

## Mobile Deposit Capture Agreement

This Agreement sets forth the terms and conditions governing your ability to use the Mobile Deposit Capture service (hereinafter referred to as “MDC”) if it is activated on your account at the Maui County Federal Credit Union (hereinafter referred to as “Credit Union” or “MCFCU”). In this Agreement, the words “you,” “your,” and “yours” mean the owner(s) of the account (“Account”) for which you used MDC and the authorized users of the Account.

This Agreement governs your use of MDC in association with one or more deposit accounts maintained by you at the Credit Union. The terms, provisions, and conditions of this Agreement do not replace, but supplement, all other agreements (whether now or in the future) that govern any account maintained by you at the Credit Union (whether now or in the future), or any other Credit Union services utilized by you (whether now or in the future).

### Terms and Conditions

- 1. General Description of MDC** - If MDC is activated on your account, it allows you to make deposit(s) of eligible checks to your Share and Share Draft account(s) by using your mobile device with a camera and data service to capture an image of the original paper check and transmitting the check image to the Credit Union for deposit. Upon acceptance of the check image(s), the Credit Union will provisionally credit the account(s) designated by you for the amount of the deposit(s).
- 2. Eligibility**- You must be a member of Maui County Federal Credit Union, be at least eighteen (18) years of age or older and be a member in good standing to be eligible to use MDC. We may revise eligibility requirements for MDC or terminate this Agreement without notice to you if, in the Credit Union’s sole discretion, Credit Union determines that you have abused MDC or the Credit Union believes that it will suffer a loss or other damage if the Agreement is not terminated.
- 3. Hardware and Software** - A mobile device with a camera and data service is required to use MDC. The mobile device must meet all technical requirements for the proper delivery of check image(s) through MDC. It is your obligation to obtain and maintain secure access to MDC. You are solely responsible for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of MDC. The Credit Union is not responsible for, and you

release the Credit Union from any and all claims or damages resulting from, or related to, any virus or related problems that may be associated with using a mobile device. Credit Union advises you, and you agree, to scan your mobile device hardware and software on a regular basis using a reliable virus detection product (available in your mobile device's app store) to detect and remove viruses.

**4. Check Deposited and Security Interest** - You agree that you will only scan and deposit a check(s) as that term is defined in the Federal Reserve Board Regulation CC (hereinafter "Reg. CC"). When the check image is transmitted to the Credit Union and converted to an Image replacement Document for presentment and collection, it will then be referred to as an "item" according to the definition found in Hawaii Uniform Commercial Code Articles 3 and 4. You further agree that you will not remotely deposit any ineligible items including, but not limited to the following:

- a. Checks or items payable to any person or entity (i.e. business) other than you (third party checks or checks payable to "cash" are ineligible).
- b. Checks that are post-dated or stale dated (more than six [6] months prior to the date of the deposit), unless otherwise stated on the check (i.e., void after XX days).
- c. Checks containing an alteration to any of the fields on the front of the check or item which you know, or suspect, or should know, or suspect to be fraudulent, or otherwise not authorized by the owner of the account on which the check is drawn.
- d. Checks or items not payable in United States currency.
- e. Checks drawn on financial institutions located outside the United States or located in a United States territory.
- f. Checks previously converted to a substitute check, as defined in Regulation CC, or returned for any reason.
- g. Checks to be deposited to an IRA or Share Certificate.
- h. Starter, counter or temporary checks.
- i. American Express Gift Cheques.
- j. Savings bonds, demand drafts, cash, certified checks, money orders, postal orders, travelers checks.
- k. Checks that require authorization.
- l. U.S. Treasury Checks; Federal Reserve Bank Checks; Federal Home Loan Bank Checks, government checks or warrants.
- m. Checks from a closed account.
- n. Remotely created checks, as defined by Regulation CC.
- o. Checks payable jointly, unless deposited into an account in the name of all payees.
- p. Checks exceeding \$5,000.00 (refer to Section 6. Deposit Limitations).
- q. Checks with any inconsistencies, such as the numerical amount not matching the written amount.

