



Mobile E-Deposit Capture Agreement

Revision Date: October 23, 2018

This **Mobile E-Deposit Capture** Agreement (“Agreement”) is entered into between First Technology Federal Credit Union (“Credit Union”) and you (“Member”), and becomes part of the Membership and Account Agreement, previously agreed to when establishing your membership (the “Account Agreement”). In the event of any conflicts between the terms of this Agreement and the terms of the Account Agreement, the terms of this Agreement shall control. Capitalized terms used in this Agreement shall have the meaning provided in this Agreement or in Definitions (“**Exhibit A**”) attached herein. By installing and otherwise using the Mobile E-Deposit Capture Program and Services (“Services”) or, if applicable, clicking the electronic signature “Accept” below, Member agrees to be bound by the terms of this Agreement.

The Services are offered for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Member to transmit paper checks converted to Imaged Items to the Credit Union for processing and deposit into the deposit accounts of Member maintained at the Credit Union (“Account(s)"). Member will capture digitized images of Checks using Software and equipment provided by or through Credit Union or other Software and equipment acceptable to Credit Union, and will ensure that the output files are compatible with the Program.

1. Member’s Responsibilities

Member will only submit Checks for processing to Credit Union that meet the definition of “Checks” in **Exhibit A** and will ensure that the Checks scanned meet the ANSI X9.37 standards for image quality required by the Federal Reserve’s Availability of Funds and Collection of Checks (“Regulation CC”), or other standards established by the Credit Union or applicable law. Only cashier’s checks, personal checks, substitute checks, payroll checks, or U.S. Treasury checks are eligible for deposit as an Imaged Item. Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Imaged Items and must be physically deposited with the Credit Union for collection: (i) checks that are drawn on banks located outside of the United States; (ii) checks payable in a medium other than U.S. dollars; (iii) non-cash items (as defined under Section 229.2(u) of Regulation CC); (iv) promissory notes and similar obligations, such as savings bonds; (v) third party checks; (vi) checks drawn on Member’s or Member’s affiliate’s account; (vii) checks that are stamped with a “non-negotiable” watermark; (viii) checks that appear to have been altered; (ix) checks that are incomplete; (x) checks that are “stale dated” or “post dated”; (xi) checks that do not contain the proper endorsement(s), including, but not limited to, “for Mobile Deposit Only at First Technology Federal Credit Union; (xii) money orders; (xiii) travelers checks; and (xiv) any other class of checks or drafts as identified by Credit Union to Member from time to time.

Credit Union’s processing of any Imaged Items that do not meet the requirements under this Agreement or definition in **Exhibit A** (“Non-qualifying Items”) shall not constitute a waiver by Credit Union or obligate it to process such Non-qualifying Items in the future. Credit Union may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

Member will not attempt to digitally capture and transmit to Credit Union any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substitute Check must be physically deposited with the Credit Union. Notwithstanding the foregoing, Credit Union may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the Account Agreement.

Member will (i) ensure that Imaged Items that are deposited using the Services and the corresponding **Initial Paper Items** are endorsed to include Member’s signature, the date of deposit, and “for Mobile Deposit Only at First Technology Federal Credit Union”; (ii) handle, process, maintain and destroy Initial Paper Items as set forth in this Agreement and in the



Documentation; and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment return of, or otherwise is charged for an Imaged Item more than once in any form.

Member will use the Services, including the entering, processing and transmittal of Imaged Items, in accordance with the Documentation. In addition, Member will provide, at their own expense, a mobile internet connection, a mobile device with a camera, such as an iPhone, Windows phone, or Android phone, that supports and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Service, all of which must satisfy any minimum requirements set forth in the Documentation or as otherwise may be acceptable to Credit Union.

Member will provide, or obtain from another party selected by Member at Member's expense, support and maintenance of such internet connection and all other computer hardware, software, and equipment required to use the Service, including without limitation troubleshooting internet connectivity issues with Member's internet service provider ("ISP"), and Credit Union will not be responsible therefore.

Member shall be responsible for verifying Credit Union's receipt of Member's transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Credit Union.

Member shall be responsible for installing and implementing any changes and upgrades to the Services as required by the Credit Union within ten (10) calendar days following notice of such change to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Services. Member will ensure that the equipment for the Services is clean, free from defects, and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes. Imaged Items transmitted to Credit Union must accurately and legibly provide, among other things, the following information: (i) the information identifying the drawer and the Payor Financial Institution that is preprinted on the check, including complete and accurate MICR information and the signature(s); and (ii) other information placed on the Initial Paper Item prior to the time an image of the Initial Paper Item is captured, such as any required identification written on the front of the Initial Paper Item and any endorsements applied to the back of the Initial Paper Item.

