



## MOBILE DEPOSIT CAPTURE AGREEMENT

Read this Agreement Carefully. Deposit of any items not allowed per “Eligible Items and Prohibited Items” on page 5; or the failure to endorse each item exactly as required per “Endorsements, Requirements and Procedures” on pages 5-6 will result in rejection of all items presented that do not meet the standards and requirements in this Agreement.

This Mobile Deposit Capture Agreement ("Agreement") contains the terms and conditions for the use of mobile deposit capture services that Kahului Federal Credit Union (“Credit Union” hereafter), and “Member” as defined below, may provide to you.

**General Terms and Conditions Agreement:** This agreement establishes the rules that govern the processing of deposited checks through member’s checking or savings account(s) at the Credit Union using Mobile Deposit. Other agreements you have entered into with Credit Union, including your Membership Agreement, as amended from time to time, are incorporated by reference and made a part of this Agreement.

**Rules, Laws and Regulations:** You agree to abide by and comply with all local, state, and federal rules, laws and regulations. These rules include but are not limited to Regulation CC “Expedited Funds Availability Act”, its Subparts B, C and D (Subpart D implements the Check Clearing for the 21st Century Act (Check 21 Act). The Bank Secrecy Act (BSA), and laws administered by the United States of America which are in existence as of the date of this agreement and as amended from time to time.

**Definitions:** In addition to all the other terms defined herein, the following terms shall have the following meanings:

1. “We”, “Our”, “Us”, and “Credit Union” shall mean Kahului Federal Credit Union, its employees, directors, officers, representatives, volunteers and agents.
2. “You”, “Your”, and “Member” shall mean the account holder authorized by Credit Union to use the Mobile Deposit, and any user authorized to exercise control over funds deposited in member’s account through the Mobile Deposit program.
3. “Account” or “Accounts” shall mean the account holders checking or savings account(s) deposited with Credit Union through the Mobile Deposit program.
4. “Check” or “Checks” shall mean negotiable demand draft(s) drawn or payable through an office of a United States based financial institution, as well as demand draft(s) drawn on a Federal Reserve Bank or a Federal Home Loan Bank or on the Treasury of the United States. Check(s) include original check(s) and substitute check(s). Check(s) do not include noncash items payable in a medium other than United States dollars. A draft may be a check even though it is described on its face by another term, such as “money order.”
5. “Image item” means digitized image(s) of check(s) that are created by you and transmitted to the Credit Union using the services.

6. "Services" means any of the Mobile Deposit functions offered and or used by you in connection with this agreement, including optional and future services added by an addendum.
7. "System" means the program that is maintained by the Credit Union, or other third parties, that you connect to through the internet in order to access the services.
8. Mobile Remote Deposit may be commonly referred to as Mobile Deposit.

**Services and Funds Availability:** Once approved for the Mobile Deposit program, you may use the services to deposit checks into your checking or savings account(s) with the Credit Union, subject to the terms of this agreement. Checks deposited through the services will be converted to image items for processing. The services are subject to transaction limitations and the Funds Availability Disclosure, as set forth in the Membership Agreement and Truth-In-Savings schedule, which govern the use of your account. We are notifying you in advance that deposits made by the Mobile Deposit program do not fall under the standard provisions of Regulation CC – Expedited Funds Availability Act.

**Availability of Funds:** Scanning and submitting check image deposits does not constitute receipt of the deposit by the Credit Union. Generally, check/item deposits received prior to 2:00 p.m. Hawaii Standard Time are processed on the business day of receipt. Any check image deposit received after this time or on Saturdays, Sundays, and holidays when the Credit Union is closed will be processed on the Credit Union's next business day. Acknowledgment that your check image deposit has been received by the Credit Union does not mean that the check image deposit was received error free.

Subject to our right to hold funds as otherwise provided under this agreement and the deposit account agreements, availability of credit from items processed under this agreement will be subject to our Funds Availability Policy previously provided to you as set forth in your Membership Agreement and Disclosures, which may be amended from time to time. Regardless, you understand that credit is provisional until settlement of the items is finalized; before using any funds by any access methods you should check to ensure you have available funds to cover any transactions you make. Please review your account history for deposit information.

**Returned Deposits:** Any credit to your account using Mobile Deposit is provisional. If a check deposited through Mobile Deposit is dishonored, rejected, or otherwise returned as unpaid by the drawee bank, or the item is rejected, or 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 agree that an original check will not be returned to you, but that we may charge back the amount of the original check and provide you with an image of the original check, a paper reproduction of the original check or a substitute check. You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned item. Without our approval, you shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to you.

We may debit any of your accounts, including any shares accounts to obtain payment for any item that has been rejected or returned, for any adjustment related to such item or for any warranty claim related to such item, whether or not the rejection, return, adjustment or warranty claim was made timely.

