

# Trademark Federal Credit Union

Updated December 2018

## I. ONLINE BANKING, MOBILE BANKING, REMOTE DEPOSIT CAPTURE (RDC) SERVICE & ONLINE BILL PAYMENT AGREEMENT AND DISCLOSURE

This Trademark Online Banking, Mobile Banking, Remote Deposit Capture & Online Bill Payment Agreement and Disclosure (the “Agreement”) states the terms and conditions that you agree to by using our Trademark Online Banking, Mobile Banking, Remote Capture Deposit and/or Online Bill Payment services (together, the “Services”). This Agreement supplements and does not replace the Trademark FCU Membership Account Agreement and Disclosures, and any other agreement between you and Trademark FCU.

The terms “you” and “your” refer to any person subscribing to the any of the Services. The terms “we”, “us”, “our”, and “Credit Union” refer to Trademark FCU. The term Trademark Mobile Banking refers to our service that allows you to access your Trademark FCU accounts and perform transactions via your personal computer or Device (defined below) with web browsing/internet capabilities.

“Account(s)” means your eligible Trademark Federal Credit Union savings, checking, money market, IRA, share certificate, loan or other product information which can be accessed through Online or Mobile Banking.

“Device” means a supportable mobile device including a cellular phone, smart phone, or other mobile device that is web-enabled and allows Secure Sockets Layer “SSL” traffic capable of receiving text messages. Your wireless carrier may assess fees for data, messaging, or web services. Please consult your wireless plan provider for details.

“Website” means Trademark Federal Credit Union’s website: <https://www.trademarkfcu.org>

**Please read this entire Agreement prior to using the Services. By using any of the Services, you acknowledge your receipt and understanding of this disclosure and agree to all applicable terms and conditions of this Agreement.**

### **AGREEMENT:**

This Agreement contains the terms that govern your use of the Services. You may use the Services to access your accounts through the Internet or via your Device. By using any of the Services, you are agreeing to the terms of this Agreement which supplements the terms and agreements of your Account(s) to which you have previously agreed. Examples of accounts that you may elect to access include deposit accounts and loan accounts. Your accounts will continue to be subject to the agreements otherwise governing them, except where it is noted in this Agreement. Additionally, each Account and your use of the Services will be subject to the following:

- The terms or instructions appearing on a screen when using the Services.
- Trademark rules, procedures and policies applicable to each account and the Services.
- The rules and regulations of any funds transfer system used in connection with the Services and all applicable state and federal laws.

This Agreement is subject to applicable federal laws and the laws of the state of Maine (except to the extent that this agreement can and does vary such rules or laws).

### **Online Banking Access (Trademark Online)**

You may access your Account through the Website to obtain balances, transaction history, and other information for all accounts under your Member Number. All Accounts will be linked by the means of the Member Number. Accounts that are linked together will appear together regardless of the ownership of those accounts.

### **Mobile Banking (Trademark Mobile)**

Mobile Banking is offered as a convenience and supplemental service to our Online Banking services. It is not intended to replace access to Online Banking from your personal computer or other methods you use for managing your accounts and services with us. Mobile Banking may allow you to access your Credit Union account information, make payments to payees, transfer funds and conduct other banking transactions. To utilize Mobile Banking services, you must be enrolled in Online Banking. We may modify the Service from time to time at our sole discretion. In the event of any modifications, you are responsible for making sure you understand how to use Mobile Banking as modified. You also accept responsibility for making sure that you know how to properly use your Device and we will not be liable to you for any losses caused by your failure to properly use the Service or your Device

We reserve the right to limit the types and numbers of accounts eligible and the right to refuse to make any transaction you request through Mobile Banking. We may also reserve the right to modify the scope of the Services at any time.

Mobile Banking may not be accessible or may have limited or delayed service over some network carriers. Mobile Banking may also not be supported by all Devices. Trademark cannot guarantee and is not responsible for the availability of data services provided by your mobile carrier, such as data outages or “out of network” issues.

