability for failing to do so. The Credit Union may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the applicable fee schedule.

**k. Prohibited Payments.** Payments to Payees outside of the United States or its territories are prohibited through the Bill Pay Service.

#### **4. External Transfer Services.**

**a. External Transfer Services.** By enrolling in the External Transfer services you agree to the following service terms and conditions. By using compatible and supported devices the Service allows you to electronically transfer funds from your account with us to your account at another financial institution, or from your account with us to other individuals' accounts. You must have Online to use the Service. The Service is only available for accounts at U.S. financial institutions and funds are transferred in U.S. dollars. We reserve the right to modify the scope of Online Money Movement Services at any time. We reserve the right to refuse to make any transaction you request through the Service. You agree and understand the Service may not be accessible or may have limited utility over some mobile telephone networks, such as while roaming.

#### **b. Definitions.**

"ACH Network" means the funds transfer system, governed by the NACHA Rules that provides funds transfer services to participating financial institutions.

"Transaction Account" is a transaction account (checking, money market or other direct deposit account, credit card account, or debit card account, including any required routing information) from which your payments as a Sender will be debited, any Service fees will be automatically debited, or to which payments and credits to you will be credited.

"Transfer Instruction" is the information provided by the Sender to the Service for a transfer or payment to be made to a Receiver (name, mobile telephone number, email address, and financial institution account and routing number information, etc.).

"Receiver" is a person or business entity that is sent a payment transaction through the Service.

"Sender" is a person or business entity that sends a payment transaction through the Service.

**c. Account-to-Account Transfer Service.** The Account-to Account Service enables you to transfer funds: (i) between your Firstmark accounts that you maintain with us; and (ii) between your Firstmark account(s) that you maintain with us and your Account(s) that are maintained by other financial institutions.

**Transfer Authorization and Processing.** You represent and warrant that you are the sole owner (and not a joint tenant) of your Firstmark account (Transaction Account) and the Recipient Account and that you have all necessary legal right, power and authority to transfer funds from the Transaction Account to the Recipient Account. Further, you represent and warrant that the Recipient Account is located in the United States. When we receive a Transfer Instruction from you, you authorize us to debit your Transaction Account and remit funds on your behalf to the Recipient Account designated by you and to debit one of your Accounts. You also authorize us to reverse a transfer from your Recipient Account if the debit is returned from the Transaction Account for any reason, including but not limited to nonsufficient funds.

**Transfer Methods and Amounts.** We may, at our sole discretion, impose limits on the amount of money you can transfer through our Account-To-Account Service. We also reserve the right to select the method in which to transfer funds on your behalf, and the method to return funds to you in the event that the Recipient Account is closed or otherwise unavailable to us.

**Transfer Cancellation Requests and Refused Transfers.** You may cancel a transfer at any time until it begins processing. We will, to the extent permitted by law, make reasonable attempts to return any unclaimed, refused, refunded, prohibited, or denied transfer to your Transaction Account. If

this is unsuccessful (for example, the Transaction Account has been closed) we will make reasonable attempts to mail you a paper check. If after ninety (90) days (or longer, depending on our then-current standard for unclaimed checks) that check has not been cashed, we will stop payment on it and transfer funds to an "unclaimed funds" account, and will subsequently handle the unclaimed funds as required or otherwise permitted by applicable law.

**Stop Payment Requests.** If you as a Sender desire to stop any transfer that has already been processed, you must contact us. Although we will make a reasonable effort to accommodate your request, we will have no liability for failing to do so. We may also require you to present your request in writing within fourteen (14) days. The charge for each request will be the current charge for such service as set out in the applicable fee schedule.

**Failed or Returned Transfers.** In using the Account-To-Account Service, you are requesting us to make transfers for you from your Transaction Account. If we are unable to complete the transfer for any reason associated with your Transaction Account (for example, there are insufficient funds in your Transaction Account to cover the transaction), the transfer may not be completed. In each such case, you agree that: (a) You will reimburse us immediately upon demand the transfer amount that has been returned to us; (b) For any amount not reimbursed to us within fifteen (15) days of the initial notification, a late charge equal to one and a half percent (1.5%) monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed; (c) You may be assessed a fee by us if the transfer is returned because you have insufficient funds in your Transaction Account to cover the requested transfer or if we cannot otherwise collect the funds from you; the fee amount will be as set forth in your fee schedule from us or your Account agreement with us; (d) You hereby authorize us to deduct these amounts from your designated Account by ACH debit; and (e) You will reimburse us for any fees or costs we or they incur in attempting to collect the amount of the return from you; and, (e) We are authorized to report the facts concerning the return to any credit reporting agency.