**Access:** To use Mobile Remote Deposit, you must have a compatible mobile device with our system, access to telecommunication services necessary for the Mobile Deposit service. Application upgrades may be required from time-to-time for continued use of the services.

**Equipment or System Failure:** In the event of a system failure, you agree that, in order to deposit your checks, you must deliver them directly to our Credit Union for processing. If the checks were scanned prior to the system failure, you must obtain our approval before delivering the checks to our branch for processing.

**Hours of Access:** Services are available 24 hours per day, 7 days per week, although some or all services may not be available occasionally due to emergency or scheduled system maintenance. Transmission deadlines and funds availability terms and conditions apply. We agree to post notice of any extended periods of non-availability on the Mobile Deposit and or Credit Union website.

**Transmission Deadlines:** Transmissions originate from our Credit Union in Maui, Hawaii. Image item deposits initiated through the System before 2:00 p.m. Hawaii Standard Time on a business day are posted to member's account the same day, subject to funds availability. In the event that we receive an image item from you after 2:00 p.m. Hawaii Standard Time, or on a day that is not a business day, the Image item is considered as received by us at the opening of the next business day. For the Mobile Deposit program, a business day is described as Monday through Friday, except for Federal holidays. Although Hawaii does not observe Daylight Savings Time, you are responsible for understanding and building into your transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

**Authorized Users:** The Credit Union shall be entitled to rely on the apparent authority of any person who accesses the services using valid member and user login IDs and passwords, including such persons who may not be signers on member's account. Except as otherwise provided by law, you will indemnify Credit Union and hold it harmless for any loss or expense caused by any person with the apparent authority to access the services. You agree to provide each authorized user a copy of these terms in connection with their use of the services. The Credit Union may elect to verify the authenticity or content of any transmission by placing a call to any authorized signer on your account at our discretion. We may deny your access to the services without prior notice if we are unable to confirm any person's authority to access the services or if we believe such action is necessary for security reasons.

**Security:** You understand the importance of your role in preventing misuse of your accounts associated with the Mobile Deposit program, and you agree to promptly examine your paper or electronic statement for each of your Credit Union accounts as soon as you receive it and notify us of any errors in accordance with your Account Membership Agreement. You agree to protect the confidentiality of your accounts and account number and passwords. Data transmitted via the services is encrypted in an effort to provide transmission security. Mobile Deposit utilizes identification technology to verify that the sender and receiver, of transmissions related to the services can be appropriately identified by each other. Notwithstanding our efforts to ensure the services are secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the internet and potentially can be monitored and read by others. We cannot, and do not, warrant that all data transfers utilizing Mobile Remote Deposit, or e-mail transmitted to and from us will not be monitored or read by others. You agree to notify us immediately if you believe any passwords have been lost, stolen, used without your permission, or otherwise compromised. Call us immediately at the number in the contact information section of this agreement.

**Use of Services:** As a condition to using the services, you agree that you are solely responsible for the use of the Services and that you will use the Services in accordance with this agreement. You agree not to attempt to circumvent the security features of the services or the system or make any improper or unauthorized transfer of funds from accounts via the services or the system. You agree that you are prohibited from engaging in conduct that would violate the proprietary rights of the owner(s) of the system and the services as well as accessing or using the system or the services in any other unauthorized manner. You agree to be liable to the Credit Union and its vendors, for any claims, losses, liabilities, damages, expenses or costs arising as a result of the negligent or intentional misuse of the services or the system by you or your authorized users.

You are prohibited from using the services for any activity that:

- Would result in you being or becoming a “money service business” as defined in the Bank Secrecy Act and its implementing regulations;
- Knowingly accepting restricted transactions in connection with another person in unlawful Internet gambling as defined in the Unlawful Internet Gambling Enforcement Act and Regulation GG (Prohibition on Funding of Unlawful Internet Gambling); or
- Directly or indirectly related to the use of the services that is illegal or fraudulent.

**Deposit of Original Checks:** You agree that no check deposited to the Credit Union shall cause funds to be debited more than once from the account of the maker. You agree that the original check, a duplicate check image, or any copy of the original check or check image will not be deposited by you with the Credit Union (unless we instruct you to do so) or under any circumstances with any other financial institution.

**Check Retention Period:** You agree that you will preserve the originals of all checks, processed through the services pursuant to this agreement for fifteen (15) calendar days after the day of deposit (“Retention Period”). After you receive the “Deposit Successful” message, write “Mobile Deposit” on the check front. The risk of loss due to the unavailability of the original or copy of a check for any reason, during the retention period, shall be exclusively on the member.

