

## Emporia State Federal Credit Union Mobile Check Deposit User Agreement

This Agreement contains the terms and conditions for the use of Emporia State Federal Credit Union's ("ESFCU", "us," or "we") Mobile Check Deposit and/or other remote deposit capture services that we or our affiliates may provide to you ("you," or "User"). Other agreements you have entered into with Emporia State Federal Credit Union, including the Membership & Account Agreement, Electronic Funds Transfer Agreement and other Disclosures governing your Emporia State Federal Credit Union account, are incorporated by reference and made a part of this Agreement.

**Service.** The mobile check deposit service ("Service") is designed to allow you to make deposits to your checking or savings accounts from your smart phone or tablet by taking a picture of the check(s) and delivering the images and associated deposit information to ESFCU or ESFCU's designated processor. Members of ESFCU who are over the age of 14 and have a checking or savings account in good standing are eligible for Mobile Deposit.

**Fees.** Charges for returned deposit items and other transactions apply.

**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 via email or on our website(s) by providing a link to the revised Agreement. Your continued use of the Service will indicate your acceptance of the revised Agreement. Further, ESFCU reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Service. Your continued use of the Services will indicate your acceptance of any such changes to the Service.

**Endorsements and Procedures.** You agree to restrictively endorse any item transmitted through the Service as **"For Mobile Deposit Only", "ESFCU", your account number and your endorsement** or as otherwise instructed by ESFCU. You agree to follow any and all other procedures and instructions for use of the Service as we may establish from time to time. You agree 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 ESFCU from any other accounts you hold with ESFCU, at its sole discretion. You further acknowledge that you, and not ESFCU, are 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 our printing of any substitute check from those images.

**Limitations of Service.** When using the Service, you may experience technical or other difficulties (i.e. sign on, connectivity, scanning, check acceptance, etc.) ESFCU is not liable and will not assume responsibility for any technical or other difficulties or any resulting damages that you may incur. ESFCU makes no warranty that the service will be available at any given time. ESFCU reserves the right to change, suspend or discontinue the service, in whole or in part, or your use of the service, in whole or in part, immediately and at any time without prior notice to you. In the event the service is not available to you, you acknowledge that you can deposit your check at a branch, in a night depository or by mail.

**Eligible items.** You agree to deposit only checks as that term is defined in Federal Reserve Board Regulation CC ("Reg CC"). You agree that the image of the check transmitted to ESFCU shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code as adopted in Kansas. Each check will require a separate transaction via Mobile Deposit.

**Unacceptable Items for Deposit:** Only checks payable to account holders are eligible for deposit. You agree that you will not use the Service to deposit any checks or other items as shown below:

- Checks payable to others; checks payable to cash
- Checks missing signature of issuer or incomplete in any way
  
- Checks missing endorsement:  
    "For Mobile Deposit Only" and payee/account holder endorsement

- Checks post-dated or more than 6 months old
- Foreign checks and items not payable in US Currency
- Traveler's checks, money orders, postal money orders and US Treasury checks or bonds
- Checks that exceed your available deposit limit
- Check that is non-negotiable
- Cash
- Duplicate check
- Poor image quality

**Image Quality.** The image of an item transmitted to ESFCU using the Service must be legible. The image quality of the items must comply with the requirements established from time to time by, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association.

**Receipt of Items.** We reserve the right to reject any item transmitted through the Service, 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 ESFCU that the item is Pending. Receipt of such confirmation does not mean that the transmission was error free or complete. In addition, the member will receive one of the following notifications: Mobile Deposit Submissions: Posted or Mobile Deposit Submissions: Failed.

**Availability of Funds.** You agree that items transmitted using the Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. Funds deposited using the Service will be subject to a seven business day hold. ESFCU 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 ESFCU, in its sole discretion, deems relevant.

**Business Day and Availability.** You agree that you understand the Services are available Monday through Friday between 10:00 a.m. and 4:00 p.m., Central Time, except during Federal Holidays or any other day we are not open for business. Transmissions processed after these business hours on a business day, or on any other day that is not a business day are treated as occurring on the next business day.

**Disposal of Transmitted Items.** Upon your receipt of a confirmation from ESFCU that we have posted the image of an item, you agree to prominently mark the item as "Electronically Presented" or "VOID". You agree to securely store each original check that you deposit using Mobile Deposit for a period of at least 60 days after transmission to ESFCU. After 60 days have passed since you transmitted the original check, you will properly dispose of the item to ensure that it is not re-presented for payment. You agree never to re-present the item. You will promptly provide any retained item, or a sufficient copy of the front and back of the item, to ESFCU as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any item, or for ESFCU's audit purposes.

**Email Address.** You agree to notify ESFCU immediately if you change your email address as this is where you will receive notification of receipt of remote deposit items.

**Deposit Limits.** We reserve the right to impose limits on the amount(s) and/or number of deposits that you transmit using the Services and to modify such limits from time to time.

**Hardware and Software.** In order to use the Service, you must obtain and maintain, at your expense, compatible hardware and software as specified by ESFCU from time to time. ESFCU is not responsible for any third party software you may need to use the Service. 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.

**Errors.** You agree to notify ESFCU of any suspected errors regarding items deposited through the Service right away, and in no event later than 60 days after the applicable ESFCU account statement is sent. Unless you notify ESFCU within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against ESFCU for such alleged error. You can notify ESFCU of errors by calling (620) 342-2336, toll free at (866) 342-2336 or sending an email to [customers@esfcu.com](mailto:customers@esfcu.com)

**Security Requirements.** To prevent unauthorized usage of the service, you agree to ensure the security of the mobile device you own, and the access credentials you use to access the service.

**Presentment.** The manner in which the items are cleared, presented for payment, and collected shall be at ESFCU's sole discretion subject to the Membership & Account Agreement and Disclosures governing your account.

**Ownership & License.** You agree that ESFCU 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 ESFCU's business interest, or (iii) to ESFCU's actual or potential economic disadvantage in any aspect. 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 Service.

**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 SERVICES OR TECHNOLOGY WILL BE CORRECTED.

**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 SERVICES 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 SERVICES, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF ESFCU HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

**Force Majeure.** ESFCU 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 its reasonable control.

**Changes in Financial Circumstances.** You understand and agree that you must inform ESFCU immediately in the event a material change in your financial circumstances as or in any of the information provided in your application including any supporting financial information. This includes, but is not limited to, the bankruptcy, insolvency, sale, transfer or assignment of a business associated with the Service and your account, or if you are in default under any agreement for borrowed money or any other material contract. You agree to provide any financial records we reasonably request to determine your financial status during the term of this Disclosure and Agreement.

**User warranties and indemnification.** You warrant to Emporia State Federal Credit Union that:

- You will only transmit eligible items.
- Images will meet the image quality
- You will not transmit duplicate items.
- You will not deposit or re-present the original item.
- All information you provide to ESFCU is accurate and true.
- You will comply with this Agreement and all applicable rules, laws and regulations.

You agree to indemnify and hold harmless Emporia State Federal Credit Union from any loss for breach of this warranty provision.

**Relationship.** This Disclosure and Agreement does not create, and shall not be construed to create, any joint venture or partnership between the parties. No officer, employee, agent, servant, or independent contractor of either party shall at any time be deemed an employee, servant, agent, or contractor of the other party for any purpose whatsoever.

**Other terms.** You may not assign this Agreement. This Agreement is entered into in Emporia, Kansas, and shall be governed by the laws of the State of Kansas and of the United States. A determination that any provision of this Agreement is unenforceable or invalid shall not render any other provision of this Agreement unenforceable or invalid.