**Refused Transfers.** We reserve the right to refuse any transfer to a Recipient Account.

We will notify you promptly if we decide to refuse to transfer funds to a Recipient Account. This notification is not required if you attempt to make a prohibited transfer under this Agreement.

**Returned Transfers.** In using the Account-To-Account Service, you understand transfers may be returned for various reasons such as, but not limited to, Recipient Account number is not valid. We will use reasonable efforts to research and correct the transfer to the intended Recipient Account or void the transfer and credit your Transaction Account. You may receive notification from us.

**Your Responsibilities for Accurate Information.** Your enrollment in the Service may not be fulfilled if we cannot verify your identity or other necessary information. Through your enrollment in the Service, you agree that we reserve the right to request a review of your credit rating at our own expense through an authorized bureau. It is your responsibility to ensure the accuracy of any information that you enter into the Service, and for informing us as soon as possible if you become aware that this information is inaccurate. We will make a reasonable effort to stop or recover a transfer made to the wrong Recipient Account once informed, but we do not guarantee such recovery and will bear no responsibility or liability for damages resulting from incorrect information entered by you.

## **5. Alerts.**

You can elect to receive Automatic Alerts and voluntary Account Alerts through the Online Banking service. Automatic Alerts are sent to you following certain changes made online to your Online Banking account, such as a change in your email or home address, telephone number, Login ID or passcode. You do not need to activate these alerts. Although you may have the option to suppress some of these Automatic Alerts, we strongly recommend that you do not do so since they are security related. Voluntary Account Alerts must be activated by you. Account Alerts allow you to choose alert messages for your accounts. We may add new alerts from time to time, or cancel old alerts. If you have opted to receive an alert that is being canceled, we will notify you at least 30 days in advance. Each alert has different options available, and you will be asked to select from among these options upon

activation of your alerts service. Both Automatic Alerts and voluntary Account Alerts will be sent to the email address you have provided as your primary email address for Online Banking. If your email address or your mobile device's email address changes, you are responsible for informing us of that change. You can also choose to have alerts sent to a secondary email address, including a mobile device that accepts text messages. Changes to your primary and secondary email addresses will apply to all of your Alerts. Text message charges from your provider may apply. You understand and agree that your alerts may be delayed or prevented by a variety of factors. We do our best to provide alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance of an alert. Because alerts are not encrypted, we will never include your passcode or full account number. However, alerts may include your name and some information about your accounts. Depending upon which alerts you select, information such as your account balance or the due date for your credit card payment may be included. Anyone with access to your email will be able to view the contents of these alerts.

## **6. Account Access & Authorizations.**

**a. Initial Access.** After you have successfully completed and submitted the Online or Mobile Web service registration form, you will be notified of the service availability. Once notified, you may log on to the service, using your Login ID and Passcode ("Access Code").

**b. Security of Access Code.** The access code for the Online and Mobile Web services is issued for your security. The access code is confidential and should not be disclosed to third parties or recorded. You are solely responsible for safekeeping your access code. You agree not to disclose or otherwise make your access code available to anyone not authorized by you to sign on your accounts. If you authorize anyone to have or use your access code, you understand that person may use the service to review all of your account information and make account transactions. Therefore, we are



entitled to act on transaction instructions received using your access code and you agree that the use of your access code will have the same effect as your signature authorizing transactions. If you authorize anyone to have or use your access code or internet enabled device, you understand that person may use the Online or Mobile Web service to access and review all of your account information and execute account transactions. Therefore, we are entitled to act on transaction instructions received using your access code and you agree that the use of your access code will have the same effect as your signature authorizing transactions.