**Destruction of Original Checks:** You will be fully responsible for the destruction of the checks. You agree to use commercially reasonable method(s) to destroy original checks after the required retention period has expired. You agree to destroy and dispose of the original checks with a high degree of care, including selecting and implementing appropriate destruction and disposal procedures. You are required to implement such procedures to ensure that the original checks are not accessed by unauthorized persons during the storage, destruction and disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed (e.g., through the use of competent shredding equipment). The risk of loss associated with the accidental inclusion of a physical check in the check collection process or with a lost, destroyed, stolen or misplaced check shall be exclusively on the member.

**Member Representations and Warranties:** You represent and warrant that all checks transmitted through the use of the services are made payable to the member, all signatures and endorsements on each check are authentic and authorized, and each check has not been altered.

**Eligible Items and Prohibited Items:** You agree to scan and deposit only "checks" as that term is defined in Federal Reserve Regulation CC ("Reg. CC"). When the image of the check transmitted to Credit Union is converted to an Image Replacement Document for subsequent presentment and collection, it shall thereafter be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code (UCC).

You agree that you **will not scan** and deposit any of the following types of checks or other items which shall be considered **ineligible items**:

- Cashier's/Teller's Checks
- Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into.
- Checks containing an alteration on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
- Checks payable jointly, unless deposited into an account in the name of all payees.
- Checks previously converted to a substitute check, as defined in Reg. CC.
- Checks drawn on a financial institution located outside the United States.
- Checks that are remotely created checks, as defined in Reg. CC.
- Checks not payable in United States currency.
- Checks dated more than 6 months prior to the date of deposit.
- Checks that are "postdated" after the date of deposit.
- Checks or items prohibited by Credit Union's current procedures relating to the Services or which are otherwise not acceptable under the terms of your Credit Union account. This includes any check that not produced by an approved vendor under Section 7.h of the Membership Account Agreement and Disclosures or by any other vendor that we in our sole discretion deem not to be a reputable check printer. Further prohibited are any items that lack a perforated edge; and checks that are not machine readable with an industry standard MICR code.
- Checks payable on sight or payable through Drafts, as defined in Reg. CC.
- Checks with any endorsement on the back other than that specified in this agreement.
- Checks that have previously been submitted through the Service or through a remote deposit capture service offered at any other financial institution.
- Checks or items that are drawn or otherwise issued by the U.S. Treasury Department
- Checks that are prohibited by the Credit Union's current Membership Agreement with you.
- Checks that are in violation of any federal or state law, rule, or regulation.
- Checks that are credit card advance or other loan advance instruments.
- Checks requiring signature and/or additional identification.
- Checks that have been re-deposited or returned for any reason such as "non-sufficient funds" or "refer to maker".
- Money Orders
- Travelers Checks
- Savings Bonds

**Endorsements, Requirements and Procedures:** You agree that you will use the Mobile Deposit service to scan only original checks payable to and properly endorsed by you by signing your name(s) and writing "**FOR KFCU MOBILE DEPOSIT ONLY**" **Account Number/DATE** under your endorsement, drawn on financial institutions in the United States with a valid ABA/Routing Number and denominated in U.S. Dollars, and intended for deposit by you to your designated account with the Credit Union. All other items may be deposited by alternate methods such as in person.

Each image must provide all information on the front and back of the original check at the time presented to you by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the original check, MICR information, signature(s), any required identification written on the front of the original check and any endorsements applied to the back of the original check. The image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association. You agree to follow any and all other procedures and instructions for use of the Services as Credit Union may establish from time to time.

**Image Quality:** You are responsible for inspecting and verifying the quality of the images associated with image items, thus ensuring that the digitized images of the front and back of original checks are legible for all posting and clearing purposes by the Credit Union. Specifically, you are representing and warranting to Credit Union that:

- The image item is an accurate representation of all information on the front and back of the original check at the time the original check was converted to an image item, and the image item contains all endorsements from the original check necessary to permit Credit Union to:
- Acquire rights of a holder in due course in the collection process of checks and other items;
- Handle, process, maintain and destroy original checks; and
- Ensure that neither Credit Union nor any other financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for a check or image item more than once in any form.

Each image item (or related electronic data file) contains a record of all MICR line (special characters printed on the bottom of a check) information required for a substitute check and otherwise satisfies all of the requirements of the American National Standards Institute (ANSI) X9.37 standards for image quality required by Check 21 and Regulation CC for the creation and/or transferring of a substitute check created from that Image item;

**Adjustments:** Once an image item is captured, the system will display captured encoded fields for your review. You will be required to make corrections to encoding not read or missing from the scanned check, including entering the legal amount of the check. We reserve the right to adjust your deposit after you have submitted it for processing. Adjustments are to correct mistakes in the value of image items deposited, mistakes in encoding, or for missing or illegible image items.

**Termination:** We are permitted to terminate any or all of the services immediately should you breach any part of this agreement or of the membership agreement. We are also permitted to terminate any or all of the services immediately if we are no longer able to provide such services.

