

# Mobile Check Deposit Service Agreement

This Mobile Check Deposit Service Agreement ("Agreement") contains the terms and conditions for the use of Mobile Check Deposit that Kauai Community Federal Credit Union ("Credit Union", "us," or "we") may provide to you ("you," "Member" or "User"). The word "Mobile Check Deposit", "MCD", or "Service" means the Mobile check deposit service offered by the Credit Union through Kauai Community FCU's *eMobile* application and *ebranch* online banking service. The word "account" means any one or more deposit accounts you have with the Credit Union. By using the Mobile Check Deposit or clicking the electronic signature "acceptance" below, Member and/or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments. Other agreements you have entered into with Credit Union, including your Membership and Account Agreement, as amended from time to time, are incorporated by reference and made a part of this Agreement.

1. **Service Eligibility.** The Mobile Check Deposit ("MCD", "Service") is designed to allow you to make deposits to your checking or share accounts from home or other remote locations by imaging checks and delivering the images and associated deposit information to Credit Union or Credit Union's designated processor. You must be 18 years of age or older to use this service. You agree to comply with the eligibility criteria and maintain your account in good standing at all times to be eligible for the Service.
2. **Acceptance of these Terms.** Your use of the Service constitutes your acceptance of this Agreement. This Agreement is subject to change from time to time. We will notify you of any material change on our website(s) by providing a link to the revised Agreement. You will be prompted to accept or reject any material change to this Agreement the next time you use the Service after Credit Union has made a material change. Your acceptance of the revised terms and conditions along with the continued use of the Services will indicate your consent to be bound by the revised Agreement. Further, Credit Union reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Services. Your continued use of the Services will indicate your acceptance of any such changes to the Services.
3. **Limitations of Service.** When using the Services, you may experience technical or other difficulties. We will attempt to post alerts on our website to notify you of these interruptions in Service. We do not assume responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services may have qualification requirements, and we reserve the right to change the qualifications at any time without prior notice. We reserve the right to change, suspend or discontinue the Services, in whole or in part, or your use of the Services, in whole or in part, immediately and at any time without prior notice to you.
4. **Hardware and Software.** In order to use the Mobile Check Deposit service, you must obtain and maintain, at your expense, compatible hardware and software including mobile applications as specified by Credit Union from time to time. Credit Union is not responsible for any third party software you may need to use the Services. Any such software is accepted by you as is and is subject to the terms and conditions of the software agreement you enter into directly with the third party software provider at time of download and installation.

5. Fee for the use of the Service. Any fee that is charged will be disclosed prior to your deposit. Credit Union may change the fees for use of the Service at any time pursuant to the section titled "Acceptance of these Terms" above. You authorize Credit Union to deduct any such fees from any Credit Union account in your name. Fees will not be charged during the free trial period or other promotional campaigns.
6. **Eligible items.** You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). When the image of the check transmitted to Credit Union is converted to an Image Replacement Document for subsequent presentment and collection, it shall thereafter be deemed an "item" within the meaning of Articles 3 and 4 of the Hawaii Uniform Commercial Code. To accept and process your deposit:
  - Checks must be an original paper check payable to you and have all fields completed.
  - Checks must be payable in United States dollars at a financial institution in the United States and dated within six (6) months prior to the deposit date

You agree that you will not scan and deposit any of the following types of checks or other items which shall be considered ineligible items:

- Checks payable to any person or entity other than the member or entity that owns the account that the check is being deposited into.
  - Checks containing an alteration on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
  - Checks payable jointly, unless deposited into an account in the name of all payees.
  - Checks previously converted to a substitute check or remotely created checks, as defined in Reg. CC.
  - Checks drawn on a financial institution located outside the United States.
  - Checks not payable in United States currency.
  - Checks dated more than 6 months prior to the date of deposit.
  - Checks that are postdated
  - Checks payable on sight or payable through Drafts, as defined in Reg. CC.
  - Checks with any endorsement on the back other than that specified in this agreement.
  - Checks that have previously been submitted through the Service or through a remote deposit capture service offered at any other financial institution.
  - Checks that are in violation of any federal or state law, rule, or regulation.
7. **Endorsements and Procedures.** You agree to restrictively endorse any item transmitted through the Service with your Signature and write "Mobile Deposit Only, KCFCU", below your signature or as otherwise instructed by Credit Union. You agree to write "Mobile Check Deposit KCFCU" above the Payee Line of the check

once you receive your email confirmation that your deposit was received for processing. You agree to follow any and all other procedures and instructions for use of the Service as Credit Union may establish from time to time.

The Credit Union reserves the right to reject an ineligible item and/or an item not properly endorsed.