**c. General Authorization.** If you authorize anyone to use your access code in any manner that authority will be considered unlimited in amount and manner until you specifically revoke such authority by notifying the Credit Union and changing your access code immediately. You are responsible for any transactions made by such persons until you notify us that transactions and access by that person are no longer authorized and your access code is changed. If you fail to maintain or change the security of your access code, you are responsible for any losses resulting from such failure and may terminate your services immediately.

**d. Access Authorizations & Account Controls.** For business members, you have the option to establish controls and limitations on the authorized access to your account and the transaction functions and amounts that may be conducted. You are solely responsible for establishing and maintaining these access authorizations and account controls to protect your account. You may establish dual account access controls and you are solely responsible for such designations, the implementation and enforcement of your internal account authorization policies and the actions of the designees of such dual controls. You may authorize multiple users to access and conduct transactions on the account ("Sub Users") with specific account transaction authorities and limitations and you are solely responsible for such Sub User authorizations, the implementation and enforcement of your internal account authorization policies and the actions of your designated Sub Users.

## **7. Unauthorized Transaction Reporting and Liability.**

You are solely responsible for all transfers you authorize using any Services under this Agreement. If you permit other persons to use your Passcode and initiate transactions with this Service, you are responsible for any transactions they authorize or conduct on any of your Accounts.

**a. Liability on Business Accounts.** For business Accounts, you understand that any transaction by a business owner, employee, agent representative or anyone you authorize to transact business on your Account or any transaction by an authorized person that exceeds the specific transaction authority you have provided, is considered an authorized transaction for which you remain fully responsible. You are responsible for safeguarding your business, financial and personal data, Passcodes and other information to prevent unauthorized access to or use of your Accounts through this Service. If you believe your Passcode has been lost or stolen or that someone has transferred or may transfer money from your Account without your permission, you must notify us immediately. When you give someone your Passcode, you are authorizing that person to access your deposit Accounts using this Service, and you are responsible for all transactions that person performs while using the Service. All transactions that person performs even those transactions you did not intend or want performed are authorized transactions. If you notify us that the person is no longer authorized, then only transactions that person performs after the time you notify us are considered unauthorized. Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions. For your protection, sign off after every Online session and close your browser to ensure confidentiality.

**b. Liability on Consumer Accounts.** For EFT transactions on a consumer deposit account, under this Agreement, you are responsible for all transactions you authorize using any EFT services. For consumer Accounts, transactions by family members or friends that you allow on your Account are authorized by you. If you permit other persons to use your Passcode, you are responsible for any transactions they authorize or conduct on any of your accounts. However, you must notify us immediately if you believe anyone has used your Passcode and accessed your accounts without your authorization.

For EFT transactions, if you notify us within two (2) business days, you can lose no more than \$50 if someone accessed your account without your permission. If you do not notify us within two (2) business days after you learn of the unauthorized use of your account or Passcode, and we can prove that we could have stopped someone from accessing your account without your permission if you had told us, you could be liable for as much as \$500.

If your statement shows EFT transactions that you did not make, notify us immediately. If you do not notify us within sixty (60) days after the statement was mailed to you, you may be liable for the full amount of the loss if we can prove that we could have stopped someone from making the unauthorized EFT transactions.

If you believe your Passcode has been lost or stolen or that someone has transferred or may transfer funds from your account without your permission, contact us immediately by one of the following: **210.442.0100** (during business hours; M - F, 8:30 AM – 5:30 PM CST) or **800.683.1211** (after business hours) or write: **Firstmark Credit Union, PO Box 701650, San Antonio, TX 78270-1650.**

#### **8. Conditions of Account and Service Use.**

The use of your Account and Services are subject to the following conditions:

**a. Account Information.** The account balance and transaction history information may be limited to recent account information involving your accounts. Also, the availability of funds for transfer or withdrawal may be limited due to the processing time for any deposit transactions and our Funds Availability policy.

**b. Illegal Use of Internet Gambling.** You agree that all transactions that you initiate by use of an electronic funds transfer including a Debit or Credit Card are legal in the jurisdiction where you live and/or where the transaction occurred. Internet gambling may be illegal in the jurisdiction in which you are located, including the United States. Your electronic funds transfers may only be conducted for legal transactions. Display of a payment card logo by an online merchant does not mean that internet gambling transactions are lawful in all jurisdictions in which you may be located. We have

restricted all online gambling transactions by use of an electronic funds transfer or Debit Card.