- r. Checks that do not have the full Magnetic Ink Character Recognition (MICR) line printed on the check.
- s. Checks payable on sight or payable through Drafts, as defined in Regulation CC.
- t. Checks previously negotiated or “cashed” at an alternate financial institution or other Credit Union branch or deposit channel causing the same drawer’s account to be debited twice.
- u. Checks that are non-negotiable.
- v. Checks that require a special endorsement or warranty (e.g., insurance or escrow checks).
- w. Checks with any endorsement on the back other than specified in this Agreement (refer to Section 5. Image of Checks and Transmission of Files).
- x. Checks that do not have the original manual signature of the person authorizing the check (facsimile signatures are ineligible).
- y. Checks for which you do not have the original paper check in your physical possession.
- z. Checks that are in violation of any federal or state law, rule, or regulation.

You grant the Credit Union a security interest in all of your Accounts or other deposits (whether general or special) at the Credit Union, and in all funds in such Accounts or other deposits, to secure your obligations to the Credit Union under this Agreement.

This security interest will survive termination of this Agreement.

Deposits of any ineligible check may result in the immediate termination of your use of MDC. The Credit Union reserves the right to modify the checks eligible for deposit through the Service without prior notice. If you have any questions about whether or not a check is eligible for deposit through MDC, contact any Credit Union branch. A check that is not eligible for deposit through MDC may be accepted for deposit or collection at a MCFCU branch, MCFCU deposit ATM or via US Mail.

**5. Image of Checks and Transmission of Files** - You shall properly install and use all software and hardware required by this Agreement or otherwise required for, or related to, the use of MDC. To transmit a check image (“File”), the following steps are required:

- a. Make sure that you have not already deposited the check at any financial institution.
- b. Endorse the back of each check in blue or black ink to be deposited with **“For MCFCU Mobile Deposit Only”**, and your signature.
- c. Place the check on a dark background before photographing the check.
- d. Ensure that you have sufficient lighting before photographing the check.
- e. Ensure that your check is the only thing visible in the photo.
- f. Ensure that all check edges can be seen when taking the photo.

- g. To ensure accuracy, you shall balance the dollar amount of each deposit to the sum of the Checks prior to transmitting the File in accordance with the instructions.
- h. Ensure that you retain and secure the original check for 60 calendar days.

The Credit Union reserves the right to amend the instructions, with or without prior notice to you. You acknowledge, understand, and agree the MDC procedures set forth above are not designed for the detection of errors. The Credit Union is not, and will not be, obligated to detect errors by you or others, even if the Credit Union takes certain actions from time to time to do so. You agree that we can accept an original paper check for manual deposit even if it is endorsed for mobile deposit.

For purposes of determining when a File has been delivered and received, the Credit Union's records shall be determinative. To be eligible for processing on the day transmitted, Files must be received by the Credit Union no later than the cut-off time, 3:00 PM Pacific Standard Time Monday through Friday, except for federal or state holidays. To meet the Cut-Off Time, the entire File must be received by Credit Union prior to the Cut-Off Time, and the File must successfully pass the edits for conformity with the technical requirements. A File which is not balanced in accordance with the instructions, or which is received after the Cut-Off Time shall be deemed to have been received on the business day following the business day on which the File is actually received by the Credit Union. The Credit Union reserves the right to change the Cut-Off Time. All such changes shall be effective immediately and may be implemented prior to your receipt of notice thereof. You may contact the Credit Union at any time, during business hours, to verify the current Cut-Off Time.

- 6. Deposit Limitations** - You may send multiple Files to the Credit Union throughout the day, not to exceed \$5,000.00 per check or \$5,000.00 per day. If the total dollar value of the Files sent by you to the Credit Union on any day exceeds the Deposit Limit, the Credit Union may, at its option, refuse to accept the File that exceeds the Deposit Limit, or the Credit Union may accept and process the File. The Credit Union reserves the right to change the Deposit Limitations. All such changes shall be effective immediately and may be implemented prior to your receipt of notice thereof. You may contact the Credit Union at any time, during business hours, to verify the current Deposit Limitations.
- 7. Maintenance and Destruction of Original Check** - You shall mark the original Check "processed" after the process of scanning the check in accordance with Section 4 of this Agreement to ensure that it is not re-presented for payment. You shall securely store all original checks for a period of at least sixty (60) calendar days after the date of transmission (Retention Period). During the Retention Period, you shall take appropriate security measures to ensure that:
  - a. Only authorized members on the Account shall have access to original checks,
  - b. The information contained on such checks shall not be disclosed,

- c. Such checks will not be duplicated or scanned more than one time, and
- d. Such checks will not be deposited or negotiated in any form.