8. **Receipt of Items.** We reserve the right to reject any item transmitted through the Services, at our discretion, without liability to you. We are not responsible for items we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from Credit Union that we have received the image. Receipt of such confirmation does not mean that the transmission was error free, complete or will be considered a deposit and credited to your account. We further reserve the right to charge back to your account at any time, any item that we subsequently determine was not an eligible item. You agree that the Credit Union is not liable for any loss, costs, or fees you may incur as a result of our chargeback of an ineligible item.
9. **Availability of Funds.** You agree that items transmitted using the Services are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. For purposes of determining the availability of funds, checks deposited via Mobile Check Deposit are considered received by the Credit Union when the Mobile Check deposit system expressly indicates that the checks were received by or delivered to the Credit Union. Member agrees that the image capture and transmitting of checks does not constitute receipt by Credit Union. Funds deposited using the Service will generally be made available in three business days from the day of deposit. Credit Union may make such funds available sooner based on such factors as credit worthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors as Credit Union, in its sole discretion, deems relevant.
10. **Disposal of Transmitted Items.** Upon your receipt of a confirmation from Credit Union that we have received an image that you have transmitted, You agree to retain the check for at least 90 calendar days from the date of the image transmission. After 90 days, You agree to destroy the check that you transmitted as an image, mark it "VOID", or otherwise render it incapable of further transmission, deposit, or presentment. During the time the retained check is available, you agree to promptly provide it to Credit Union upon request.
11. **Deposit Limits.** We may establish 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. The current dollar limit is \$2,500.00 per business day and \$5,000 per calendar month. There is no daily or monthly statement limit on the number of items, as long as the dollar limits are not exceeded.

12. **Presentment.** The manner in which the items are cleared, presented for payment, and collected shall be in Credit Union's sole discretion subject to the Membership and Account Agreement governing your account.
13. **Errors.** You agree to notify Credit Union of any suspected errors regarding items deposited through the Service right away, and in no event later than 30 days after the applicable Credit Union account statement is sent. Unless you notify Credit Union within 30 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against Credit Union for such alleged error.
14. **Errors in Transmission.** By using the Service you accept the risk that an item may be intercepted or misdirected during transmission. Credit Union bears no liability to you or others for any such intercepted or misdirected items or information disclosed through such errors.
15. **Image Quality.** The image of an item transmitted to Credit Union using the Service must be legible, as determined in the sole discretion of Credit Union. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by Credit Union, ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse or association.
16. **User Warranties and Indemnification.** You warrant to Credit Union that:
  - You will only transmit eligible items.
  - You will not transmit duplicate items.
  - You will not re-deposit or re-present the original item.
  - You will store and destroy items to prevent duplicate presentment of the item by you or another party.
  - All information you provide to Credit Union is accurate and true.
  - You will comply with this Agreement and all applicable rules, laws and regulations.
  - You are not aware of any factor which may impair the collectability of the item.
  - You warrant that files submitted by you to the Credit Union do not contain computer viruses or malware.
  - You agree to indemnify and hold harmless Credit Union from any loss for breach of this warranty provision.
17. **Cooperation with Investigations.** You agree to cooperate with us in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, upon request and without further cost, any originals or copies of items deposited through the Service in your possession and your records relating to such items and transmissions.
18. **Termination.** We may terminate this Agreement at any time and for any reason. This Agreement shall remain in full force and effect unless and until it is terminated by us. Without limiting the foregoing, this Agreement may be terminated if you breach any term of this Agreement, if you use the Service for any unauthorized or illegal purposes or you use the Service in a manner inconsistent with the terms of your Membership and Account Agreement or any other agreement with us.
19. **Enforceability.** We may waive enforcement of any provision of this Agreement. No waiver of a breach of this Agreement shall constitute a waiver of any prior or subsequent breach of the Agreement. Any such waiver shall not affect our rights with respect to any other transaction or to modify the terms of

this Agreement. In the event that any provision of this Agreement shall be deemed to be invalid, illegal, or unenforceable to any extent, the remainder of the Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

20. **Ownership & License.** You agree that Credit Union retains all ownership and proprietary rights in the Service, associated content, technology, and website(s). Your use of the Service is subject to and conditioned upon your complete compliance with this Agreement. Without limiting the effect of the foregoing, any breach of this Agreement immediately terminates your right to use the Service. Without limiting the restriction of the foregoing, you may not use the Service (i) in any anti-competitive manner, (ii) for any purpose which would be contrary to Credit Union's business interest, or (iii) to Credit Union's actual or potential economic disadvantage in any aspect. You may use the Service only for non-business, personal use in accordance with this Agreement. You may not copy, reproduce, distribute or create derivative works from the content and agree not to reverse engineer or reverse compile any of the technology used to provide the Services.
21. **Disclaimer of warranties.** You agree your use of the service and all information and content (including that of third parties) is at your risk and is provided on an "as is" and "as available" basis. We disclaim all warranties of any kind as to the use of the service, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and noninfringement. We make no warranty that the service (i) will meet your requirements, (ii) will be uninterrupted, timely, secure, or error-free, (iii) the results that may be obtained from the service will be accurate or reliable, and (iv) any errors in the service or technology will be corrected.
22. **Limitation of liability.** You agree that we will not 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 this service, regardless of the form of action or claim (whether contract, tort, strict liability or otherwise), even if Kauai Community Federal Credit Union has been informed of the possibility thereof.
23. **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 the total fees paid by member for the service resulting in such liability in the six month period preceding the date the claim accrued. 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. The credit union's licensors or suppliers will not be subject to any liability to member in connection with any matter.
24. **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 Hawaii 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, subject to Hawaii law, to 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 may 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.