Member shall exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Credit Union or otherwise required for use of the Services and shall further prevent the use of the Services by unauthorized persons. Member assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Services or disclosure of any confidential information or instructions by Member, its employees or agents.

Member will retain each Initial Paper Item in accordance with this Agreement unless provided for otherwise in the Documentation. If not directed otherwise by the Credit Union, Members will store Initial Paper Items in a safe and secure environment for a period of ninety (90) calendar days after such Item has been digitized and processed. Member shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to Initial Paper Items, and (b) that the information contained on such Initial Paper Items or on any corresponding Imaged Items are not disclosed to third parties. Within five (5) business days the Member will provide any retained Initial Paper Item (or, if the Initial Paper Item is no longer in existence, a sufficient copy as determined by Credit Union at its sole discretion of the front and back of the Initial Paper Item) to Credit Union as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any Item or as Credit Union otherwise deems necessary. Member will use a commercially reasonable method which is consistent with any requirements of Regulation CC and required by Credit Union under the Documentation to destroy Initial Paper Items after Member's ninety (90) day retention period has expired.



Member understands and agrees that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Member and Member's Account charged for the amount of the Item plus any associated fee as disclosed in Credit Union's Fee Schedule. Credit Union's right to charge the Account of Member will apply without regard to whether the Item is timely returned to Credit Union or whether there is any other claim or defense that the Item has been improperly returned to Credit Union.

Member represents, agrees and warrants to Credit Union that (except as otherwise specifically disclosed in writing to Credit Union) Member is not now engaged, and will not during the term of this Agreement engage, in any business that would result in Member being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.

Member will not engage or permit its employees, customers, contractors, or agents in any activity directly or indirectly related to the use of the Services that is illegal or fraudulent, or intended to harm, vandalize, misuse, abuse, infect, or damage the system, other users of the Services or Credit Union's ability to provide the Services.

Compliance with Law. Member shall comply with all laws, rules, and regulations applicable to Member, to the business and operation of Member, and to the Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Agreement. Member shall have the responsibility to fulfill any compliance requirement or obligation that Credit Union and/or Member may have with respect to the Services under all applicable U.S. federal and state laws, regulations, rulings, including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the federal Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

2. Use of the Services

Member's Account will be provisionally credited upon Credit Union's acceptance of Imaged Items for deposit which are received by Credit Union from Member through the Service. Member will create images of Checks at Member's location by use of devices (e.g. mobile phone) and Software approved or provided by Credit Union. Member will enter all amounts and any other required information correctly.

The Imaged Items will be transmitted by Member to Credit Union, or Credit Union's authorized processor, over the internet through a web-based interface.

All deposits received by Credit Union are provisionally accepted and credited subject to Credit Union's verification and final inspection and may be rejected by Credit Union for any reason at Credit Union's sole discretion, including the Payor Financial Institution returning the Item Unpaid. Credit Union may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. In most cases Credit Union will not make available all of the funds that you deposit using the Services until the fifth business day after the day of your deposit. However, the first \$200 of your aggregate deposits each day using the Service may be available on the day of your deposit. Credit Union will establish limits on the dollar amounts of Imaged Item deposits in any given day or other time period at Credit Union's sole discretion, and such "exposure limitations" may not be communicated to Member.

3. Communications Security Software

Member is required to use Software in connection with the Service. Credit Union will provide to Member a copy of the Software or instructions on how to obtain a copy of the Software, the Documentation and any applicable materials relating to the Documentation to transmit output files to Credit Union. Member will not allow access to the Software or the use of the



Services by any person other than Member. Upon termination of this Agreement Member will promptly delete or return to Credit Union all copies of the Software and Documentation, including materials related to the Documentation.

Member acknowledges that (i) its license to any Software that may be required for the Services is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Member or otherwise provided to Member; (ii) Credit Union may provide certain “first level” support to Member with respect to the Software, but that Credit Union will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Member with respect to the Software; and (iii) Member will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Credit Union’s assistance.

Member will not copy or reproduce the Software or other functionality or content included or used for the Services or on which the Services are based. Additionally, Member will not decompile, reverse engineer or disassemble the Software or otherwise attempt to derive computer source code from the Software functionality of the Service.

Credit Union or its Software provider may, from time to time, require and change the Software required for this Service, provided such change does not result in any additional license or maintenance fees payable by Member. Member will be responsible to install and implement the changes to the Software within ten (10) calendar days following notice of such change.