#### **9. Business Days.**

Our business days are Monday through Friday 8:30am – 5:00 pm CST. Holidays are not included.

#### **10. Fees and Charges.**

There are certain fees for the Digital Services as set forth on the Rate and Fee Schedule. Fees and charges may be changed from time to time. We will notify you of any changes as required by law.

#### **11. Periodic Statements.**

Transfers, withdrawals, and purchases transacted through any EFT Service, or with a participating merchant will be recorded on your periodic statement, provided by mail or electronically if you have requested an electronic statement. You will receive a statement monthly unless there is no transaction in a particular month. In any case, you will receive a statement at least quarterly. You may request that your statement be provided electronically. Communications means any periodic statement, year-end tax statement, disclosure, notice, or other information related to your account(s), including but not limited to information that we are required by law to provide to you in writing.

**Scope of Communications to Be Provided in Electronic Form.** You agree that we may provide you with any Communications relating to your account(s) in electronic format, and that we may discontinue sending paper Communications to you, unless and until you withdraw your consent as described below. Your consent to receive electronic Communications includes, but is not limited to:

- Periodic disclosures or monthly billing statements for your account(s).
- Periodic balance and transaction activity statements for your account(s).
- Notices or disclosures about a change in the terms of your account(s) or associated payment feature.
- Notices or disclosures that are required by law to be provided to you in writing.
- Privacy policies and notices.

**Refused Transfers.** We reserve the right to refuse any transfer to a Recipient Account.

We will notify you promptly if we decide to refuse to transfer funds to a Recipient Account. This notification is not required if you attempt to make a prohibited transfer under this Agreement.

**Method of Providing Communications to You in Electronic Form.** All Communications

that we provide to you in electronic form will be provided either (1) via email at the email address you provide to us, (2) by access to a website that we will designate in an email notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that will generally be designated in advance for such purpose.

**How to Withdraw Consent.** You can withdraw your consent at any time by calling

Firstmark Credit Union or visiting any of our Financial Centers.

**How to Update Your Records.** It is your responsibility to provide us with true, accurate

and complete email address, contact, and other information related to this disclosure and your account(s), and to maintain and update promptly any changes in this information. You can update such information in Home Banking on our website ([www.Firstmarkcu.org](http://www.Firstmarkcu.org)) or by contacting us.

**Requesting Paper Copies.** We will not send you a paper copy of any Communications

from us, unless you request it or we otherwise deem it appropriate to do so. While your account(s) are open, you can obtain a paper copy of the electronic Communications by printing them yourself or by requesting that we mail you a paper copy. To request a paper copy, contact us. We may charge you a reasonable service charge for the delivery of paper copies of any Communications provided to you electronically pursuant to your authorization.

**Federal Law.** You acknowledge and agree that your consent to electronic

Communications is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, and that you and we both intend that the Act apply to the fullest extent possible to validate our ability to conduct business with you by electronic means.

We reserve the right to provide any disclosures or notices in writing, rather than electronically. Except as otherwise provided by law or in other agreements, you can give us all notices regarding your account or your periodic statements, except for stop payment orders, by email using our current email address, regardless of anything in this agreement to the contrary; however, we reserve the right to have any notices confirmed in writing upon request.

## **12. Account Information Disclosure.**

We will maintain the confidentiality and privacy of your account information in accordance with our Privacy Policy as stated on our website at: [www.firstmarkcu.org](http://www.firstmarkcu.org). However, we may disclose information to third parties about your account or the transactions you submit in the following limited circumstances:

- As necessary to complete transfers;
- To verify the existence of sufficient funds to cover specific transactions upon the request of a third party, such as a credit bureau or merchant;
- To comply with government agencies or court orders;
- If you give us your express written permission.

