

# SMART DEPOSIT AGREEMENT

This Agreement contains the terms and conditions for the use of AmeriCU Credit Union's remote deposit capture service, Smart Deposit, that AmeriCU Credit Union ("AmeriCU" "us" or "we"), its partners or its affiliates may provide to you ("you" or "user"). Other agreements you have entered into with, including the Depository Agreement and Disclosures governing your account, are incorporated by reference into this Agreement.

1. **Services.** "Smart Deposit Services" ("Services") means the software, hardware and procedures that allow you to electronically capture checks and deposits using a check scanning device and convert the checks and deposits into electronic images, balance the checks and deposits captured, electronically inspect images for quality and transmit the images to AmeriCU for deposit and forward collection.
2. **Acceptance of these Terms.** Your use of the Services constitutes your acceptance of this Agreement. This Agreement is subject to change from time to time. We will notify you of any material change via e-mail or on our website(s) by providing a link to the revised Agreement. Your continued use of the Services will indicate your acceptance of the revised Agreement. Further, AmeriCU reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Services. Your continued use of the Services will indicate your acceptance of any such changes to the Services.
3. **Eligibility for Service.** To use this Service, you must adhere to the following:
  - a. Have a Credit Union membership account in good standing (good standing to be determined by the Credit Union in its sole and absolute discretion).
  - b. Have a qualifying membership account.
  - c. Be registered to use AmeriCU's Online Service.
4. **Limitation of Service.** When using the Services, you may experience technical or other difficulties. We cannot assume responsibility for any technical or other difficulties or any resulting damages that you may incur. Some of the Services have qualification requirements, and we reserve the right to change the qualifications at any time without prior notice. We reserve the right to change, suspend or discontinue the Services, in whole or in part, or your use of the Services, in whole or in part, immediately and at any time without prior notice to you.
5. **Governing Transactions.** Except as otherwise provided in this Agreement, AmeriCU will transmit and process the electronic entries initiated by the member in accordance with the rules of Check 21 Act, FRB Regulation CC - 12 CFR 229, National Clearing House Association (NACHA), American

National Standards X9 specification, Federal Reserve Bank, UCC Article 3 and 4 and any network association agreements as are currently in effect and as amended from time to time (the "Rules").

6. **Eligible Items.** You agree to scan only checks as defined by 12 C.F.R. 229.2(c) or any other section of Regulation CC that might apply. Furthermore, you agree to transmit scan and deposit checks in accordance with the rules set forth by the Check 21 Act, National Clearing House Association (NACHA), American National Standards X9 specification, Federal Reserve Bank, UCC Article 3 and 4 as adopted by the State of New York. The image of a check transmitted by you will be deemed an "item" within the meaning of UCC Article 4.

You will not initiate an electronic check entry without first being authorized as required by this Agreement or law, or in possession of a proper check or substitute check, which is made payable to You. You will retain the authorization form, check or substitute check as prescribed in this Agreement, and upon AmeriCU's request, will furnish AmeriCU or those regulatory agencies having jurisdiction over AmeriCU with a copy of authorization, check or substitute check.

You agree not to use the Services to deposit the checks or items listed below or any other checks or items that are not defined above:

- a. Checks or items payable to any person or entity other than you.
- b. Checks or items drawn or otherwise issued by you or any other person on any of your accounts or any account on which you are an authorized signer or joint account holder held at AmeriCU Credit Union.
- c. Checks or items containing obvious alteration to any of the fields 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 or item is drawn.
- d. Checks or items previously converted to a substitute check, as defined in Reg CC.
- e. Checks or items drawn on a financial institution located outside the United States.
- f. Checks or items that are remotely created checks, as defined in Reg CC.
- g. Checks or items not payable in United States currency.
- h. Checks or items dated more than 6 months prior to the date of deposit.

- i. Checks or any other items prohibited for deposit by current AmeriCU procedures, rules or otherwise unacceptable under the terms of your AmeriCU account.
7. **Image Quality.** You agree to transmit legible images to AmeriCU that meet ANS X9 standards, the requirements of the Federal Reserve Board or the requirements of any other regulatory agency, clearing house or associations. Images not meeting these standards may be rejected and returned to you without any liability for such rejection and/or return to AmeriCU.
8. **Endorsement and Procedures.** You agree to restrictively endorse any item transmitted through the Services.
9. **Availability of Funds.** You agree that items transmitted using the Services are not subject to funds availability as described in the AmeriCU Funds Availability Policy. Check images deposited to your account using a mobile device, with the exception of checks on the AmeriCU Approved Payroll List, will receive a one day business hold for the first \$200 and anything over \$200 will be placed on a two business day hold.

RDC transactions may be subject to extended holds pursuant to AmeriCU policy.

10. **Disposal of Transmitted Check or Item.** Upon your receipt of a confirmation from AmeriCU that we have received the image of an item, you agree to save in your records for 90 days. Properly dispose of or file the item to ensure that it is not represented after this time.
11. **Deposit Limits.** Deposit limits are set at the sole discretion of AmeriCU. We reserve the right to modify these limits from time to time.
12. **Hardware and Software.** In order to use the Services, you must obtain and maintain, at your expense compatible hardware and software as specified by AmeriCU. AmeriCU reserves the right to modify hardware and software requirements from time to time. AmeriCU is not responsible for any third party software accepted by you.
13. **Errors.** AmeriCU will make every effort to assist you in resolving transmission and posting errors, but all adjustments will be made in accordance with AmeriCU's Depository Agreement with you and Regulation CC.
14. **DISCLAIMER OF WARRANTIES.** YOU AGREE THAT YOUR USE OF THE SERVICES 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. IN NO EVENT SHALL AMERICU, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES BE LIABLE OR RESPONSIBLE FOR

CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS (WHETHER THE CLAIM IS IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER OR NOT AMERICU WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES). AMERICU MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY OF ANY OF THE SERVICES OR SOFTWARE PRODUCTS FOR A PARTICULAR PURPOSE, OR AS TO THE SUITABILITY OR COMPATIBILITY OF AMERICU'S SOFTWARE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE USED BY YOU.

15. **LIMITATION OF LIABILITY.** YOU AGREE THAT WE 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 RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES 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 THIS SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF AMERICU HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.
16. **User Warranties and Indemnification.** You agree and warrant (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that no depository institution, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the institution, drawee, drawer, or endorser will be asked to make a payment based on a check that the institution, drawee, drawer, or endorser has already paid. You agree that you will maintain practices to ensure that the check images captured and transmitted to and through AmeriCU into its correspondent institutions, participating Image Exchange Network and the FRB meet all of the requirements as defined by Check 21 Act, Section 5, and will maintain operating procedures to ensure that the original checks and substitute checks transmitted are stored and destroyed in a timely manner to prevent the presentment of a check that a financial institution, drawee, drawer or endorser has paid.