### **Additional Mobile Banking Agreements**

You agree that when you use Mobile Banking, you remain subject to the terms and conditions in your existing agreements with any unaffiliated service providers, including your mobile service provider, and that the Agreement does not amend or supersede any of those agreements. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (such as data usage or messaging charges imposed on you by your mobile service

provider). You also agree to be solely responsible for all such fees, limitations and restrictions. You agree that only your mobile service provider is responsible for its products and services and you also agree to resolve any issues or problems with your provider directly with the provider without involving us. You agree to review your account disclosures carefully, as they may include transaction limitations and fees which may apply to your use of Mobile Banking.

### **Equipment and Technical Requirements**

It is your responsibility to acquire the software or equipment necessary to use the Services you select.

To access Trademark FCU Services and to perform transactions, you must have an Internet access with a web browser that supports 256-bit encryption. You acknowledge that access to the Services and the availability of Services hereunder is at all times conditioned upon the availability of the computer services, software and system used to communicate your instructions and Trademark's responses.

We do not guarantee the compatibility of the Services with all modem types, mobile devices, computer systems, internet browsers, hardware and/or software. You are responsible for obtaining and properly installing and maintaining all telephone equipment and services, wireless services, internet connection services, computer hardware and software, and all necessary upgrades thereto, and all other equipment necessary for you to access and use the Services.

**TRADEMARK FCU WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE INCURRED OR SUFFERED BY YOU AS A RESULT, DIRECTLY OR INDIRECTLY, OF ANY FAILURE, INTERRUPTION, SUSPENSION OR TERMINATION OF SUCH SERVICES OR SYSTEMS FOR WHATEVER REASON, INCLUDING BUT NOT LIMITED TO THE ACTS OR OMISSIONS OF THE SERVICE OWNER OR ANY THIRD PARTY.**

You can download the latest browser software at the following sites:

- Internet Explorer
- Firefox
- Chrome
- Safari

### **Account Eligibility and Enrollment**

Trademark Mobile Banking is available to any person who has subscribed to Trademark FCU's Online Banking Service and has a web-enabled mobile phone device whose network allows secure SSL traffic. Enrollment will be completed by creating an Online Banking account at [www.trademarkfcu.org](http://www.trademarkfcu.org). From there you will download the appropriate application ("app") for your IOS or Android compatible Device and enter your Internet Home Banking Username and Password. Trademark reserves the right to condition eligibility for RDC Services based upon certain risk factors and other reasons in the exercise of its discretion.

To enroll in Home Banking, you must provide a valid email address. It is your responsibility to notify us immediately if any of your information changes, including but not limited to your cell phone number and email address.

**Logging into Trademark Mobile Banking**

Download the appropriate application (“app”) for your IOS or Android compatible Device and enter your Internet Home Banking Username and Password.

**Account Ownership/Accurate Information**

You agree that you are the legal owner of the Accounts and other financial information which may be accessed via the Services. You agree that all information provided to us in connection with Online or Mobile Banking is accurate, current and complete, and that you are required to provide such information to us for the purpose of the Services. You agree you will keep Trademark informed on any changes to your email address. You agree not to misrepresent your identity or your account information as well as keeping your account information up to date and accurate. You agree that you are an authorized user of the Device. You are responsible for all transactions you authorize using the Services under this Agreement. If you permit others to use your log in or password you are responsible for any transactions they authorize or conduct on any of your Accounts. Trademark has the right to rely upon the access of Online or Mobile Banking using log in and password information as legitimate and authorized use.

**Security; Liability for Access**

You agree to take every precaution to ensure the safety, security and integrity of your account and transactions when using Online and Mobile Banking. You agree you will not give out account information, user log in or passwords, leave your computer or Device unattended while on Online or Mobile Banking, allow your computer or Device to store your user name and password, leave account information in view or range of others, nor will you send any private account information via a public or general email system. You agree to log off immediately at the completion of each access of the Services by you. You agree not to provide your username, password or other access information to any unauthorized person. If you allow access to any Service to an unauthorized user, you will be responsible for any transaction they authorize and we will not be liable for any damages as a result. You agree not to use any personally identifiable information when creating shortcuts to your Account.

We require that you change your password regularly. We are entitled to act on instructions received under your password. For security purposes, it is recommended that you memorize your password and do not write it down. You are responsible for keeping your password and account information confidential. If you believe that your password may have been lost or stolen, or that someone has transferred or may transfer money from your account without your permission, or if you suspect any fraudulent activity on your account, notify us immediately by calling 1.800.696.1146. You may also notify us in writing at Trademark FCU, P.O. Box 1056, Augusta, ME 04332.