4. Credit Union Rights and Responsibilities

For all Imaged Items processed by Member pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Presentment Points, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Credit Union may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation or as otherwise established by the Credit Union from time to time.

Unless otherwise agreed by Member and Credit Union, Credit Union will process any returned Items in accordance with applicable law and the Account Agreements.

In addition to any other rights Credit Union may have as regards the Accounts of Member, Credit Union may hold and use funds in any deposit Account following termination of this Agreement for such time as Credit Union reasonably determines that any Item processed by Credit Union prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Credit Union may be responsible. Without limitation, Member recognizes that under the UCC, Regulation CC and the rules of any image exchange network Credit Union’s representations and warranties as regards Image Exchange Items and Substitute Checks may expose Credit Union to claims for several years following processing of the Image Exchange Item or Substitute Check.

Credit Union shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Credit Union’s control. In the event of any of the foregoing failure or delays, Member acknowledges that it may instead deposit directly with Credit Union any Initial Paper Items for processing and presentment provided such Initial Paper Items have not been previously imaged and processed in connection with the Services. In addition, Credit Union shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Credit Union having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Credit Union would otherwise be violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.



To secure all Member obligations to Credit Union arising from this Agreement, Member grants to Credit Union a security interest in all Member's Accounts at Credit Union, all funds in those Accounts, any reserve Accounts or funds therein, all Items, whether now or hereafter established by or for the benefit of Member at Credit Union, and all proceeds of the foregoing. Credit Union's security interest will survive after termination of this Agreement. This security interest is supplemental to and not in lieu of the security interest granted by Member to Credit Union under any other agreement.

Credit Union shall not be liable or responsible to Member or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Member's system, including any which allegedly delay, alter or corrupt the Member's data, whether related to the transmission of Imaged Items or other data to Credit Union or whether caused by the equipment, Software, Credit Union, ISPs, internet browsers, or other parties providing communication services to or from Credit Union to Member.

Credit Union may add, delete or change the features or functions of the Service disclosed in this Agreement, at any time at Credit Union's sole discretion. If Credit Union deems it reasonably practicable to do so and if Credit Union deems the change material and such change adversely affects Member's usage of the Service, Credit Union will notify Member of the change in advance. Otherwise, Credit Union will notify Member of the change as soon as reasonably practicable after it is implemented, Credit Union may cause the Services to be temporarily unavailable to Member, either with or without prior notice, for site maintenance, security or other reasons. Member acknowledges that factors beyond Credit Union's reasonable control, such as telecommunications failure or equipment failure, may also cause the Services to be unavailable to Member. Member may deposit Initial Paper Items and other Items to any deposit Account at Credit Union in person or in any other manner permitted by agreement between Member and Credit Union, and Member will be responsible for maintaining procedures and facilities to enable Member to do so if the Services are unavailable to Member.

5. Processing Times

The Services are generally available for use twenty-four (24) hours a day, seven (7) days a week, except during maintenance periods, or such other hours as established by Credit Union from time to time. However, transmissions to the Credit Union that occur after the hours on Business Day as provided in the Documentation, or on any day that is not a Business Day, are treated as occurring on the next Business Day.

Imaged Items processed for deposit through the Services will be deemed to have been received by Credit Union for deposit at the time the Imaged Items are actually received and accepted at the location where Credit Union or its designated agent posts the credit to the Account. A deposit of Imaged Items will be deemed to have been received and accepted by Credit Union for deposit when all of the following have occurred:

- a) Credit Union has preliminarily verified that the image quality of the Imaged Items is acceptable to Credit Union in its discretion, all Item information is complete, and the deposit totals are balanced to the Item information provided for the deposit; and
- b) Credit Union has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Credit Union for deposit may be rejected by Credit Union at Credit Union's sole discretion.

Items will be processed and ready for presentment by Credit Union after Credit Union receives all good digitized images and associated data for any given transmission from Member. Credit Union reserves the right to subsequently reject the Imaged Item if such Item is returned unpaid by the Payor Financial Institution. In the event that an Imaged Item is rejected, whether at time of initial deposit using the Services or subsequently (e.g., upon rejection by a Payor Financial Institution), Credit Union will provide notice of rejection by email.



Credit Union will use commercially reasonable efforts to present Items for payment to the applicable Presentment Point within a reasonable period of time following such receipt.

If an Imaged Item is not accepted for deposit, Member may then submit the Initial Paper Item to Credit Union for processing or contact the maker to reissue the Check. If Member submits the Initial Paper Item for processing, Credit Union reserves the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require Member to have the maker reissue the Check.

