

# Wauna Credit Union

## Mobile Banking & Deposit Services Agreement

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This Mobile Banking and Deposit Service Agreement, ("Agreement") is the contract which covers your and our rights and responsibilities concerning the Mobile Banking and Deposit Service ("Service") offered to you by Wauna Federal Credit Union ("Credit Union"). By your downloading, log-in to or use of the Mobile Banking and Deposit Service, by clicking any electronic signature "Consent", or by clicking "Done" on the Mobile Banking Deposit help and agreement page, you and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments. The Mobile Banking and Deposit Service is subject to the following terms and conditions and to the instructions, rules and terms provided to you via a link within the service and incorporated by reference herein.

### 1. Mobile Banking Services.

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

At the present time, you may use the Mobile Banking Service to:

- View account balance and transaction history information for any of your accounts
- Transfer funds between your savings, checking, money market, club and loan accounts
- Make loan payments from your savings, checking, money market and club accounts
- Access your line of credit accounts
- Determine if a particular check or item has cleared your account
- Verify the last date and amount of your payroll deposits

Mobile Banking will not work unless you use it properly. You accept responsibility for making sure that you understand how to use Mobile Banking before you actually do so, and you use Mobile Banking in accordance with the online instructions posted on our website. You also accept responsibility for making sure that you know how to properly use your wireless device and the Mobile Banking software ("Software") required to use the Service. The Software is provided by a service provider not affiliated with the Credit Union and you are solely responsible for entering a license agreement to use the software. We will not be liable to you for any losses caused by your failure to properly use the Mobile Banking Service, the Software, or your wireless device. You may experience technical or other difficulties related to the Mobile Banking Service that may result in loss of data, personalization settings, or other Mobile Access service interruptions. We assume no responsibility for the timeliness, deletion, misdelivery, or failure to store any user data, communications, or personalization settings in connection with your use of the Mobile Banking Service. We assume no responsibility for the operation, security, or functionality of any wireless device or mobile network which you utilize to access the Mobile Banking Service. Financial information shown on the Mobile Banking Service reflects the most recent account information available through the Mobile Banking Service. You agree that we will not be liable for any delays in the content or for any actions you take in reliance thereon. If you need current account information, you agree to contact us directly.

- b. Access to Accounts.** By enrolling in the Mobile Banking Service, you certify you are an owner, joint owner, or custodian on the accounts represented in your enrollment. You understand that all owners of your accounts or anyone with whom you share your Password or any access code will be an Authorized User. That authority will be considered unlimited in amount and manner, with full authority to perform all transactions relating to the stated accounts, until you notify the Credit Union in writing of the revocation of such authority. You agree that you are and will remain fully responsible for any transactions made by such persons on your accounts except transactions that occur after the Credit Union has been notified of any revocation of authority and has had a reasonable opportunity to act upon such notice.
- c. Relationship to Other Agreements.** You agree that when you use Mobile Banking, you will remain subject to the terms and conditions of all your existing agreements with us or any service providers of yours; including service carrier or provider, and that this Agreement does not amend or supersede any of those agreements. You understand that those agreements may provide for fees, limitations, and restrictions which might impact your use of Mobile Banking (for example, your mobile service carrier or provider may impose data usage or text message charges for your use of or interaction with Mobile Banking, including while downloading the Software, receiving or sending Mobile Banking text messages, or other use of your Wireless device when using the Software or other products and services provided by Mobile Banking), and you agree to be solely responsible for all such fees, limitations, and restrictions. You agree that only your mobile service carrier or provider is responsible for its products and services. Accordingly, you agree to resolve any problems with your carrier or provider directly with your carrier or provider without involving us. You also agree that if you have any problems with Mobile Banking, you will contact us directly.
- d. Mobile Banking Service Limitations and Conditions.** When you use the Mobile Banking Service to access accounts, you agree to the following limitations and conditions:
- i. *Account Ownership/Accurate Information.* You represent that you are the legal owner of the accounts and other financial information which may be accessed via Mobile Banking. You represent and agree that all information you provide to us in connection with Mobile Banking is accurate, current, and complete, and that you have the right to provide such information to us for the purpose of operating the Mobile Banking Service. You agree to not misrepresent your identity or your account information. You agree to keep your account information up to date and accurate.
  - ii. *Proprietary Rights.* You may not copy, reproduce, distribute, or create derivative works from this content. Further, you agree not to reverse engineer or reverse compile any Mobile Banking technology, including, but not limited to, any Software or other mobile phone applications associated with the Mobile Banking Service.
  - iii. *User Conduct.* You agree not to use Mobile Banking or the content or information delivered through Mobile Banking in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the Software; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of Mobile Access to impersonate another person or entity; (c) violate any law, statute, ordinance, or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening, or unlawfully harassing; (g) potentially be perceived as illegal, offensive, or objectionable; (h) interfere with or disrupt computer networks connected to Mobile Banking; (i) interfere with or disrupt the use of Mobile Banking by any other user; or (k) use Mobile Banking in such a manner as to gain unauthorized entry or access to the computer systems of others.