## **13. Credit Union Liability for Digital Services.**

**a. Consumer Accounts.** Except for emergency or unforeseen events, if we do not complete a transaction to or from your account on time or in the correct amount according to our agreement with you, we may be liable for your losses or damages. Our sole responsibility for an error in a transaction will be to correct the error and in no case will we be liable for any indirect, special, incidental, or consequential damages. Also, we will not be liable if you fail to report timely any error or discrepancy reflected in a statement prepared by us, or if you fail to report a breach of a security procedure. In states that do not allow the exclusion or limitation of such damages, our liability is limited to the extent permitted by applicable law. The Credit Union will not be liable for the following:

- If, through no fault of ours, you do not have sufficient funds in your account to complete the transaction, your account is inactive, or the transaction would exceed the credit limit on your line of credit, if applicable.
- If you used the wrong account or Passcode, you have not properly followed any applicable service or Credit Union user instructions for making Online and Mobile Web transactions.
- If your personal computer malfunctioned or the phone lines were not working properly or the Credit Union computer system was not working properly and such problem(s) should have been apparent when you attempted your transaction.
- If circumstances beyond our control (such as fire, flood, telecommunication outages or strikes, equipment or power failure) prevent making the transaction.
- If the funds in your account are subject to an administrative hold, legal process or other claim.
- If you have not given the Credit Union complete, correct and current instructions so the Credit Union can process the transaction.
- If, through no fault of ours, Online, Mobile Web or External Transfer transaction does not reach a particular recipient due to changes in the payee address, account number or otherwise; the time you allow for payment delivery was insufficient; payment is lost in the mail or the payee failed to process a payment correctly or in a timely manner and a fee, penalty, or interest charge is assessed against you.
- If an error was caused by a system beyond the Credit Union's control such as a telecommunications system, an Internet Service Provider, any computer virus or problems related to software not provided by the Credit Union.
- If there are other exceptions as established by the Credit Union.

**b. Business Accounts.** The Credit Union shall have no liability to you, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Services regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other

legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Services provided for in this Agreement. We shall have no liability for not completing a transaction, if we receive actual notice or have reason to believe that you have filed for bankruptcy, the ownership of funds involving a transaction or the Authorized Representative's authority to conduct a transaction is in question; we suspect your Account has been used for illegal or fraudulent purposes; or we reasonably believe that a transaction is prohibited by federal law or regulation, or this Agreement. We will not be liable if you fail to report timely any error or discrepancy reflected in a statement prepared by us, or if you fail to report a breach of a security procedure. If we fail to perform under this Agreement in accordance with the standards set herein, our liability for damages, losses, and other compensation owing to you shall be limited to direct damages caused solely by the Credit Union. We shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control.

#### **14. Statement Errors.**

In case of errors or questions about your Online or Mobile Web transactions on a consumer account, contact us at: **210.442.0100** (during business hours; M - F, 8:30 AM – 5:00 PM CST) or **800.683.1211** (after business hours) or write: **Firstmark Credit Union, PO Box 701650, San Antonio, TX 78270-1650.**

The following notice and investigation requirements apply to consumer accounts only. We must hear from you no later than sixty (60) days after we sent the first statement on which the problem appears.

- Tell us your name and member number.
- Describe the transaction you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.



- Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days

We will tell you the results of our investigation within ten (10) business days after we hear from you and will correct the error promptly. For errors related to transactions occurring within thirty (30) days after the first deposit to the account (new accounts), we will tell you the results of our investigation within twenty (20) business days. If we need more time, however, we may take up to forty-five (45) calendar days to investigate your complaint or question (ninety (90) calendar days for new account transaction errors, or errors involving transactions initiated outside the United States). If we decide to do this, we will re-credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not re-credit your account.

If we decide after our investigation that an error did not occur, we will deliver or mail to you an explanation of our findings within three (3) business days after the conclusion of our investigation. If you request, we will provide you copies of documents (to the extent possible without violating other members' rights to privacy) relied upon to conclude that the error did not occur.

### **15. Mobile Deposit**

(Remote Deposit Capture) Services. By using the Mobile Deposit Service ("Service") or by electronically accepting these Mobile Deposit Terms and Conditions within Online or Mobile Web, you and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments. The Mobile Deposit Service allows you to scan paper checks ("Original Checks") from your desktop photograph them with the camera on your mobile device ("Remote Deposit Capture") and electronically deliver the images and associated deposit information ("Check Images") to the Credit Union or our processor for deposit into

your Credit Union account.