It is Member's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Credit Union as set forth in the Account Agreements or as otherwise established by Credit Union. Member is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

6. Security Procedures

Member will be solely responsible for establishing, maintaining, and following such security protocols as necessary to ensure that output files transmitted directly to Credit Union are intact, secure, and confidential until received by Credit Union.

Member shall comply with online instructions for using the Services by taking reasonable steps to safeguard the confidentiality and security of any passwords, equipment, and other proprietary property or information provided in connection with the Service.

Member agrees to change the password(s) periodically and whenever anyone who has had access to the password is no longer employed or authorized by Member to use the Service.

Credit Union may elect, at Credit Union's discretion, to verify the authenticity or content of any transmission by placing a call to any authorized signer on Member's Account or any other person designated by Member for that purpose. Credit Union may deny access to Services without prior notice if unable to confirm any person's authority to the access the Services or if Credit Union believes such action is necessary for security reasons.

Member warrants each time Imaged Items are transmitted using the Services that Credit Union's security procedures are commercially reasonable (based on the normal size, type, and frequency of transmissions). Member agrees to be responsible for any transmission Credit Union receives through this Service, even if it is not authorized by Member, provided it includes a password or is otherwise processed by Credit Union in accordance with this security procedure.

7. Member Representations and Warranties

Member makes the following representations and warranties with respect to each Item processed by Member pursuant to this Agreement:

- a) The Imaged Item is a digitized image of the front and back of the unaltered Check and accurately represents all of the information on the front and back of the Check as of the time Member converted the Check to an Imaged Item;
- b) The Imaged Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return;
- c) There will be no duplicate presentment of an Item in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Member assumes responsibility for any such duplicate presentment of any Item;
- d) The drawer of the Check has no defense against payment of the Check;



- e) Member has instituted appropriate procedures to ensure that each Initial Paper Item was authorized by the drawer in the amount and to the payee stated on the Imaged Item;
- f) Files and images transmitted to Credit Union will contain no viruses or any other disabling features that may have an adverse impact on Credit Union's network, data, or related systems;
- g) All encoding, transfer, presentment and other warranties as Credit Union is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

8. Term and Termination

The term of this Agreement will commence upon full execution of this Agreement and will continue thereafter until terminated as follows:

- a) Member may terminate this Agreement at any time, with or without cause, upon thirty (30) calendar days prior written notice to Credit Union.
- b) Credit Union may terminate this Agreement at any time immediately upon notice to Member, (including, without limitation if Credit Union discovers any breach of this Agreement by Member, willful misconduct, bad checks or fraudulent activities on the part of Member or any other party with respect to Items process by Member under this Agreement).

Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same. Upon termination, Credit Union may terminate Member's access to the Services, and Member will terminate its access to and use of the Services, except to the extent necessary to process and collect Items that were in process prior to the termination date.

All sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 1, 7, and 10 will survive any such termination.

9. Member Indemnification

Member will indemnify and hold harmless Credit Union, its licensors and providers of the Services, and their respective directors, officers, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Member, or any person acting on Member's behalf (including without limitation Member's authorized processor, if any), in connection with Member's use of the Services or processing of Items under this Agreement, including without limitation (a) the breach by Member of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Member or its Members or any third party acting on behalf of Member, (c) any misuse of the Program or Services by Member, or any third party within the control or acting on behalf of Member, (d) the failure by Member to comply with applicable state and federal laws and regulations, or (e) any fine, penalty or sanction imposed on Credit Union by, any clearing house, or any governmental entity, arising out of or connected with any Item processed by Credit Union for Member or at Member's instruction; (ii) any act or omission of Credit Union that is in accordance with this Agreement or instructions from Member; (iii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an Imaged Item to Credit Union; (iv) any loss or corruption of data in transit from Member to Credit Union; (v) any claim by any recipient of a Substitute Check corresponding to a Check processed by Member under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Initial Paper Item; or (vi) any claims, loss or damage resulting from Member's breach of, or failure to perform in accordance with, the terms of this Agreement.