We make no representation that any content or use of Services is available in locations outside the United States. Accessing Services from locations outside the United States is at your own risk.

**Permitted Online or Mobile Banking Transfers**

You may use the Service to transfer funds between your eligible Trademark accounts. You may transfer to or from an Account at another financial institution using Online or Mobile Banking. You must have sufficient funds available in the selected accounts at the time the transfer is received, including available overdraft protection (if applicable). We may process transfers that exceed your available balance at our sole discretion. Applicable fees may apply as permitted by Law. Money Market and Christmas Club accounts may have fees associated with excessive withdrawals. Online and Mobile Banking transfers count towards the number of withdrawals allowed and a fee may be charged if the withdrawal is over this limit. We may also limit the type, frequency and amount of transfers for security purposes and may change or impose the limits without notice, at our option as permitted by law. You agree to confirm the completion of each transfer in your account balance and transaction history before withdrawing transferred funds.

### **Hours of Accessibility**

In general, Trademark Online and Mobile Banking Services are accessible 24-hours per day, seven days a week; however, Trademark FCU does not guarantee that these Services will be available at all times. Occasionally, due to system maintenance, improvement, or reasons beyond our control, the Trademark Mobile and Online Banking Services may be unavailable.

Transfers between Trademark Accounts are processed seven (7) days a week; all other transactions are processed on business days only. Every day is a business day except Saturdays, Sundays, and Federal Holidays. A bill payment initiated before 5:00 p.m. EST on a business day will be processed on the same day. A bill payment completed after 5:00 p.m. EST on a business day or completed at any time on a non-banking day, as specified above, will be processed on the next business day.

## **Errors**

In case of errors or questions about your use of our Online or Mobile Banking Services, telephone us at 1-800-696-1146, write us at P.O. Box 1056, Augusta, ME 04332 or E-mail us at: MemberServices@trademarkfcu.org as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt.

We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

## **Joint Accounts**

A Trademark Online PIN is issued to both to the primary account holder and any additional joint Account Owner on any Account and offers access to those Accounts owned, including jointly owned, by that Member, as described in the Membership Agreement. You should not disclose your PIN to any joint account holder of your Account. You agree that if you do, the joint account holder will have access to all Accounts at the Credit Union owned by you, individually and jointly.

## **Termination of Account Access**

We reserve the right to terminate the Services, in whole or in part, at any time with or without cause and without prior written notice. In that event, or in the event that you give us a termination notice, we may (but are not obligated to) immediately discontinue making previously authorized transfers, including recurring transfers and other transfers that were previously authorized but not yet made.

We also reserve the right to temporarily suspend the Services in situations deemed appropriate by us, in our sole and absolute discretion, including when we believe a breach of system security has occurred or

is being attempted. We may consider repeated incorrect attempts to enter your ID, username or password as an indication of an attempted security breach. Termination or Suspension of the Services does not affect your obligations under this Agreement with respect to occurrences before termination. Your username and password are our property.

### **Equipment and Software**

Trademark FCU does not guarantee that your mobile phone/mobile phone service plan will be compatible with our Trademark Mobile Banking service. You are responsible for understanding the operation and maintenance of your mobile phone. Trademark FCU is not responsible for any errors or problems related to your mobile phone, mobile provider, or mobile internet access. Nor are we responsible for any fees assessed by your telephone company, internet service provider, or any other outside party. You agree that only your mobile service provider is responsible for its products and services. Accordingly, you agree to resolve any problems with your provider directly without involving us.

Devices and personal computers with internet capabilities are susceptible to viruses. Members are responsible for making sure that the hardware and software they are using to access the Services are protected from and free of viruses, worms, Trojan horses, or other similar harmful components (collectively, referred to as “viruses”), which could result in damage to programs, files, and/or your phone or could result in information being intercepted by a third party.

Trademark FCU will not be responsible or liable for any indirect, incidental, special or consequential damages that may result from such harmful components being present on the Device or personal computer, nor will Trademark FCU be responsible or liable if sensitive information accessed via our Trademark Mobile Banking service is intercepted by a third party due to any of the above named “viruses” residing or being contracted by the Member’s Device or personal computer at any point or from any source.