Credit Union members are eligible to use the Mobile Deposit Service immediately following your initial account opening and service eligibility and will continue if you are in good standing with the Credit Union

The Credit Union's determination of good standing may be made on a daily basis and includes criteria including but not limited to: no delinquent loans, no charged off loans, no excessive NSF or negative account history, no member privilege revocation or internal fraud warnings, never causing the Credit Union a loss or other conduct the Credit Union considers abusive. Mobile Deposit services will not be available to Minor, Rep-Payee, Memorial, Estate and Non-Member accounts.

**a. Mobile Deposit Access.**

Mobile Deposit Process. If we approve the Mobile Deposit service for you, you must use your Online Passcode with your Login to access your accounts. You may photograph an image of checks with your Mobile device creating an electronic image and you may transmit the electronic image that the Credit Union will deposit to your account. The Credit Union's processing agent shall perform an image quality assessment of the imaged checks and shall convert items meeting the Credit Union's required standards into substitute checks to facilitate the deposit and collection of such items. You agree that the manner in which checks are cleared or presented for payment shall be determined by the Credit Union, in its sole discretion. We reserve the right to select the clearing agents through which we clear checks.

Funds Availability. For purposes of funds availability, Mobile Deposits are considered deposited at a branch of the Credit Union subject to the following deposit cut-off time limits. Mobile Deposits confirmed as received before 5 pm on a business day will be available for withdrawal from your account within 1 business day. There may be additional holds on deposited items as set forth in the Credit Union's Funds Availability Policy disclosure, as amended from time to time, which is incorporated herein by reference. For purposes of determining the cut-off period for deposits and the availability of funds, checks deposited via Mobile Deposit session are considered received by the

Credit Union when the checks have cleared and funds are available to the Credit Union. You agree that the imaging and transmitting of checks alone does not constitute receipt by Credit Union.

Also, acknowledgment of receipt or delivery does not constitute an acknowledgment by Credit Union that the transmission of a check or items does not contain errors or that funds will be available.

Deposit Acceptance. You agree that Credit Union may at any time, in its sole discretion, refuse to accept deposits of checks from you via Mobile Deposit session. In the event that the Service is interrupted or are otherwise unavailable, you may deposit checks in-person at a Credit Union branch or via night drop or mail or other contractually acceptable method. Once you make a deposit, you may not attempt to deposit the check in any other manner.

**b. Member Account & Responsibilities.** You may designate any Credit Union account as the settlement account to be used for the purposes of settling, transactions requested in connection with the Service. We will provide you with details of each specific transaction. You will be responsible for reviewing and balancing of any settlement account.

**Responsibility for Imaging.** You are solely responsible for imaging deposit items, accessing the service from the Credit Union and for maintaining your imaging equipment. You will be responsible for the payment of all telecommunications expenses associated with the service. Credit Union shall not be responsible for providing or servicing any Equipment for you.

Responsibility for Check Endorsements. For all mobile check deposits, you must endorse the original paper check with your name, signature and providing: "FOR MOBILE DEPOSIT ONLY ATFCU#" or as otherwise instructed. If you fail to provide this endorsement, we may refuse the deposit and return it to you and you agree to indemnify the Credit Union from any liability or loss to the Credit Union arising from the payment of the original paper check without such required endorsement.

**Deposit Requirements and Limits.** You agree that you will only use the Service to deposit checks drawn on financial institutions within the United States, excluding its territories. For checks not falling within this requirement you must deposit those checks in person, using a night drop facility or by

U.S. Mail. You agree that each check you deposit through the Service will meet the image quality standards directed in the application. The deposit cut-off time is generally 3:00 pm on business days, excluding Saturday. Any deposits made after the cut will be processed the next business day.

**Deposit Limits** Deposit limits will apply to users based upon financial history and qualification. These limits may include daily deposit item limits; daily maximum deposit amounts and maximum monthly amounts. Your limit may change daily based on your account activity you may not be notified in advance of the limit change going into effect. We may establish different limits on the dollar amount and/or number of items or deposits 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 these 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.

