

## Empower Federal Credit Union Mobile Deposit Capture Disclosure and Agreement

In this Disclosure and Agreement, the words “we”, “us”, “our”, and “Empower” mean Empower Federal Credit Union and our successors and assigns. When we use the words “member,” “you,” or “your” we mean each person who uses the Mobile Deposit Capture Service (the “Service”) described in this disclosure and agreement, or has a membership or another relationship with Empower Federal Credit Union, and any person authorized to use such access. Your notification of use of the Service and the Membership and Account Agreement are hereby incorporated into and made a part of this disclosure and agreement. In the event of a discrepancy or contradiction in terms between this disclosure and agreement and your approval, this disclosure and agreement will control.

**Use of the Service:** Following receipt of notification email that you may begin using the Service, you are authorized by us to remotely deposit paper checks received to your account with us (the “Account”) by electronically transmitting a digital image of the paper check(s) to your account for deposit. You will be required to transmit both the front and back of the check. **Your use of the Service constitutes your acceptance of the terms and conditions of this disclosure and agreement.** You agree to comply with any mobile device hardware and software requirements set forth by us and you understand and agree that the hardware and software requirements and specifications may change from time to time. Upon receipt of the digital image, we will review the image for acceptability. You understand and agree that receipt of an image does not occur until after notification of receipt of the image. You understand that by receiving notification from us confirming receipt of an image, such notification does not mean the image contains no errors or we are responsible for any information transmitted to us. We are not liable for any image we do not receive. Following receipt of the image, we may process the image by preparing a “substitute check” or clearing the item as an image. Notwithstanding anything to the contrary, we reserve the right, within our sole and absolute discretion, to accept or reject any item for mobile deposit into your account. You understand that any amount credited to your account for items deposited using the service is a provisional credit and agree to indemnify us against any loss suffered because of acceptance of the remotely deposited check. In addition you agree that you will not: a) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or service; b) copy or reproduce all or any part of the technology or service; or c) interfere, or attempt to interfere, with the technology or service.

**Equipment:** To use the Service, you must have a supported mobile device (e.g., smartphone, tablet, etc.) with a supported camera and a supported operating system. It must have a data plan for your mobile device, and you need to download the “App” to your mobile device (collectively, the “Mobile Device”). We do not guarantee that your particular mobile device, mobile device camera, mobile device operating system or mobile carrier will be compatible with the Service. You are responsible for the security of your device, the costs of using your device, including the purchase of your mobile devices, internet services, and security.

**Eligibility for Service:** You understand and agree that you must meet and maintain our qualifications in order to use the Service. You further understand that we use an automatic enrollment process to

determine eligibility to use the Service and that you may lose access to the Service, either temporarily or permanently, if you do not meet our qualifications. If you do not meet our qualifications, you agree that you will not be able to use the Service and will need to mail in deposits, utilize an ATM, or bring checks to a branch location for deposit. **In addition to other qualifications, you understand you must have a membership open for a minimum of 30 days and must not be in delinquency or default on any loans or accounts at Empower Federal Credit Union.**

**Additional qualifications:**

- Must be at least 18 years of age
- Must have both a share savings account with par value in it and a qualifying checking/share draft account: regular share draft, Premium Money Market with checks, Basic Business Checking, Business Checking with Dividends, Share Draft Checking Plus, HSA Checking, Business Money Market with checks, Business checking com core, Com Core Checking.

You understand that your ability to utilize the Service may be limited or terminated at any time and that we do not need to notify you before taking such action.

**Guarantee Specific to Deposits Received for Credit to a Consumer or Business Account:** Your use of the Service for the purpose of depositing to a consumer or business account constitutes the understanding and agreement that you are personally liable for any expenses Empower Federal Credit Union incurs in attempting to obtain final payment for the item in question, outside of the routine costs associated with item processing, in the event of a default by you and/or by your business. This includes, but is not limited to: (i) recovery of the amount credited in the event of non-payment, collection costs, and attorneys' fees as applicable; and (ii) any and all costs associated with Empower enforcing this guarantee. This guarantee shall benefit Empower and its successors.