- iv. *No Commercial Use or Resale.* You agree that the Mobile Banking Services are for personal use only. You agree not to resell or make commercial use of Mobile Banking.
- v. *Indemnification.* Unless caused by our intentional misconduct or gross negligence, you agree to protect and fully compensate us and service providers from any and all third party claims, liability, damages, expenses, and costs (including, but not limited to, reasonable attorneys fees) caused by or arising from your improper use of the Mobile Banking software or your infringement, or infringement by any other user of your account, of any intellectual property or other right of anyone.
- vi. *Additional Service Limitations.* Neither we nor our service providers can always foresee or anticipate technical or other difficulties related to Mobile Banking. These difficulties may result in loss of data, personalization settings, or other Mobile Banking interruptions. Neither we nor any of our service providers assume responsibility for the timeliness, deletion, misdelivery or failure to store any user data, communications or personalization settings in connection with your use of Mobile Banking. Neither we nor any of our service providers assume responsibility for the operation, security, functionality, or availability of any Wireless device or mobile network which you utilize to access Mobile Banking. You agree to exercise caution when utilizing the Mobile Banking application on your Wireless device and to use good judgment and discretion when obtaining or transmitting information. Financial information shown on Mobile Banking reflects the most recent account information available through Mobile Banking, and may not be current. You agree that neither we nor our service providers will be liable for any delays in the content, or for any actions you take in reliance thereon. If you need current account information you agree to contact us directly.
- vii. *Third Party Beneficiary.* You agree that our service providers (including any provider of Software) may rely upon your agreements and representations, set forth in this Section I. Such service providers are third party beneficiaries with the power to enforce those provisions against you, as applicable.

## **2. Security of Access Code.**

The PIN or access code ("access code") is for your security purposes. The access code is confidential and should not be disclosed to third parties or recorded. You are responsible for safekeeping your access code. You agree not to disclose or otherwise make your Access code or Wireless Device for Mobile Banking available to anyone not authorized by you to sign on your accounts. If you authorize anyone to have or use your Access code or Wireless Device, you understand that person may use the Mobile Banking Service to access and review all of your account information and execute account transactions. Therefore, we are entitled to act on transaction instructions received using your Access code and you agree that the use of your Access code will have the same effect as your signature authorizing transactions. If you authorize anyone to use your access code, that authority shall continue until you specifically revoke such authority by notifying the Credit Union. If you fail to maintain the security of these access codes and the Credit Union suffers a loss, we may terminate your electronic funds transfer and account services immediately.

You may choose to save your access code, password, and challenge questions on your device so the next time you access mobile banking you will automatically be taken to the account balance page. If you do so, prior to processing a transaction you will be required to input your login and password credentials. We do not recommend doing this due to the potential security risks if you lose your phone or someone accesses your phone via a malicious app.