You shall also implement proper security procedures and internal controls to ensure the confidentiality of any information that is considered to be confidential personal information that you retain. During the Retention Period, you must promptly provide the original check to us within one business day upon our request. After the Retention Period, you agree to promptly provide a sufficient copy of the front and back of the check. After the Retention Period, if you dispose of the original check, mark it "VOID" and then destroy it by cross-cut shredding or another commercially acceptable means of destruction. After destruction of an original check, the check image will be the sole evidence of the original check. You agree to cooperate with us to aid in the clearing and collection process, to resolve claims with respect to any check, for MCFCU audit purposes, or for any other matter reasonably requested by us.

**8. Image and MICR Quality** - Each File transmitted by you to the Credit Union shall contain images of the front and the back of the Checks scanned and remotely deposited by you. Each Image of each Check shall be of such quality that the following information can clearly be read and understood by sight review of such image:

- a. The amount of the check;
- b. The payee of the check;
- c. The signature of the drawer of the check;
- d. The date of the check;
- e. The check number;
- f. The information identifying the drawer and the paying bank that is preprinted on the check, including the MICR line; and
- g. All other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check (refer to Section 4).

Each image shall also meet all standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

You shall also capture and transmit to the Credit Union the full-field MICR encoding on each check. In accordance with the instructions, you shall ensure that the following information is captured from the MICR line of each check:

- a. The American Bankers Association routing transit number ("RTN");
- b. The number of the account on which the check is drawn; and
- c. When encoded, the serial number and the process control field of the check.

**9. Receipt of File** - You agree to be solely liable for, and the Credit Union shall not have any liability whatsoever to you for, any File or the Images or other information contained therein that are not received by the Credit Union or for any File or the Images or other information contained therein that are intercepted or altered by an unauthorized third party. You agree that Credit Union has no obligation to accept a File and, therefore, may reject any File or Images or other information contained therein submitted by you. The Credit Union will notify you of the rejection of a File, either in writing or via email, of the Images or other information contained therein. The Credit Union shall have liability to you for the rejection of a File or the Images or other information contained therein or for the failure to notify you of such rejection. Upon receipt of a File submitted by you, the Credit Union may examine such File and the Images and other information contained therein to ensure that you have complied with this Agreement and followed the instructions. If Credit Union determines that you have not complied with this Agreement or followed the instructions or if errors exist in the Images or other information contained in the File, Credit Union, in its sole discretion, may either reject the File or elect to correct the error and accept and process the corrected File (a "Corrected File"). As a form of correction, the Credit Union may credit your Account for the full amount of the deposit and make any necessary adjustments to the Account to correct the error. Credit Union may, at its option, also perform a risk management analysis of one or my Files submitted by you to detect potentially fraudulent Checks, and, in its sole discretion, the Credit Union may reject any such File, or the images or other information contained therein. If after examination of a File and the Images and other information contained therein, the Credit Union determines that you have complied with this Agreement and processed and transmitted the File in accordance herewith and with instructions, the File balanced and the Images meet the requirements of Sections 4 and 7 of this Agreement, then the Credit Union shall accept the File (an "Accepted File") for deposit to your Account. Upon acceptance of the File, Credit Union shall electronically notify you of receipt and acceptance of the Accepted File for deposit. Notwithstanding, the fact that the Credit Union has accepted a File for deposit, any credit made to your Account shall be provisional, and you shall remain liable to Credit Union for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, the Credit Union.

**10. Provisional Credit and Availability of Funds** - You agree that File(s) submitted through MDC are not subject to Regulation CC and therefore are not subject to the Funds Availability Policy. You also agree that credit is provisional until settlement is final. Funds availability for MDC is governed by special rules. You agree that you retain no responsibility for any funds credited to your account if the check is returned unpaid for any reason at any time, regardless of when the funds were made available to you. The Credit Union reserves the right to delay the availability of funds of checks deposited through MDC.