**Compliance with Law, Rules, and Regulations:** You agree to comply with all existing and future operating procedures used by Empower 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, 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, the National Credit Union Administration and any other clearinghouse and/or other organization in which Empower is a member or to which rules Empower has agreed to be bound. 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. You also agree that you will not engage in any activity directly or indirectly related to the use of the product or service that is illegal or fraudulent. You further understand and agree that your ability to use the Service may be limited or terminated as outlined in the Eligibility for Service and Termination of the Service sections.

**Check Requirements:** Any image of a check which is transmitted must accurately and legibly provide all the information on the front and back of the check at the time presented by the drawer. Prior to

capturing the original check, the check MUST be endorsed on the back of the original check. The endorsement must include your signature and the following information: "Mobile Deposit Only".

The captured image of the check transmitted must accurately and legibly provide, among other things, the following information:

1. The information identifying the drawer and the paying bank preprinted on the check, including complete and accurate MICR information and the signature(s); and
2. 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.

The image quality for the check will meet the standards for image quality established by the American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve, and any other regulatory agency, clearinghouse or association. Empower reserves the right to reject any check image that is not clear, is skewed, or is suspicious in any manner. **Upon transmitting the check you agree not to allow the item to be deposited or presented for payment more than once, to the extent that it could result in payment of the check more than one time. You will also not allow the transmission of an imaged item which has already been presented to us, or to any other financial institution, by any other means.** You will not allow transmission of an image of an item that has already been transmitted through the Service.

**Rejection of Deposit:** We are not liable for any service or late charges levied against you due to the rejection of any item. In all cases, you are responsible for any loss or overdraft, plus any applicable fees to your account due to an item being rejected or returned.

**Items Returned Unpaid:** A notice will be sent to you of transactions unable to be processed due to returned items. With respect to any item that is transmitted for mobile deposit that we credited to your account, in the event such items being dishonored, you authorize us to debit the amount of such items from your account. Check images which are returned for image quality adjustments will have to be submitted in paper to Empower and upon receipt of such notice, to be physically reprocessed; they may not be re-scanned.

**Email Address:** You agree to notify us immediately if you change your email address or mobile phone number, as this is the email address and phone number where we will send you notification of modification or rejection of mobile deposit items.

**Unavailability of Service:** You understand and agree that at times the Service may be temporarily unavailable due to system maintenance or technical difficulties, including those of an Internet service provider and/or Internet software issue. In the event the Service is unavailable, you can deposit the original check(s) at any branch, ATM, or by mailing the original check(s) to us at: Empower Federal Credit Union, 1 Member Way, Syracuse, NY 13212. **It is your sole responsibility to verify the items deposited and that they have been received and accepted for deposit by us.** However, we will send notification of

any items rejected **by us** by the next business day. You understand our preferred method for this notification will be email and you are agreeing to such method as outlined in the Short Message Service (SMS or Text Messages) and Emails section below. In addition, you understand we may add, delete, or change the feature(s) or functionality of the Service, at any time, at our discretion.

**Funds Availability:** The Service is available 24 hours a day, 7 days a week. You understand and agree, for purposes of deposits made using the mobile deposit service, the place of deposit is Syracuse, NY. You agree that items transmitted using the Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. In general, if an image of an item you transmit through the Service is received and accepted before 3:00 p.m. Eastern Time on a business day that we are open, we consider that day to be the day of your deposit. Otherwise, we will consider that the deposit was made on the next business day we are open. Funds deposited using the Service will generally be available by the third business day after the day of your deposit. All checks must be endorsed with proper endorsement (as described above in the Check Requirements section), including the words "Mobile Deposit Only", to be accepted by Empower. Additional delays may occur on a case-by-case basis. For determining the availability of your deposits, every day is considered a business day except Saturdays, Sundays, and Federal Holidays. Please note that Mobile Deposit funds availability rules are different than our standard Funds Availability Policy and that funds from checks deposited in person at a branch, or at an Empower-owned ATM may be available sooner than those deposited through the Service. For further information on funds availability for non-mobile deposits, please see our Funds Availability Policy Disclosure.

**Accountholder's Warranties:** You make the following warranties and representations with respect to each image of an original check transmitted utilizing the Service as follows:

1. Each image of a check transmitted is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
2. The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
3. You will not deposit or otherwise endorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
4. Other than the digital image of an original check that has been remotely deposited through the Service, there are no other duplicate images of the original check.
5. You are authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.