**Confidentiality:** You acknowledge that we will disclose information to third parties about Your account or the image items you deposit:

- To enable Your access to the services and the system,
- When it is necessary for completing deposits, and
- As required by law.

NOTE: Items deposited using Mobile Deposit is subject to our verification and final inspection process. We may at any time deposit an image item or return all or part of a deposit of multiple image items to you without prior notice. We are under no obligation to inspect or verify any image item to determine accuracy, legibility or quality of the image item or MICR line information associated with the image item, or for any other purpose. However, we may correct or amend MICR line information associated with an image item to facilitate processing of the image item or a substitute check created from that image item. We may process and collect an image item or a substitute image item through one or more check clearing houses, Federal Reserve Banks, or other private clearing agreements with other financial institutions. We may hold and use funds in any deposit account of yours following termination of this Agreement and the services for such time as we reasonably determine to be necessary for us to be assured that no image item processed by us prior to termination may be returned, charged back, or otherwise become a source or cause for any loss, liability, cost, exposure or other action for which the Credit Union may be responsible, with such right being in addition to any other rights we may have with respect to your accounts. Without limitation, you recognize that under the Rules, the UCC, Regulation CC and the rules of any image exchange network, our representations and warranties to others with regards to image items and substitute checks may expose the Credit Union to claims for several years following processing of any particular image item or substitute check.

If a payor financial institution returns an image item to us for any reason, we may charge your applicable account for the returned image item, whether or not the return is timely and proper, and we may further either: return the image item to you; or re-present it to the payor financial institution before returning it to you.

**You also agree that:**

- Items may be returned as image items, rather than substitute checks, as agreed by the parties. If a payor financial institution or other third party makes a claim against us or seeks a re-credit with respect to any image item processed, we may provisionally freeze or hold aside a like amount in the applicable account pending investigation and resolution of the claim;
- We may immediately suspend the services or the system or the processing of any check or corresponding electronic image item if we have reason to believe that there has been a breach in the security of the services or system, fraud involving your account(s) or check(s), or any uncertainty as to the authorization or accuracy of electronic image items, including the right to process electronic image items on a collection basis at any time; and
- We may refuse to process any non-conforming image items, including without limitation any image items that do not meet the definition of a "check" or endorsement as set forth herein.

**Contact Information:** Notifications required by this agreement are to be directed to us at the address or phone numbers listed below.

Kahului Federal Credit Union 25 W. Kamehameha Avenue, Kahului, HI 96732 (808) 871-7705.

**Disclaimer of Warranty and Limitation of Liability:** We make no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with the Mobile Deposit Services provided to you under this agreement. We do not and cannot warrant that Services will operate without errors, or that any or all services will be available and operational at all times.

Except as specifically provided in this agreement, or otherwise required by law, you agree that our officers, directors, employees, volunteers, agents, representatives or contractors are not liable for any indirect, incidental, special or consequential damages under or by reason of any services or products provided under this and or by reason of your use of or access to Mobile Deposit Services. The Credit Union shall be responsible only for performing the services expressly provided for in this agreement and shall be liable only for its negligence in performing those services. The Credit Union shall not be responsible for the member's acts or omissions (including without limitation the amount, accuracy, or timeliness of transmittal) or those of any person, including without limitation any Federal Reserve Financial Institution or transmission or communications facility, and no such person shall be deemed the Credit Union's agent. The member agrees to indemnify the Credit Union against any claims, damages, loss liability, or expense (including attorney's fees and expense) resulting from or arising out of any claim of any person that the Credit Union is responsible for any act or omission of the member, or any other person described in this paragraph. In no event shall the Credit Union be liable for any consequential, special, punitive or indirect loss or damage which the member may incur or suffer in connection with this Agreement, including without limitation, loss of damage from subsequent wrongful dishonor resulting from the Credit Union's acts or omissions pursuant to this Agreement. Without limiting the generality of the forgoing provisions, or the provisions of this Agreement, the Credit Union shall be excused from failing to act or from delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond the Credit Union's control. In addition, the Credit Union shall be excused from failing to transmit or delay in transmitting a deposit if such transmittal would result in the Credit Union violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other United States governmental regulatory authority. Notwithstanding any other provision set forth herein to the contrary, in the event of default under the terms of this agreement by the member, the Credit Union shall have all rights and remedies available at law or in equity.

**Governing Law:** This Agreement shall be construed in accordance with Hawaii law and the laws of the United States of America. Severability

If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future laws, the remaining provisions shall remain in full force and effect.

**Acceptance:** Your use of the services constitutes your acceptance of this agreement. The credit union reserves the right to change the terms for the services described in this agreement by notifying you of such change in writing and we may amend, modify, add to, or delete from this agreement from time to time. Your continued use of the services will indicate your acceptance of the revised agreement.