



WASATCH PEAKS

CREDIT UNION

Reach your peak!™

Mobile Deposit Agreement

This Mobile Deposit Agreement, ("Agreement") is the contract which covers your and our rights and responsibilities concerning the Mobile Deposit services offered to you by Wasatch Peaks Credit Union ("Credit Union"). The words "we," "us," and "our" mean Wasatch Peaks Credit Union. The word "account" means any one or more deposit accounts you have with the Credit Union. By clicking the electronic signature "acceptance" below Member 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 services are offered for the purpose of converting original checks to substitute checks, as such term is defined in the Check Clearing for the 21st Century Act and Federal Reserve Board Regulation CC ("Check 21"), for deposit with Credit Union and for processing and presentment to a collecting or paying financial institution. The Mobile Deposit service is subject to the following terms and conditions.

1. Mobile Deposit Service.

1. 1.1 **Mobile Deposit Capture Process.** Member will scan checks or drafts ("items") with a smartphone using the Wasatch Peaks Credit Union Mobile Banking App, creating an electronic image and Member will transmit, using Mobile Banking, an electronic file of such electronic images that the Credit Union will deposit to Member's account. The Credit Union's processing agent shall perform an image quality assessment of scanned checks or items and shall convert items meeting the Credit Union's required standards into substitute checks to facilitate the deposit and collection of such items. Member agrees that the manner in which items (e.g., substitute check, image exchange, ACH) are cleared or presented for payment shall be determined by Credit Union, in its sole discretion. Credit Union reserves the right to select the clearing agents through which Credit Union clears items. Member agrees to be bound by any clearinghouse agreements, operating circulars and image exchange agreements to which Credit Union is a party.
2. 1.2 **Funds Availability.** Funds from deposited items will be available according to Credit Union's Regulation CC funds availability disclosure, as amended from time to time, which is incorporated herein by reference. For purposes of determining the availability of funds, checks deposited via Mobile Deposit are considered received by Credit Union when the remote deposit capture system expressly indicates that the checks were received by or delivered to Credit Union. Member agrees that the scanning and transmitting of checks does not constitute receipt by Credit Union. Generally, checks scanned and transmitted via Mobile Deposit before 4 p.m. Mountain Standard Time on a business day (defined as Monday

through Friday excluding holidays.) will be received by the Credit Union on that day. For the purpose of establishing funds availability, the Member's deposits via Mobile Deposit are deemed to be received by the Credit Union at its office located at the address designated in this Agreement for the delivery of notices to be provided under this Agreement.

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.

3. **1.3 Deposit Acceptance.** Member agrees that Credit Union may at any time, in its sole discretion, refuse to accept deposits of Checks from Member via Mobile Deposit. In the event that remote deposit capture services are interrupted or are otherwise unavailable, Member may, at its option, deposit checks in-person at a Credit Union branch or via night drop or mail.

2. Member Account.

1. **2.1 Member Account.** Member will designate a Credit Union checking account as the settlement account to be used for the purposes of settling, in aggregate, the financial transactions requested in connection with the Mobile Deposit service. The Credit Union shall provide Member with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to the service. Member shall be responsible for auditing and balancing of any settlement account.
2. **2.2 Responsibility for Scanning.** Member is solely responsible for scanning deposit items, accessing the service from the Credit Union and for maintaining Member's equipment (smartphone). Member 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 Member.
3. **2.3 Deposit Requirements.** Member agrees that it will only use the Mobile Deposit services to deposit checks drawn on financial institutions within the United States, excluding its territories. Member will deposit checks not falling within this requirement in person, using a night drop facility or by U.S. Mail accompanied by a deposit slip issued by Credit Union. Member agrees it will not use Mobile Deposit to deposit checks drawn on its own accounts with any financial institution. Member agrees that each check it submits for deposit through the Mobile Deposit Capture service will meet the image quality standards established in American National Standards Institute's standard X9.37. **Member Agrees that each check will be properly endorsed including the restrictive endorsement language "For Mobile Deposit Only" legibly written below the signature.**
4. **2.4 Check Retention & Destruction.** Member agrees that all items belong to Member and not to Credit Union and that those items shall be handled in accordance with this Agreement. After receipt by Credit Union of any transmission by Member of imaged items for deposit to Member's account, Credit Union will acknowledge by electronic means its receipt of such electronic transmission. Member's electronic transmission is subject

to proof and verification. Member shall retain the original of all imaged items that have been deposited via Mobile Deposit for reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond thirty-five (35) days from the date processed, and shall properly destroy and dispose of such original checks after such time. During the period that the Member maintains the original checks, the Member understands and agrees that it 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 Mobile Deposit Capture service) and (ii) unauthorized use of information derived from the original checks. When Member destroys, and disposes of, the original checks pursuant to the requirements of this Agreement, the Member understands and agrees that it must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent shredding equipment.)