For purposes of determining the availability of funds, checks deposited via MDC are considered received by MCFCU when posted to your account. In most cases, funds will be available by the third business day after the date of posting.

In most cases, checks deposited through MDC on a business day prior to 3:00 pm (Pacific Standard Time) will be posted within two business days; checks deposited after 3:00 pm (Pacific Standard Time) will be posted within three business days. MCFCU may change the cut-off time in its sole discretion.

For determining the availability of funds, every day is a business day, except Saturdays, Sundays and federal or credit union holidays.

To avoid delay, you may go to any MCFCU branch to deposit the original check instead of using MDC. You may contact MCFCU for information regarding deposits and availability.

**11. Laws, Rules, and Regulations** - You agree to comply with all existing and future operating procedures used by the Credit Union for processing of transactions. You further agree to comply with, and be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts and ACH transactions, including, but not limited to, all rules and procedural guidelines established by the Federal Trade Commission ("FTC"), the Board of Governors of the Federal Reserve, Electronic Check Clearing House Organization ("ECCHO") and any other clearinghouse or other organization in which the Credit Union is a member or to which rules the Credit Union has agreed to be bound. The Rules are incorporated herein by reference. These procedures, rules, and regulations (collectively the "Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control.

**12. Collection of Checks** - Credit Union, in its sole discretion, shall determine the manner in which Checks shall be presented for payment to the drawee bank. Credit Union, in its sole discretion, shall select the clearing agents used to collect and present the Checks. Credit Union shall not be liable for the negligence of any clearing agent. Collection of Checks is also subject to the Rules and the terms of the Membership and Account Agreement.

**13. Contingency Plan** - You agree that, in the event you are not able to capture, balance, process, produce or transmit a File to the Credit Union, or otherwise comply with the terms hereof or of the Instructions, for any reason, including, but not limited to, communications, equipment or software outages, interruptions or failures. You will transport the originals of all checks to MCFCU by mail, MCFCU deposit ATMs, or the closest MCFCU branch location for deposit until such time that the outage, interruption or failure is identified and resolved. You acknowledge and agree that the Credit Union shall not be liable to you for any loss or damage of any nature sustained by you as the result of your inability to use MDC. The deposit of original checks at an office of the Credit Union shall be governed by the terms and conditions of the Membership and Account

Agreement. Notwithstanding the foregoing, and to the extent applicable, Section 14 of this Agreement dealing with warranties shall apply to the deposit of original checks.

**14. Warranties** - You represent, warrant, and convey the following to the Credit Union:

- a. Checks Deposited. You shall only deposit checks that are authorized by this Agreement, the Instructions, and the Deposit Agreement;
- b. Image Quality. Each Image or File transmitted by you to the Credit Union contains an accurate representation of the front and the back of each check and complies with the requirements of this Agreement. You are solely responsible for any improper or unusable images submitted using MDC;
- c. Accuracy of Information. All data and other information submitted by you to the Credit Union, including but not limited to data contained in the MICR line of each check, is complete and accurate and complies with the requirements of this Agreement. You are solely responsible for any fraudulent, incorrect, illegible, unauthorized, inaccurate, or incorrect information;
- d. No Duplicates. You will not: (i) create duplicate Images of the checks, (ii) transmit a duplicate Image or File to the Credit Union, or (iii) deposit or otherwise negotiate the original of any check of which an Image was created. You further warrant that no subsequent transferee, including but not limited to the Credit Union, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which the File(s) or Image(s) were created or a duplication (whether paper or electronic, including ACH entries) of the Item(s);
- e. No Loss. No Subsequent transferees of the Item(s), including but not limited to the Credit Union, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the File or Image was presented for payment or returned instead of the original Check.
- f. Information. All information provided by you to Credit Union is true, complete and accurate.
- g. Transactions. All checks from you are, and will be, bona fide. All signatures on checks are authentic and authorized.
- h. Compliance. You will use MDC for lawful purposes and in compliance with all applicable laws, rules, regulations and this Agreement. You will only submit acceptable checks for deposit using MDC and will handle those checks in accordance with applicable laws, rules, regulations, and this Agreement.
- i. Computer Virus. No Files or Images contain any computer viruses or other harmful, intrusive or invasive codes.