**Check Retention & Destruction.** You agree that all checks belong to you and not to the Credit Union and that those items shall be handled in accordance with this Agreement and your Membership and Account Agreement. After our receipt of a deposit transmission we will acknowledge by electronic means our receipt of such transmission. Your electronic transmission is subject to proof and verification. You will retain the original of all imaged checks that have been deposited via Mobile Deposit for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond thirty-five (60) days from the date processed. It is your responsibility to properly destroy and dispose of such original checks after such time. During the period that you maintain any original checks, you understand and agree that you must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including by employees) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service) and (ii) unauthorized use of information derived from the original checks. When you dispose of any original checks, you understand and agree that you must use a high degree of care when selecting

and implementing disposal procedures to ensure that the original checks are destroyed and not accessed by unauthorized persons.

**Deposit Prohibitions.** You agree not to deposit, or attempt to deposit, or allow others, either directly or indirectly, to deposit, or attempt to deposit, by any means: (i) any Substitute Check, the original of which has already been presented for deposit via the Service, (ii) any image of a check that has already been deposited either as an original or as a substitute check, or (iii) any original check, the Substitute Check of which has already been presented for deposit via Mobile Deposit. In the event that you, or any third party, makes, or attempts to make, a deposit in violation of this Subsection you agree to defend, indemnify, and hold Credit Union and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such Substitute Check or original check. You agree that the aggregate amount of any items which are deposited more than once will be debited from your account, and to the extent funds in your account are insufficient to cover such amount, any balance shall be debited by Credit Union from any other deposit accounts with Credit Union in its sole discretion. You further acknowledge that you and not the Credit Union is responsible for the processing and handling of any original items which are imaged and deposited utilizing the Service and you assume all liability to the drawer of any item imaged using the service or liability arising from the Credit Union's printing of any substitute check from those images.

**Your Representations and Warranties.** You represent and warrant:

- That you will comply with all federal and state laws, and rules and regulations applicable to deposit and check transactions, including those of the National Automated Clearing House for ACH transactions;
- That all checks deposited through the Service are made payable to you;
- That all signatures on each check are authentic and authorized; and
- That each check has not been altered.

In the event you breach any of these representations or warranties, you agree to defend, indemnify and hold Credit Union and its agents harmless from and against all liability, damages and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. You further authorize the Credit Union to charge your account for the amount of any such demand, claim or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

**Financial Responsibility.** You understand that you remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds associated with accessing the Service. The Credit Union shall not be liable in any manner for such risk unless Credit Union fails to follow the procedures described in materials for use of the service. You assume exclusive responsibility for the consequences of any instructions you give to the Credit Union, for your failures to access the Service properly in a manner prescribed by the Credit Union, and for your failure to supply accurate input information, including, without limitation, any information contained in an application.

**Account Reconciliation.** You will verify and reconcile any out-of-balance condition, and promptly notify the Credit Union of any errors within the time periods established in the Membership and Account Agreement after receipt of your account statement. If notified within such period, the Credit Union shall correct and resubmit all erroneous files, reports, and other data at the Credit Union's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Credit Union's error.

**c. Credit Union's Obligations.**

**Financial Data.** The Credit Union agrees to transmit all the financial data under its control required to utilize the service selected by you and to act on appropriate instructions received from you in connection with such service. The Credit Union shall exercise due care in seeking to preserve the confidentiality of the user number, Passcode, test key, or other code or identifier and to prevent the use of the service by unauthorized persons.

**Service Availability.** You understand that Service availability is at all times conditioned

upon the corresponding operation and availability of the communication systems used in communicating your instructions and requests to the Credit Union. We will not be liable or have any responsibility of any kind for any loss or damage thereby incurred by you in the event of any failure or interruption of such communication systems or services resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union.