We are not responsible for errors or delays or your inability to access the service caused by your equipment. We are not responsible for the cost of upgrading your equipment to stay current with the services nor are we responsible, under any circumstances, for any damage to your equipment or the data resident thereon.

### **Electronic Mail (E-mail)**

You may choose to communicate with Trademark FCU using electronic mail. However, be advised that email transmissions are not secure. We strongly discourage you from sending confidential account information to Trademark FCU via email. Trademark FCU is not responsible for any error or problems of any kind involving your email. Trademark FCU will never initiate contact over email requesting confidential information. For your convenience, Trademark offers a number of secure communication methods, including secure e-mail through the Credit Union Website and secure messaging through Online Banking and Mobile Banking.

**Changes**

Except as otherwise required by law, rule or regulation, we may change the terms of this Agreement from time to time and at any time. When changes are made we will update this Agreement at the Trademark FCU website. The Website will be updated on the effective date, unless an immediate change is necessary to maintain the security of the system or unless a law, rule or regulation requires that it be updated at an earlier time. As always, you may choose to accept or decline changes by continuing or discontinuing the use of Trademark's Remote Services. Changes to fees or terms applicable to accounts are governed by the agreement otherwise governing the applicable account.

**New Services**

Trademark FCU may, periodically, introduce new Online or Mobile Banking services. By using the new services when they become available, you agree to be bound by the terms and conditions concerning these services.

**Confidentiality**

We will abide with the Trademark FCU privacy policy, as may be in effect from time to time, in all transactions with you.

**Fees**

Trademark FCU does not charge a fee for the Services; however, all other fees associated with your accounts apply. Standard messaging rates, data rates and other taxes and additional fees from your mobile phone service provider may apply when using Trademark Mobile Banking and are your responsibility. Check with your specific mobile phone service provider for more information on fees.

**User Conduct**

You agree to abide by the terms of this and all other agreements between you and Trademark FCU. You also agree not to use Trademark Mobile or Online Banking or the content or information delivered through Trademark Mobile or Online Banking in any way that would be considered illegal. Harassment or threatening language will result in the closure or suspension of your Account. You also agree not to make commercial use of the Services or resell, lease, rent, or distribute access to Online or Mobile Banking.

**Indemnification**

Unless caused by our intentional misconduct or gross negligence, you agree to indemnify, defend and hold harmless Trademark FCU its officers, directors, employees, consultants, agents, service providers, and licensors from any and all third party claims, liability, damages, expenses and costs caused or arising from (1) a third party claim, dispute, action, or allegation of infringement, misuse, or misappropriation based on information, data files, or otherwise in connection with the Trademark Remote Services; (2) your violation of any law or rights of a third party; or (3) your use, or use by a third party of Trademark Remote Services.



**Contacting Trademark FCU**

You may contact our Member Services Department at (800) 696-1146 or at [memberservices@trademarkfcu.org](mailto:memberservices@trademarkfcu.org) during regular business hours of 7:30 a.m. – 4:30 p.m. EST Monday – Friday. You can also write us at the following address: Trademark FCU, P.O. Box 1056, Augusta, ME 04332.

**ADDITIONAL DEPOSZIP REMOTE DEPOSIT CAPTURE SERVICES PROVISIONS:**

This Remote Deposit Capture Services Agreement governs the use of Remote Deposit Capture Services (“RDC”, “RDC Services”, “DeposZip”)

By using DeposZip, you agree to the terms and conditions of this Agreement.

**Description of the RDC Services**

The RDC Services allow you to make deposits to certain of your Accounts with us that we approve by electronically transmitting a digital image of checks to us for deposit. In order to use the RDC Service, you must be enrolled in our Online Banking service and, for mobile deposits, our Mobile Banking application must be installed on your Device. You acknowledge and agree that no transaction made through or using the Service is an “electronic fund transfer” as defined by the federal Electronic Fund Transfer Act and/or Regulation E of the Consumer Financial Protection Bureau.