**15. Returned Checks** - If checks deposited by you through MDC are dishonored or otherwise returned unpaid by the drawee bank, or are returned by a clearing agent or collecting bank for any reason, including, but not limited to, issues relating to the quality of the Image, you understand and agree that, since you either maintain the original check or have destroyed the original Check in accordance with Section 7 of this Agreement, the original Check will not be returned, and the Credit Union may charge back the amount of



the check and provide you with an image of the check, a substitute check, or other Image Replacement Document (IRD). You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned check. We may debit any of your MCFCU accounts to obtain payment for any check that has been rejected or returned, for any adjustment, warranty, indemnity or claim related to such check, whether or not made timely. Unless otherwise instructed by the Credit Union, you agree not to deposit the original check that was submitted through MDC. To redeposit a dishonored mobile-deposited check, please bring the IRD of the check and the original check to the Credit Union.

- 16. Fees and Charges** - There are no usage or recurring fees/charges assessed to you for use of the Credit Union's MDC. Fees may be assessed each time a check is dishonored. Fees and Charges that may apply are listed the Credit Union's Membership and Account Agreement or provided to you from time to time.

You authorize the Credit Union to deduct any charges for MDC from any Account, even if such deduction causes an overdraft in the Account. Should you fail or refuse to pay any charges under this Agreement, you agree to pay all collection costs (including reasonable attorney's fees) which may be incurred by Credit Union. Credit Union shall have the right to increase or decrease charges imposed for MDC and will notify you of the changes, to the extent required by law. Your use of MDC after changes have been made shall constitute your agreement to the same. You are also responsible for the costs of any communication lines and any data processing charges payable to third parties.

- 17. Amendments** - The Credit Union may amend the terms of this agreement at any time, in its sole discretion, by giving notice to you. If required by this Agreement or by applicable law, notice will be given for the applicable required number of days in advance of each such amendment. No amendments requested by you shall be effective unless and until received and agreed to in writing, by the Credit Union.

- 18. Confirmation: Account Reconciliation** - You are responsible for promptly examining each statement upon receiving it and reporting any irregularities to the Credit Union. If you fail to report any irregularities or other discrepancies reflected on your statement within 60 days of the date the statement was sent to you, the Credit Union will not be responsible for your loss.

- 19. Credit Union's Duties** - Credit Union duties and responsibilities are limited to those described in this Agreement, the Membership and Account Agreement, and any other agreements governing the Accounts. The Credit Union will use commercially reasonable care in performing its responsibilities under this Agreement.

- 20. Credit Union's Disclaimer** - Credit Union shall not be responsible for suspension of performance of all or any of its obligations, responsibilities or covenants hereunder, whether expressed or implied, if at any time, or from time to time, compliance therewith

is prevented or hindered by, or are in conflict with, any federal or state law, regulation or rule, or the order of any court of competent jurisdiction, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U.S. Postal Service and commercial carrier(s), or electronic power disruption or shortages, telecommunications failure or computer failures; acts, omissions or errors of any carrier and/or agent operating between you and the Credit Union or the Credit Union and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipient of transferred funds; any incorrect, unauthorized or fraudulent use or other fraud by any person other than the Credit Union's employees; or, without limiting the generality of the foregoing, any other cause or circumstance beyond the Credit Union's control or other conditions or circumstances not wholly controlled by the Credit Union, which would prohibit, retard or otherwise affect the Credit Union's complete or partial performance under this Agreement.

**21. Internet Disclaimer** - Credit Union does not, and cannot, control the flow of any documents, files, data, or other information via the internet, whether to or from the Credit Union's network, other portions of the internet or otherwise. Such flow depends in large part of the performance of internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt your connections to the internet (or portions thereof). Credit Union cannot guarantee that such events will not occur. Accordingly, the Credit Union disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall the Credit Union be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the internet infrastructure or your or the Credit Union's ability or inability to connect to the internet.