## **3. Member Liability.**

- a. **Transaction Authorization.** You are responsible for all transfers you authorize using your Mobile Banking and Bill Pay services under this Agreement. If you permit other person(s) to use the service or access code, you are responsible for any transactions they authorize or

conduct on any of your accounts. If you authorize anyone to use your Access code in any manner, that authority will be considered unlimited in amount and manner until you specifically revoke such authority by notifying the Credit Union and changing your Access code immediately. You are responsible for any transactions made by such persons until you notify us that transactions and access by that person are no longer authorized and your Access code is changed. If you fail to change your Access code or maintain the security of your Access code and the Credit Union suffers a loss, we may terminate your electronic services immediately. However, tell us at once if you believe anyone has used your Account, Card, or access code and accessed your account(s) without your authority. Telephoning us is the best way of keeping your possible losses down.

- b. Limits on Consumer Accounts.** For consumer mobile banking transactions, if you tell us within two (2) business days, you can lose no more than \$50.00 if someone accessed your account without your permission. If you do not tell us within two (2) business days after you learn of the unauthorized use of your account or service, and we can prove that we could have stopped someone from accessing your account without your permission if you had told us, you could lose as much as \$500.00. Also, if your statement shows transactions that you did not make, tell us at once. If you do not tell us within sixty (60) days from the statement date that the transaction appears, you may be liable for the full amount of the loss, if we can prove that we could have stopped someone from making the transfer(s) if you had told us in time. If a good reason (such as a hospital stay) kept you from telling us, we will extend the time periods. If you believe your Card has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call: 800.773.3236 or write: Wauna Federal Credit Union, PO Box 67, Clatskanie, OR 97016.
- c. Limits on Business Accounts.** The Credit union will not be responsible for any losses or damages you may incur regarding the unauthorized access to or use of your account through this Service.

#### **4. Business Days.**

Our business days and hours are Monday through Friday. Holidays are not included.

#### **5. Fees and Charges.**

There are certain charges for electronic fund transfer services as set forth on the Fee Schedule. From time to time, the charges may be changed. We will notify you of any changes as required by law. If you request a transfer from your line of credit account, such transactions may be subject to charges under the terms and conditions of your Loan Agreement.

#### **6. Right to Receive Documentation of Transfers.**

Mobile Banking transactions will be recorded on your periodic statement. You will receive a statement monthly unless there is no transaction in a particular month. In any case, you will receive a statement at least quarterly.

#### **7. Account Information Disclosure.**

We will disclose information to third parties about your account or the transfers you make:

- a.** As necessary to complete transfers;
- b.** To verify the existence of sufficient funds to cover specific transactions upon the request of a third party, such as a credit bureau or merchant;
- c.** To comply with government agency or court orders;

- d. If you give us your written permission.

## **8. Credit Union Liability for Failure to Make Transfers.**

### **a. Consumer Accounts.**

- i. For consumer mobile banking transactions, if we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable for instance:
  - ii. If, through no fault of ours, you do not have adequate funds in your account to complete a transaction, your account is closed, or the transaction amount would exceed your credit limit on your line of credit, if applicable.
  - iii. If you used the wrong access code or you have not properly followed any applicable computer, or Credit Union user instructions for making transfer and bill payment transactions.
  - iv. If the card has expired or is damaged and cannot be used.
  - v. If the automated teller machine (ATM) or POS terminal where you are making the transfer does not have enough cash or was not working properly, and you knew about the problem when you started the transaction.
  - vi. If your computer fails or malfunctions or the Online Banking service was not properly working, and such problem should have been apparent when you attempted such transaction.
  - vii. If circumstances beyond our control (such as fire, flood, telecommunication outages, postal strikes, equipment or power failure) prevent making the transaction.
  - viii. If the funds in your account are subject to an administrative hold, legal process, or other claim.
  - ix. If you have not given the Credit Union complete, correct, and current instructions so the Credit Union can process a transfer.