**Exception Items.** When we review and process your electronic file, we may reject any electronic image that we determine to be ineligible for the service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. We will notify you of any

**Exception Items.** You agree that if you wish to attempt to deposit any Exception Item to any of your accounts with Credit Union, you will only do so by depositing the original item on which the Exception Item is based. You acknowledge and agree that even if you do not initially identify an electronic image as an Exception Item, the substitute check created by the Credit Union there from may nevertheless be returned to Credit Union because, among other reasons, the electronic image is deemed illegible by a paying bank. Credit Union's failure to identify an Exception Item shall not preclude or limit your obligations to Credit Union.

**Account Information.** We will provide you with daily transaction history via the Internet and the Online service detailing items processed, return items, and deposit adjustments.

**Retention of Check Images.** Credit Union will retain any substitute checks it generates for seven (7) years.

**d. Services Fees.** Currently there is no monthly fee for the Mobile Deposit Service. You agree to pay all fees and charges for deposit services as set forth on the Rate and Fee Schedule. All Service Fees are subject to change by Credit Union upon thirty (30) days written notice to Member.

**e. Disclaimer of Warranties.**

MEMBER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CREDIT UNION IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM YOUR USE OF THE SERVICE. THE CREDIT UNION DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). MEMBER FURTHER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND/OR TELECOMMUNICATION LINES OR CIRCUITS. MEMBER HEREBY ASSUMES ALL RISKS RELATING TO THE FOREGOING.

**f. Credit Union's Liabilities.**

**Direct Damages.** THE CREDIT UNION'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY MEMBER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED ONE HUNDRED DOLLARS. IN NO EVENT SHALL THE CREDIT UNION BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT THE CREDIT UNION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**Your Duty to Report Errors.** You will notify Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to you which reflects the error. Your failure to notify Credit Union of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve



Credit Union of any liability for such error, omission, or discrepancy.

**Credit Union's Performance.** You acknowledge and agree that Credit Union shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by Credit Union in performing the Service, in accordance with or unintentional deviation from the terms and conditions of this Agreement. You acknowledge that Credit Union's systems and procedures established for providing the Service are commercially reasonable.

**Limitation.** Credit Union shall have no liability to you, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Service if:

- We receive actual notice or have reason to believe that you filed or commenced a petition or proceeding for relief under any bankruptcy or similar law
- The ownership of funds involving a transaction is in question
- We suspect a breach of the security procedures
- We suspect that your account has been used for illegal or fraudulent purposes; or
- We reasonably believe that a transaction is prohibited by federal law or regulation, or otherwise so provided in the Agreement.
- You fail to report timely any error or discrepancy reflected in an account statement prepared by Credit Union.
- You insert an unauthorized restrictive endorsement
- You fail to report a breach of a security procedure.
- You commit fraud on your account.

The Credit Union shall not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond the Credit Union's reasonable control.

**Modification of Mobile Deposit Services.** Credit Union reserves the right to modify the

Service from time to time without making prior notice to Member.

**Termination of Digital Services.** You agree that we may terminate this Agreement and your Digital Services, if you, or any authorized user of the account, Service or Access code breach this or any other agreement with us; or if we have reason to believe that there has been an unauthorized use of your accounts or Passcode. You or any other party to your account can terminate this Agreement by notifying us in writing. Termination of service will be effective the first business day following receipt of your written notice. Termination of this Agreement will not affect the rights and responsibilities of the parties under this Agreement for transactions initiated before termination.

#### **16. Amendments.**

The Credit Union reserves the right to change the terms and conditions upon which the Digital Services are offered. The Credit Union will notify you, by mail, at least twenty-one (21) days before the effective date of any change, as required by law. Use of these Digital Services are subject to existing regulations governing the Credit Union account and any future changes to those regulations.

#### **17. Enforcement.**

You agree to be liable to the Credit Union for any liability, loss, or expense as provided in this Agreement that the Credit Union incurs as a result of any dispute involving your accounts or services. You authorize the Credit Union to deduct any such liability, loss, or expense from your account without prior notice to you. This Agreement shall be governed by and construed under the laws of the state of Texas as applied to contracts entered into solely between residents of, and to be performed entirely in, such state. In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this Agreement, the prevailing party shall be entitled to, subject to Texas law, payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this Agreement be determined illegal or

unenforceable in any relevant jurisdiction, then such provision be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other provision of this Agreement.

I agree to the terms and conditions