10. Disclaimer

CREDIT UNION'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND MEMBER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. CREDIT UNION AND ITS LICENSORS HEREBY DISCLAIM, AND MEMBER HEREBY WAIVES AND RELEASES CREDIT UNION, ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PROGRAMS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER CREDIT UNION NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PROGRAM WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

11. Credit Union's Liability

Credit Union will not be liable to Member for any of the following: (i) any damages, costs or other consequences caused by or related to Credit Union's actions that are based on information or instructions that Member provides to Credit Union; (ii) any unauthorized actions initiated or caused by Member or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Credit Union has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Image Exchange Item or Substitute Check for any reason (except in the event of Credit Union's breach of contract, gross negligence or willful misconduct), including without limitation, that the Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) Member's or any other party's lack of access to the internet or inability to transmit or receive data; (vi) failures or errors on the part of ISPs, telecommunications providers or any other party's own internal systems, or (vii) if Member does not follow or comply with the representations or warranties set forth in Section 7 above.

Credit Union's liability for errors or omissions with respect to the data transmitted or printed by Credit Union in connection with this Agreement will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/ or representing the Image Exchange Items or Substitute Checks to the Payor Financial Institution.

Notwithstanding anything to the contrary in this Agreement, Credit Union's aggregate liability for claims related to this Agreement, whether for breach, negligence, infringement, in tort or otherwise, arising during any twelve (12) month period shall be limited to an amount equal to the greater of: (i) the amount of fees paid by Member to Credit Union under this Agreement for such twelve (12) month period; or (ii) \$1,000.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE OR LOSS OF BUSINESS, REVENUE, PROFITS, OPPORTUNITY OR GOOD WILL, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

Member and Credit Union acknowledge and agree that the limitations of liability in this section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into this Agreement without the limitations of liability set forth in this section.



12. Miscellaneous

Assignment. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party; provided, however, Credit Union may assign or transfer this Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Credit Union, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Credit Union's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Credit Union) and Member hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by this Agreement. Credit Union may subcontract any of the work, services, or other performance required of Credit Union under this contract without the consent of Member. **Consent to Breach Not Waived.** Neither party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

Member Notices. Notices from Member to Credit Union must be in writing, and must be delivered (a) by regular U.S. mail, (b) a nationally recognized overnight courier, or (c) by certified mail, return receipt requested, and (d) to the address provided by the Credit Union for correspondence in the Account Agreement. Notices from Credit Union to Member will be provided by email to Member's email address in Credit Union's records.

Email Address. Member agrees to immediately notify Credit Union of any changes in Member's email address.

Force Majeure. Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

Entire Agreement: Amendment. Credit Union may amend this Agreement at any time and from time to time as determined in its sole discretion and without prior notice to Member. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements or understandings. Any amendment or modification of this Agreement shall be in writing and executed by duly authorized representatives of the Credit Union.

Severability. If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.

Applicable Law. This Agreement will be governed by federal law, and to the extent not preempted, by the internal laws of the State of California (without regard to that state's conflict of law provisions).

Relationship of Parties. Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.

Headings. The titles or captions used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof.



Exhibit A

Definitions

“Business Day” means a calendar day other than a Saturday or a Sunday,; days on which banks are authorized or required to be closed in the State of California, and/or federal holidays.

“Check” means an Initial Paper Item, as defined in Regulation CC, except that Check does not include a Substitute Check or a remotely created check.

“Documentation” means all documentation, application, user set-up form, system requirements guide, schedule of fees, the user manual, any other user guides/quick references, all instructions (including on-line instructions) relating to the Services which Credit Union may provide to Member from time-to-time in connection with the Program or Services.

“Imaged Item” means the digitized image of a Check that is created by Member and transmitted to Credit Union using the Service.

“Image Exchange Item” means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

“Initial Paper Item” means a Check in paper form that is payable or endorsed to Member and in the ordinary course of member’s business would be deposited for credit to Member’s account with the Credit Union.

“Item” means a Check that is payable on demand, drawn on or payable through or a credit union or other financial institution in the United States, whether negotiable or not, and payable or endorsed to Member, and includes Initial Paper Items, Substitute Checks and Image Exchange Items. Such term does not include Non-Cash Items or Items payable in a medium other than United States money.

“Non-Cash Item” means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice

of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

“Payor Financial Institution” means a United States bank, savings and loan association, credit union, clearinghouse or a government agency that pays or clears Checks in the regular course of its operations or business that is to make payment of an Item to the payee(s) named on the Item.

“Presentment Point” means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

“Program” means collectively the procedures, protocols, and software used by Credit Union and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.

“Regulation CC” means 12 C.F.R. Part 229, as it may be amended from time to time.

“Services” means the services described in this Agreement provided by Credit Union to Member to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Presentment Points.

“Software” means any software which may be offered or required by Credit Union for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Credit Union for additional processing.

“Substitute Check” means a paper reproduction of an Item that satisfies the requirements and definition of “substitute check” set forth in Regulation CC.

“UCC” means the Uniform Commercial Code.