**Ineligible Accounts**

We may from time to time limit or prohibit the use of the RDC Service for deposits to certain account types, at our sole discretion. Currently, we do not permit the RDC Service to be used for deposits to the following Accounts: Individual Retirement Accounts (IRAs), Individual Retirement Account Certificates (IRA CD’s), and Share Certificate Accounts. Further, you are not permitted to use the RDC Service to make payments directly to any outstanding loan with us.

**Eligible Items**

You agree that you will use the RDC Service only to scan and transmit images of “checks”, as that term is defined in Regulation CC of the Board of Governors of the Federal Reserve System, for a deposit to your Account.

Any reference herein to “check” shall refer to each and every check or item that is transmitted to us by you using the RDC Service, both individually and collectively. You agree that the image of any check that is transmitted via the RDC Service shall be deemed an “item” within the meaning of Article 4 of the Uniform Commercial Code as adopted in Maine. You further agree that you will not use the RDC Service to scan or transmit any check or item that:

(a) is payable to any person or entity other than you (a “third party check”);

- (b) is drawn or otherwise issued by you on any account you own or have an interest in, or on which you are an authorized signer;
- (c) is prohibited by our procedures pertaining to the Service, as amended from time to time, or is in violation of any law, rule or regulation;
- (d) bears any alteration or that you know or suspect, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the check is drawn;
- (e) is either a “substitute check” (as defined in Regulation CC or other applicable federal law or regulation) or an “image replacement document” that purports to be a substitute check;
- (f) is drawn on a financial institution that is located outside of the United States;
- (g) is a “remotely created check” as that term is defined in Regulation CC;
- (h) is not payable in United States currency;
- (i) is dated more than six (6) months prior to the date of scanning and transmission or is “post dated”;
- (j) is payable jointly, unless the check is being deposited to an Account in the name of all payees on the check;
- (k) is payable on sight or is a payable through draft, as defined in Regulation CC;
- (l) has any endorsement on the back other than the endorsement specified in this Agreement;
- (m) has previously been submitted through the Service or through any remote deposit capture service offered by any other financial institution;
- (n) is drawn or otherwise issued by the U. S. Treasury;
- (o) is not acceptable to us for deposit into your Account as provided in the deposit agreement that governs your Account; or
- (p) is cash, a money order, cashier’s check, or traveler’s check (any of the foregoing being herein referred to as a “Prohibited Check”).

### **Image Quality**

The image of any check transmitted to us through the Service must, in our sole and absolute judgment, be legible and contain images of the front and back of the check. The image quality of the check must meet the 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, clearinghouse or association. These requirements include, but are not limited to, ensuring the following information can be clearly read and understood by sight review of the check image:

- (a) the amount of the check (both written and numeric);
- (b) the payee;
- (c) the signature of the drawer (maker);
- (d) the date the check was written;
- (e) the check number;
- (f) pre-printed information that identifies the drawer and the financial institution on which the check is drawn, including the MICR encoded account number and financial institution routing/transit number;
- (g) all other information placed on the check prior to the time an image of the check is captured, such as any endorsements applied to the back of the check.

### **Endorsements**

You agree to restrictively endorse any check transmitted through the Service by supplying the following verbiage: “For Mobile Deposit Only \_\_\_\_\_”, and your legally-binding signature to endorse the check. For example, a proper endorsement would appear as follows:

#### **For Mobile Deposit Only**

If the back of the check has the disclosure “Check here if mobile deposit.” You may check the box in place of writing the verbiage noted above.

You further agree that we may handle and process any check image you transmit to us through the RDC Service in accordance with the terms of this Agreement notwithstanding any restrictive, qualified, or conditional endorsement you may apply to the check without our approval or direction.

### **Security Procedures**

You agree to follow any and all procedures, instructions, and guides for use of the RDC Service as we may require from time to time and download each software update as it is available by us to you. We may require you to use a user identification code, a personal identification number, and/or passwords and other security procedures (collectively, “RDC Service Access Procedures”) to access the RDC Service. You agree at all times to comply with the Service Access Procedures, to safeguard the confidentiality of the Service Access Procedures, and to notify us immediately if you have any reason to believe the security or confidentiality of the Service Access Procedures has been compromised or breached.