6. The information provided in the membership application remains true and correct and, in the event any such information changes, you will immediately notify us of the change.
7. You have not knowingly failed to communicate any material information to Empower and will provide us all reasonable assistance with any questions related to your deposits.
8. You have possession of each original check deposited using the Service and no party will submit the original check for payment.
9. Files and images transmitted will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.
10. You are not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed to Empower.
11. You are not in the business of cashing checks.

**Limitations on Frequency and Dollar Amount:** You understand and agree that you cannot exceed the limitations on frequency and dollar amounts of mobile deposits that are set forth here:

**You can deposit up to \$10,000 per day, not to exceed \$20,000 per week or \$100,000 per month.**

Business account limits may vary; contact the credit union for details.

These limitations are subject to change by us. We may establish limits on the dollar amount, items, and/or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposits will still be subject to the terms of this agreement and we will not be obligated to allow such deposits at other times. Different limits may apply to small business entities. Changes to the limitations will be subject to the "Change in Terms" clause defined within this disclosure and agreement.

**Unacceptable Deposits:** You understand and agree you are not permitted to deposit the following items using the service:

1. Any item that is stamped with a "non-negotiable" watermark
2. Any item that contains evidence of alteration to the information on the check
3. Any item issued by a financial institution in a foreign country
4. Any item that is incomplete or inconsistent
5. Any item that is "stale dated" (more than six months from its date) or "postdated" (dated in the future)
6. Any third-party check (i.e., any item that is made payable to another party and then endorsed to you by such party)

7. Any item that is a money order, traveler's check, or Savings Bond
8. Any item drawn on your account at Empower Federal Credit Union
9. Any item purported to be a lottery or prize winning
10. Any item that is not payable in United States currency
11. Any item payable to "Cash", "Empower Federal Credit Union", or "EFCU"
12. Any item previously submitted for deposit
13. Any item payable to any person or entity other than you
14. Any item payable to two (2) or more persons not alternatively, unless deposited into an account owned by all payees
15. Any item authorized over the telephone or otherwise lacking the original signature of the person authorizing the check (such as a remotely created check)
16. Any item that is an electronically created item (such as an item that did not exist in paper form)

**Storage of Original Checks:** You must securely store each original check. If you use the Service to deposit items into an account to which you are a party, you understand this means the original check(s) you deposit using the Service. For any image in which you have transmitted, you will be responsible for preventing the transmission of another image of the item or presentment of the item by another means. You agree to retain the item and have it accessible for a period of at least 14 calendar days after the date of deposit acknowledgement, up to 30 days after the date of deposit acknowledgement. After such period expires, all checks can be destroyed in a manner that will assure the check(s) cannot be reconstructed. **You understand and agree you are solely responsible for any loss caused by failure to secure or destroy the original check(s).**

**Accountholder's Indemnification Obligation:** You indemnify us and hold us harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from the use of this Service and/or breach of this disclosure and agreement. You understand and agree this requirement shall survive the termination of this agreement.

**Securing Images on Mobile Devices:** When using mobile capture, you understand check images captured using your mobile device are stored on the device only until the associated deposit has been successfully submitted. You also agree to promptly complete each deposit. In the event you are unable to promptly complete a deposit, you agree to ensure your mobile device remains securely in your possession until the deposit has been completed or to delete the associated images from the application.

**In Case of Errors:** In the event you believe there has been an error with respect to any original check or image thereof transmitted to us for deposit or a breach of this agreement, you must immediately

contact Empower regarding such errors or breach as set forth below: By Telephone: 1.800.462.5000 or via email through the Online Banking Message Center.

**Limitations of Liability:**

a) ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, EMPOWER SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND APPROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND EMPOWER'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) YOUR ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY YOU TO EMPOWER FOR SERVICE. IN NO EVENT SHALL EMPOWER 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 THE SERVICE, OR BY ANY SERVICE, OR THE FAILURE OF EMPOWER OR ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER; EVEN IF EMPOWER OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.

b) YOU ACKNOWLEDGE AND AGREE YOUR USE OF SERVICE SHALL BE AT YOUR SOLE RISK, AND SERVICE IS PROVIDED BY EMPOWER ON AN "AS IS" BASIS.