**22. Indemnification and Liability; Third Party Claims** - You indemnify the Credit Union and their respective officers, directors, employees, members, partners, agents, insurers, and attorneys (each and "Indemnified Party" and, collectively, the "Indemnified Parties") for, and holds each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorney's fees) of any nature or kind (including those by third parties) arising out of, related to or resulting from: (a) your (i) failure to report required changes, (ii) transmission of incorrect data to the Credit Union or (iii) failure to maintain compliance with the Rules, (iv) destruction of original Checks, (v) deposit of an electronic representation of a substitute check into an Account instead of an original Check, (vi) deposit of a prohibited check; (b) Credit Union's (i) provision of MDC, (ii) action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by the Credit Union to be an authorized representative of you, (c) your breach of any of your warranties, representations and/or obligations under this Agreement or any other agreement between you and the Credit Union, including, but not limited to, the Deposit Agreement, and the terms of this paragraph shall survive the termination of this Agreement. And/or (d) your breach or violation of any Rules; provided, however you are

not obligated to indemnify the Credit Union for any damages solely and proximately caused by the Credit Union's gross negligence or willful misconduct.

### **23. Limit of Liability –**

- a. Any provision in this Agreement, any other Agreement or the rules to the contrary notwithstanding, the Credit Union shall only be liable for damages solely and proximately caused by its gross negligence or willful misconduct, and the Credit Union's liability shall in no event exceed the lesser of (i) your actual damages or (ii) the total fees paid by you to the Credit Union for MDC. In no event shall the Credit Union or any provider be responsible or liable for any indirect, special, consequential, exemplary, punitive or incidental damages, losses or injuries (including, without limitation, lost profits, loss of use, loss of data, or cost of cover) arising out of or related to, the use by you of MDC or any service or the failure or the Credit Union or any provider to properly process and complete transactions thereunder, even if the Credit Union or such provider(s) have been specifically advised of the possibility of such damages, losses, or injuries.
- b. You acknowledge and agree that your use of MDC shall be at your sole risk, and that MDC is provided by Credit Union on an "as is" basis.
- c. Except as expressly set forth in this Agreement, the Credit Union makes absolutely no representations or warranties whatsoever, express or implied, in law or in fact, to you or to any other person, as to MDC or any aspect thereof, including (without limitation) any warranty of merchantability, fitness for a particular purpose, quality accuracy, or suitability, and Credit Union disclaims any and all of the same. You agree that no oral or written advice or representation obtained from any Credit Union employee or representative shall create a warranty or representation for purposes of this Agreement or MDC to be performed pursuant hereto.
- d. To the fullest extent allowed by law, and subject to the foregoing provisions of this section dealing with the Credit Union's liability for damages solely and proximately caused by its gross negligence or willful misconduct, the Credit Union's liability to you under this Agreement shall be limited to correcting errors resulting from the Credit Union's failure to exercise ordinary care.
- e. Credit Union makes absolutely no representations or warranties whatsoever, express or implied, in law or in fact, to you or to any other person as to any equipment in connection with MDC, including, but not limited to, your imaging systems or related equipment, your software, or your data plan service provider or its equipment, or as to the suitability or compatibility of the Credit Union's software, internet delivered service, equipment or communication interfaces with those that you use, or as to whether any software or internet delivered service will perform in an uninterrupted manner, including, but not limited to, any warranty of merchantability or fitness for a particular purpose.
- f. Credit Union shall not be responsible or liable for any errors or failures resulting from defects in, or malfunctions of, your imaging systems or software, for the quality of performance or lack of performance of any imaging software or

hardware or internet delivered services supplied by Credit Union to you in connection with this Agreement, or for the transmission or failure of transmission of any information from you to Credit Union, from Credit Union to you. Credit Union shall not be responsible for notifying you or any upgrades or enhancements to any of your imaging system hardware or software. Credit Union is not responsible for, and you release the Credit Union from any and all claims or damages resulting from, or related to, any mobile device virus or related problems that may be associated with using electronic mail or the internet.