- b. Business Accounts.** The Credit Union shall have no liability to you for any loss, damage, cost, or expense arising out of this Agreement, except as provided by applicable law for any error or delay in performing the Services in this Agreement. We shall have no liability for not completing a transaction, if we receive actual notice or have reason to believe that you have filed for bankruptcy, the ownership of funds involving a transaction or the Authorized Representative's authority to conduct a transaction is in question; we suspect your account has been used for illegal or fraudulent purposes; or we reasonably believe that a transaction is prohibited by federal law, or this Agreement. We will not be liable if you fail to report any error or discrepancy reflected in a statement prepared by us, or if you fail to report a breach of a security procedure. If we fail to perform under this Agreement, our liability for damages, losses, and other compensation owing to you shall be limited to direct damages caused solely by the Credit Union. We shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is beyond our control including but not limited to natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in communication or computer networks.

## 9. Termination of Services.

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

## 10. Notices.

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

## 11. Mobile Banking Statement Errors on Consumer Accounts.

In case of errors or questions about your Mobile Banking transactions on a consumer account of yours, telephone us at the business hour phone numbers or write us at the address set forth above as soon as you can. We must hear from you no later than sixty (60) days after we sent the first statement on which the problem appears.

- a. Tell us your name and account number.
- b. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- c. Tell us the dollar amount of the suspected error.
- d. If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days.

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

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

## 12. Mobile Deposit Service.

- a. **Mobile Deposit Process.** The credit union reserves the right to establish and assign to you deposit limits for the Service (including limits on the dollar amount and/or number of checks that you may transmit through the Service each day) and to modify such limits from time to time in the credit union's sole discretion, and you agree to comply with all such limits. If we approve the Mobile Deposit service for you, you must use your Online Banking password with your Login to access your accounts. You may scan an image of checks with your Remote

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

- b. Funds Availability.** Funds from items deposited through the Service will be available on the day the item is cleared by the payor bank or the Credit Union has been given credit. There may be additional holds on deposited items as set forth in the Credit Union's Funds Availability Policy disclosure, as amended from time to time, which is incorporated herein by reference. For purposes of determining the cut-off period for deposits and the availability of funds, checks deposited via Mobile Deposit session are considered received by the Credit Union when the checks have cleared and funds are available to the Credit Union. You agree that the imaging and transmitting of checks alone does not constitute receipt by Credit Union. Also, acknowledgment of receipt or delivery does not constitute an acknowledgment by Credit Union that the transmission of a check or items does not contain errors or that funds will be available.
- c. Deposit Acceptance.** You agree that Credit Union may at any time, in its sole discretion, refuse to accept deposits of checks from you via Mobile Deposit session. In the event that the Service is interrupted or are otherwise unavailable, you may deposit checks in-person at a Credit Union branch or via night drop or mail or other contractually acceptable method.
- d. Member Account.**
- i. *Member Account.* You must designate a Credit Union savings or checking account as the settlement account to be used for the purposes of settling, transactions requested in connection with the Service. We will provide you with details of each specific transaction. You will be responsible for reviewing and balancing of any settlement account.
  - ii. *Responsibility for Imaging.* You are solely responsible for imaging deposit items, accessing the service from the Credit Union and for maintaining your imaging equipment. You will be responsible for the payment of all telecommunications expenses associated with the service. Credit Union shall not be responsible for providing or servicing any Equipment for you.
  - iii. *Deposit Requirements.* You agree that you will only use the Service to deposit checks drawn on financial institutions within the United States, excluding its territories. For checks not falling within this requirement you must deposit those checks in person. You agree that each check you deposit through the Service will meet the image quality standards directed in the application.
  - iv. *Check Retention & Destruction.* You agree that all checks belong to you and not to the Credit Union and that those items shall be handled in accordance with this Agreement and your Membership and Account Agreement. After our receipt of a deposit transmission we will acknowledge by electronic means our receipt of such transmission. Your electronic transmission is subject to proof and verification. You will retain the original of all imaged checks that have been deposited via Mobile Deposit for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond ninety (90) days from the date processed. It is your responsibility to properly destroy and dispose of such original checks after such time. During the period that you maintain any original checks, you understand and agree that you must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including by employees) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service) and (ii) unauthorized use of

information derived from the original checks. When you dispose of any original checks, you understand and agree that you must use a high degree of care when selecting and implementing disposal procedures to ensure that the original checks are not accessed by unauthorized persons during the disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed.