c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EMPOWER MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, TO YOU OR TO ANY OTHER PERSON, AS TO SERVICE OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY, AND EMPOWER HEREBY DISCLAIMS ANY AND ALL OF THE SAME. YOU AGREE NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY EMPOWER EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR SERVICE TO BE PERFORMED PURSUANT HERETO.

d) TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH EMPOWER'S LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EMPOWER'S LIABILITY TO MEMBER(S) UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM EMPOWER'S FAILURE TO EXERCISE ORDINARY CARE.

e) EMPOWER 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 COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH SERVICE, INCLUDING, BUT NOT LIMITED TO, YOUR MOBILE DEVICE OR RELATED EQUIPMENT, YOUR SOFTWARE, OR YOUR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF EMPOWER'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE 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) EMPOWER SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, YOUR MOBILE DEVICE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY EMPOWER TO YOU IN CONNECTION WITH THIS AGREEMENT; OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM YOU TO EMPOWER, FROM EMPOWER TO YOU, FROM YOU TO ANY PROCESSOR, FROM ANY PROCESSOR TO EMPOWER, OR OTHERWISE. EMPOWER SHALL NOT BE RESPONSIBLE FOR NOTIFYING YOU OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF YOUR MOBILE DEVICE HARDWARE OR SOFTWARE.

**Change in Terms:** We may change the terms, conditions, and charges for the Service indicated in this disclosure and agreement by notifying you of such change, in a manner we deem appropriate given the circumstances, and may amend, modify, add to, or delete from this disclosure and agreement from time to time. **Your use of the Service after our delivery of any notification of change constitutes your acceptance of the change.** You agree that we do not have an obligation to demonstrate or prove that you received or viewed a particular change before it becomes enforceable against you.

**Termination of the Service:** You may, by written request, terminate the Service provided for in this disclosure and agreement. At our sole discretion, we may revoke your privilege of the Service at any time. In the event of termination of the Service, you will remain liable for all transactions performed on your account.

**Relationship to Other Disclosures:** The information in this disclosure applies only to the Service described herein. Provisions in other disclosure documents, as may be revised from time to time, remain effective for all other aspects of the account.

**Governing Law:** You understand and agree this disclosure and agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of New York, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary.

**Attorneys' Fees:** In the event of any 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.

**Periodic Statement:** Any mobile deposits made through the Service will be reflected on your monthly account statement. You understand and agree that you are required to notify us of any error relating to images transmitted using the Service within 33 days after receipt of your monthly periodic statement which includes any alleged erroneous transaction(s). You are responsible for any errors you fail to bring to our attention within such time period.

**Confidentiality:** You acknowledge and agree that confidential data relating to strategies, business operations, and business systems (collectively, "Confidential Information") may come into your possession in connection with this disclosure and agreement and your use of the Service. You also



understand and agree that you are prohibited from disclosing and agree to maintain the confidentiality of our confidential information.

**Waiver:** Our failure to seek a redress for violation, or to insist upon the strict performance of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms, or of the terms of any other covenant, agreement, provision, or condition, and we shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

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

**Fees:** You will pay any fees related to the Service as they are listed in the Fee Schedule for the Service. You also understand we may, at any time, add, increase, alter, or otherwise charge or change a fee and other amounts for the Service any time or from time to time.

**Short Message Service (SMS or Text Messages) and Emails:** You acknowledge Empower and our service providers are not responsible for the security and/or confidentiality of transaction information sent to or stored on your mobile telephone, sent to your email address, or stored on your mobile device. **You authorize us and our service providers to deliver information, such as a short message service (also known as SMS or text message), or email messages regarding mobile transactions to mobile telephone or internet service providers in order to facilitate the mobile service to you.** Empower and our service providers are not responsible for any errors or delays caused by the use of SMS or email messaging, caused by your mobile telephone, the Internet service provider, or any other third party. In addition, you acknowledge while we do not charge for SMS/text messages, your mobile carrier's standard text messaging rates will still apply. This means, depending on your particular contract with your mobile carrier, you may be charged per text message, or if you go over the text message limit set by your carrier, you could be charged. You acknowledge access to, and use of, the mobile deposit system is subject to the terms and conditions set forth in this disclosure. The use of the mobile deposit system signifies your acceptance of these terms and conditions. If you do not agree to these terms, you should not access or use the system and notify us immediately to withdraw from access.