#### **24. Third Parties; Maintenance –**

- a. MDC from others. You may be using special equipment, services or software provided by a third party to assist in processing Checks and Files hereunder (each a “Third Party” and, if more than one, “Third Parties”). You (i) agree that any Third Party is acting as your agent in the delivery of Checks and Files to the Credit Union, and (ii) agree to assume full responsibility and liability for any failure of what that Third Party to comply with the Rules or this Agreement. Credit Union will not be liable for any losses or additional costs incurred by you as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. You are solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. Credit Union shall not have any responsibility for any Check or File handled by a Third Party until that point in time when Credit Union accepts and approves a Check or File from such Third Party for processing.
- b. Equipment Maintenance. You shall be solely responsible for obtaining and properly maintaining its equipment and system requirements, their electrical services, and data systems, internet connectivity and any other equipment or items necessary to receive MDC. Credit Union shall not be liable to you, in any other manner whatsoever, for any type of errors, losses. Damages or other claims related to your failure to do so.

**25. Arbitration and Waiver of Jury Trial –** You and the Credit Union agree that the transactions contemplated in this Agreement involve “commerce” under the Federal Arbitration Act (“FAA”). Every controversy or claim between member and any indemnified party arising out of, or is in any way related to or resulting from, this Agreement, MDC, or any other services provided by the Credit Union, whether based in contract, tort or any other legal theory, including claims of fraud, suppression, misrepresentation and fraud in the inducement, will be resolved by binding arbitration under the FAA. If a claim is submitted to arbitration, (a) you will not have the right to go to court or to have a jury trial; (b) you will not have the right to engage in pre-arbitration discovery except as provided in the arbitration rules; (c) you will not have the right to have any claim arbitrated as a class action under the arbitration rules or under any other rules, whether of civil procedure or otherwise; and (d) the arbitrator’s decision will be final and binding with limited rights to appeal. This arbitration provision is supplemental

to, and not in lieu of, any other alternative dispute resolution provision, and, in the event of a conflict between this provision and any other such alternative dispute resolution provision, the terms of this provision shall rule. This agreement to arbitrate disputes will survive the closing of your accounts and the termination of this Agreement.

- 26. Attorneys' Fees** - In the event of any arbitration or other adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.
- 27. Successors** - This Agreement and all the terms and provisions herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- 28. Assignment** - No right or interest conferred shall be assignable without the prior written consent of the other party, and any assignment made without such consent shall be null and void; provided, however that Credit Union may assign this Agreement or any part of it to any of Credit Union's affiliates or to a successor of the Credit Union by merger or acquisition upon written notice to you.
- 29. No Third-Party Beneficiaries** - This Agreement shall not be construed to confer any rights or remedies upon any person not a party to this Agreement, whether as a third-party beneficiary or otherwise, against you or Credit Union, their respective successors, assigns and affiliates.
- 30. Captions and Headings** - The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.
- 31. Entire Agreement** - The terms of the Deposit Agreement, all other agreements with the Credit Union pertaining to the Accounts and the Rules, are incorporated by reference and made a part of this Agreement. In the event of any inconsistencies between such agreements, the Rules and this Agreement, the provisions of this Agreement shall control to the extent necessary. You agree that this Agreement is the entire statement of the terms and conditions which apply to the subject matter hereof. This Agreement supersedes any prior agreements between the parties relating to MDC.
- 32. No Waiver** - No delay or failure on the part of the Credit Union in exercising any of the Credit Union's rights under this Agreement shall constitute a waiver of such rights, and no exercise of any remedy hereunder by the Credit Union shall constitute a waiver of its right to exercise the same or any other remedy hereunder. Except for changes made in accordance with this Agreement, no deviation, whether intentional or unintentional, will constitute an amendment of this Agreement or will constitute a waiver of any right or duty of either party.

**33. Severability** - In the event all or any part of any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable, in any respect, the remaining provisions or parts thereof shall be binding and enforceable as if any such invalid, illegal or unenforceable provision had never been contained herein.

**34. Termination** - This Agreement shall remain in full force and effect until such time as this Agreement is terminated by either party as hereinafter provided:

- a. This Agreement may be terminated at any time by either party.
- b. Either party shall have the right to terminate this Agreement immediately by giving written notice to the other if such other party: (i) ceases to conduct its business in the ordinary sense, (ii) has any substantial part of its property becoming subject to any levy, seizure, assignment or application for sale for, or by, any creditor or government agency, (iii) fails to perform its obligations under this Agreement or defaults under any other agreement between the parties or (iv) makes any warranty representation which proves to be false or misleading.