5. **2.5 Presentment Prohibitions.** The Member shall not present, or attempt to present, or allow others, either directly or indirectly, to present, or attempt to present, for deposit by any means (i) any Substitute Check that has already been presented for deposit via Mobile Deposit check capture service or (ii) any original check, the Substitute Check of which has already been presented for deposit via Mobile Deposit. In the event that the Member, or any third party, presents, or attempts to present, a deposit in violation of this Subsection the Member agrees 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. Member agrees that the aggregate amount of any items which are deposited more than once will be debited from Member's account, and to the extent funds in Member's 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. Member further acknowledges that Member 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 Member assumes 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.

6. **2.6 Member's Representations and Warranties.** Member's Representations and Warranties: Member represents and warrants:

- i. that it will comply with all federal and state laws, and rules and regulations applicable to Online transactions, including those of the National Automated Clearing House for ACH transactions;
- ii. that all Checks scanned through image transport are made payable to Member;
- iii. that all signatures on each check are authentic and authorized; and
- iv. that each check has not been altered.

In the event Member breaches any of these representations or warranties, Member agrees 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. Member further authorizes the Credit Union to charge its 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.

7. **2.7 Financial Responsibility.** Member is, and shall 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. Member assumes exclusive responsibility for the consequences of any instructions it may give to the Credit Union, for Member's failures to access the service properly in a manner prescribed by the Credit Union, and for Member's failure to supply accurate input information, including, without limitation, any information contained in an application.
 8. **2.8 Account Reconciliation.** Member will verify and reconcile any out-of-balance condition, and promptly notify the Credit Union of any errors within the time periods established (exclusive of weekends and applicable holidays) after receipt of the applicable detail report from the Credit Union. 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.
3. **Credit Union's Obligations.**
1. **3.1 Financial Data.** The Credit Union agrees to transmit all the financial data under its control required to utilize the service selected by Member and to act on appropriate instructions received from Member in connection with such service. The Credit Union shall exercise due care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons (and in this connection it is understood and agreed that implementation by the Credit Union of its normal procedures for maintaining the confidentiality of information relating to its members, and where practicable the obtaining by the Credit Union from any third parties engaged in the installation, maintenance and operation of the system of

similar undertakings, shall constitute fulfillment of its obligation so to exercise due care) but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Member by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the service. Member assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the service or disclosure of any confidential information or instructions of Member by Member's employees, agents, or other third parties.

2. **3.2 Service Availability.** Member understands that service availability is at all times conditioned upon the corresponding operation and availability of those computer services and systems used in communicating Member's instructions and requests to the Credit Union and the Credit Union's response. The Credit Union shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by Member in the event of any failure or interruption of such services or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union.
 3. **3.3 Exception Items.** When Credit Union reviews and processes Member's electronic file, Credit Union may reject any electronic image that Credit Union, in its sole discretion, determines 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. Credit Union will notify Member of any Exception Items. Member agrees that if it wishes to attempt to deposit any Exception Item to any of Member's account with Credit Union, Member shall only do so by depositing the original item on which the Exception Item is based. Member acknowledges and agrees that even if Credit Union does not initially identify an electronic image as an Exception Item, the substitute check created by the Credit Union therefrom 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 the obligation of Member to Credit Union.
 4. **3.4 Reports.** 1. Credit Union shall provide Member with daily reports via the Internet, detailing items processed, return items, and deposit adjustments.
 5. **3.5 Retention of Check Images.** Credit Union will retain any substitute checks it generates for seven (7) years.
4. **Services Fees.**

Currently there is no monthly fee for the mobile deposit service. Member agrees 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.