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

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

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

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

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

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

**e. Credit Union's Obligations.**



- i. *Financial Data.* We will review and process your electronic file through a batch processing between 9:30 am to 10:30 am PST and 3:30 pm to 4:30 pm PST on business days disclosed in section 5. The Credit Union agrees to transmit all the financial data under its control required to utilize the service selected by you and to act on appropriate instructions received from you in connection with such service. The Credit Union shall exercise due care in seeking to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons. You agree 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 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 you by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the service. You assume full responsibility for the consequences of any misuse or unauthorized use of or access to the Service.
  - ii. *Service Availability.* You understand that Service availability is at all times conditioned upon the corresponding operation and availability of the communication systems used in communicating your instructions and requests to the Credit Union. We will not be liable or have any responsibility of any kind for any loss or damage thereby incurred by you in the event of any failure or interruption of such communication systems or services resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union.
  - iii. *Exception Items.* When we review and process your electronic file, we may reject any electronic image that we determine to be ineligible for the service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. We will notify you of any Exception Items. You agree that if you wish to attempt to deposit any Exception Item to any of your accounts with Credit Union, you will only do so by depositing the original item on which the Exception Item is based. You acknowledge and agree that even if you do not initially identify an electronic image as an Exception Item, the substitute check created by the Credit Union there from may nevertheless be returned to Credit Union because, among other reasons, the electronic image is deemed illegible by a paying bank. Credit Union's failure to identify an Exception Item shall not preclude or limit your obligations to Credit Union.
  - iv. *Account Information.* We will provide you with daily transaction history via the Internet, the Online Banking, and Mobile Banking service detailing items processed, return items, and deposit adjustments.
  - v. *Retention of Check Images.* Credit Union will retain any substitute checks it generates for seven (7) years.
- f. Services Fees.** Currently there is no monthly fee for the Mobile Deposit Service. You agree to pay all fees and charges for deposit services as set forth on the Rate and Fee Schedule. All Service Fees are subject to change by Credit Union upon thirty (30) days written notice to Member.
- g. Disclaimer of Warranties.**

MEMBER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CREDIT UNION IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM YOUR USE OF THE SERVICE. THE

CREDIT UNION 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.

**h. Credit Union's Liabilities.**

- i. *Direct Damages.* THE CREDIT UNION'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY MEMBER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED ONE HUNDRED DOLLARS. IN NO EVENT SHALL THE CREDIT UNION BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT THE CREDIT UNION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE CREDIT UNION'S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO MEMBER IN CONNECTION WITH ANY MATTER.
- ii. *Your Duty to Report Errors.* You will notify Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to you which reflects the error. Your failure to notify Credit Union of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve Credit Union of any liability for such error, omission, or discrepancy.
- iii. *Credit Union's Performance.* You acknowledge and agree that Credit Union shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by Credit Union in performing the Service, in accordance with or unintentional deviation from the terms and conditions of this Agreement. You acknowledge that Credit Union's systems and procedures established for providing the Service are commercially reasonable.
- iv. *Limitation.* Credit Union shall have no liability to you, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Service 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 Service provided for in this Agreement, and we shall have no liability for not effecting a transaction, if:
  - We receive actual notice or have reason to believe that you filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
  - The ownership of funds involving a transaction is in question;
  - We suspect a breach of the security procedures;
  - We suspect that your account has been used for illegal or fraudulent purposes; or
  - We reasonably believe that a transaction is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

Credit Union will not be liable if Member fails to report timely any error or discrepancy reflected in an account 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 you will be limited as set forth above.

**8. 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.

**9. 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) you will immediately cease using the Service, and (ii) you will promptly remit all unpaid monies due under this Agreement. The Credit Union may immediately suspend or terminate your 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.

**10. Modification of Services.** Credit Union reserves the right to modify the Service from time to time without making prior notice to Member, provided, however, that Credit Union will give you at least thirty (30) days notice prior to making any modifications to the Service that would materially alter their functionality.

**11. 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 Oregon 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 Oregon 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.