Notwithstanding the foregoing, the Credit Union may immediately terminate this Agreement without notice if, in the Credit Union's sole discretion, Credit Union determines that you have abused MDC or the Credit Union believes that it will suffer a loss or other damage if the Agreement is not terminated.

The Credit Union's election to terminate this Agreement is in addition to any and all other remedies that may be available to the Credit Union and will not affect any obligations you may have to the Credit Union. Any reinstatement of MDC under this Agreement will be at the Credit Union's sole discretion and must be agreed upon in writing by an authorized representative of the Credit Union.

Upon termination of this Agreement, (i) you will promptly pay to the Credit Union all sums due or to become due under this Agreement, (ii) you shall have no further right to make use of MDC or any system or software which may have been provided in connection with any Mobile Deposit Service.

**35. Governing Law** - This Agreement shall be governed by, and construed in accordance with, the laws of the State of Hawaii, without reference to its conflict of law provisions, and applicable federal law.

**36. Notices** –

- a. You are responsible for notifying us of any name or address change. The Credit Union is only required to attempt to communicate with you at the most recent address you have provided to us. We may require all name and address changes to be provided in writing. If we attempt to locate you, we may impose a service fee as set forth in the Truth-in-Savings Disclosure or Schedule of Fees and Charges.

- b. All notices from the Credit Union will be effective when we electronically provided, mailed, or delivered to you at the last address we have for you in the Credit Union records. Notice from you will generally be effective once we receive them at the appropriate address as specified below. If there is more than one account holder, notice from one (1) of the account holders will be effective for all account holders. We reserve the right to change the terms and conditions of MDC. The Credit Union will notify you at least twenty-one (21) days before the effective date of any change that may have a negative impact on you. Use of MDC is subject to existing regulations and laws governing the Credit Union account and any future changes to those laws and regulations.

Maui County Federal Credit Union  
1888 Wili Pa Loop, Wailuku, HI 96793  
(808)-244-7968

**37. Financial Accommodation** - You and Credit Union agree that this product schedule and the service constitute an agreement to provide a “financial accommodation” as defined in 11 U.S.C. 365.

**38. Account Holder’s Indemnification Obligation** - You understand and agree that you indemnify, defend and hold harmless MCFCU and its directors, officers, employees, members and agents from and against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys’ fees and expenses arising from any use of MDC by anyone for your account and for any breach of this Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement.

**39. DISCLAIMER OF WARRANTIES** - YOU AGREE THAT YOUR USE OF RC 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 ANY MOBILE BANKING SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT ANY MOBILE BANKING SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN ANY MOBILE BANKING SERVICE OR TECHNOLOGY WILL BE CORRECTED. WE ARE NOT RESPONSIBLE FOR ANY LOSS, INJURY OR DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, CAUSED BY YOUR INTERNET PROVIDER, ANY RELATED SOFTWARE OR THE CREDIT UNION’S USE OF ANY OF THEM OR ARISING IN ANY WAY FROM THE INSTALLATION, USE OR MAINTENANCE OF YOUR PERSONAL COMPUTER HARDWARE, SOFTWARE, OR OTHER EQUIPMENT.

YOU AGREE THAT THE CREDIT UNION WILL NOT BE LIABLE FOR ANY DAMAGES THAT ARISE, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM ANY OF THE FOLLOWING:

(A) ANY ERROR, FAILURE OR DELAY IN THE TRANSMISSION OR DELIVERY OF DATA, RECORDS, OR CHECKS; (B) ANY DIFFICULTY WITH THE CHECK IMAGE, FILE, OR OTHER TRANSMISSION; OR (C) ANY NONPAYMENT OR RETURN OF ANY CHECK.

**40. LIMITATION OF LIABILITY** - YOU AGREE THAT THE CREDIT UNION 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 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 ANY MOBILE BANKING SERVICE, REGARDLESS OF THE OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY LAW.

By using MDC, you agree to the terms of this Agreement. If you do not agree, do not use MDC and cancel your enrollment by contacting the Credit Union.