5. Warranties; Disclaimer of Warranties.

1. **5.1 Service Warranty.** Member performs the function of converting an original check to a substitute check. Therefore, Member understands and agrees that it is responsible, to the extent permitted by law, for all warranties and indemnifications set forth in Check 21 applying to any Reconverting Credit Union and Truncating Credit Union, as such terms are defined by Check 21, including, without limitation, the obligation to only convert an original check that allows for the creation of a substitute check that clearly and accurately represents the information on the front and back of the original check. Credit Union and its agents may, but shall have no obligation, to screen items or Substitute Checks for legal compliance. The Member agrees 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 checks.
2. **5.2 Disclaimer of Liability.** 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 MEMBER'S USE OF THE SERVICE. THE CREDIT UNION MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, 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.

6. Credit Union's Liabilities.

1. **6.1 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.

2. **6.2 Member's Duty to Report Errors.** Member shall 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 Member which reflects the error. Failure of Member 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.
3. **6.3 Credit Union's Performance.** Member acknowledges and agrees 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 Services, in accordance with or unintentional deviation from the terms and conditions of this agreement, including exhibits or addenda. Member acknowledges that Credit Union's systems and procedures established for providing the Services are commercially reasonable. Member shall defend, indemnify, and hold Credit Union harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to the Services.
4. **6.4 Limitation.** Credit Union shall have no liability to Member, 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, and shall have no liability for not effecting an Entry, if:
 - i. Credit Union receives actual notice or has reason to believe that Member has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
 - ii. The ownership of funds involving an Entry or the Authorized Representative's authority to transmit an Entry is in question;
 - iii. Credit Union suspects a breach of the Security procedures;
 - iv. Credit Union suspects that the Member account has been used for illegal or fraudulent purposes; or

- v. Credit Union reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

Credit Union will not be liable if Member fails to report timely any error or discrepancy reflected in a Statement prepared by Credit Union, or if Member fails to report a breach of a security procedure. If Credit Union fails to perform under this Agreement in accordance with the standards set herein, Credit Union's liability for damages, losses, and other compensation owing to Member shall be limited to the total fees paid by Member to Credit Union for the Credit Union failure to perform resulting in such liability in the two (2) month period preceding the date the claim accrued. Credit Union 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. In no event will Credit Union be liable for any indirect, consequential, punitive, or special damages. Credit Union will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

7. Force Majeure.

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.

8. Termination.

Either party may terminate this Agreement upon not less than ten (10) days prior written notice to the other party. Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Agreement, (i) Member will immediately cease using the service, and (ii) Member shall promptly remit all unpaid monies due under this Agreement. The Credit Union may immediately suspend or terminate Member's access to the service in the event that the Credit Union reasonably determines such suspension or termination is necessary in order to protect the service or the Credit Union from harm or compromise of integrity, security, reputation, or operation.

9. Indemnification.

Member agrees to indemnify, defend and hold harmless the Credit Union and its shareholders, directors, officers, employees and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not limited to, reasonable attorney fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (a) Member's failure to abide by or perform any obligation imposed upon Member under this Agreement, (b) the willful misconduct, fraud, criminal activity, intentional tort or negligence of Member or any of its representatives involving use of the service; (c) the actions, omissions or commissions of Member, its employees, consultants and/or agents relating to the service; and (d) any transmission or instruction, whether or not authorized, acted upon by the Credit Union in good faith. Member shall be provided with prompt notice of any claims and given full authority and assistance (at Member's expense) for the defense of any such claims; provided that the Credit Union may participate in such defense and settlement with counsel of the Credit Union's own choosing at the Credit Union's own expense; provided, further, however, Member shall have no authority to settle any claim against any Indemnified Party without the prior written consent of such Indemnified Party (which consent shall not be unreasonably withheld).

10. Modification of Services.

Credit Union reserves the right to modify the Mobile Deposit services from time to time without making prior notice to Member, provided, however, that Credit Union will give Member at least thirty (30) days notice prior to making any modifications to the Mobile Deposit services that would materially alter their functionality

11. Notices:

Except as otherwise expressly provided herein, the Credit Union shall not be required to act upon any notice or instruction received from Member or any other person, or to provide any notice or advice to Member or any other person with respect to any matter. Except as otherwise provided herein, any notice under this Agreement must be in writing and delivered by express carrier, faxed, or sent by United States registered or certified mail and, if to the Credit Union, addressed to

12. 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 Utah 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 Utah 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.