### **Receipt of Images**

We have no obligation to accept any check or image you transmit to us through the RDC Service, and we may reject any check or image that you transmit in our sole and absolute discretion without liability to you. You agree that we are not responsible or liable to you for images that are dropped during transmission, which we do not receive, or that are intercepted or altered by, or misdirected to, any unauthorized third party. You assume the risk that any check image or information from a check image may be intercepted or misdirected during transmission. An image shall be deemed received by us when the funds deposited appears as “Deposit Accepted” under the Deposit History tab. Such confirmation only confirms the receipt of the image and does not confirm that the transmission was complete or error free, or that the amount of the check will be finally collected from the drawee institutions and/or credited to your Account. If, after we confirm the receipt of a check image, we determine that the check is a Prohibited Check, you agree that we may charge the amount of the check back to your Account and grant us a lien on any other Account you may have if the funds in the deposit Account are insufficient for a chargeback in full. You agree that we will not be liable to you for any loss, costs, or fees as a result of the exercise of our chargeback rights.

### **Funds Availability**

You agree that check images transmitted using the RDC Service and the funds represented by the checks are not subject to the funds availability requirements of Regulation CC. Except as otherwise provided in this Agreement, and subject to the requirements of applicable law or regulation, funds from any check

transmitted through the RDC Service will be available after final payment with respect to the check is made by the drawee of the check, and any credit of funds to your Account before that time is provisional. As a general rule, funds from deposits made by the RDC Service will be made available to you on the second Business Day following the Business Day on which we accept the check image from you. However, funds may not be available for up to seven (7) business days from the day the deposit was made based on such factors as creditworthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors as we, in our sole discretion, deem relevant, and/or based upon funds availability options we may offer to you in connection with the RDC Service. You acknowledge and agree that no funds availability option we offer constitutes a promise or guarantee that check funds will be finally collected from the drawee institution and/or finally paid to you. In any event, we reserve a right of chargeback to your Account in the event of dishonor or nonpayment by the drawee institution, and we reserve the right to chargeback all applicable fees in the event of such dishonor or nonpayment and/or any resulting chargeback (including, but not limited to, returned deposit item fees and overdraft fees). Check images received by us before 4:30 p.m. EST on a Business Day will be processed on the same day. Check images received by us after 4:30 p.m. EST will be processed on the next Business Day.

#### **Contingency Plan**

The RDC Service is provided by us to you as a convenience. Because the RDC Service could be unavailable from time to time for various reasons, you should not rely on the Service as the sole means of depositing checks to your Account. If you wish to deposit any check to your Account and you are unable to transmit the image of the check to us through the RDC Service or are unable to use the RDC Service in compliance with the terms of this Agreement for any reason (including, without limitation, reasons related to communications, equipment or software outages, interruptions or failures), you acknowledge and agree that you are solely responsible for using alternative available means of depositing the check to your Account, such as depositing the check in person at any Credit Union branch location. Such alternative means will be governed by the terms and conditions of our Deposit Account Agreement and not by the terms of this Agreement.

#### **Your Representations and Warranties to Us; Indemnification**

Each time you use the RDC Service to transmit any check image to us, you represent and warrant to us that:

- (a) the check is not a Prohibited Check;
- (b) you are entitled to enforce the check;
- (c) all signatures on the front and back of the check are authentic and authorized;
- (d) the check is not a counterfeit item;
- (e) the check has not been altered;
- (f) the check is not subject to a defense or claim in recoupment of any party that can be asserted against you;
- (g) you have no knowledge of any insolvency proceeding commenced with respect to you or the drawer of the check;

- (h) the check, in the event of any dishonor or nonpayment by the drawee, is enforceable against both you and the drawer of the check;
- (i) the check image transmitted by you to us contains an accurate representation of the front and the back of the check and otherwise complies with all the requirements of the Service (including, but not limited to, any endorsement requirements);
- (j) you will neither create nor transmit through the Service any duplicate image of the check, nor will you deposit or otherwise negotiate the original check;
- (k) no person or entity will be asked to make payment on the check more than once;
- (l) neither we nor any subsequent transferees of the check or its image will sustain a loss as the result of the fact that an image of the check, instead of the original check, was accepted by us through the Service, presented for payment, or returned;
- (m) the image of the check contains no computer viruses or other harmful, intrusive, or invasive codes;
- (n) all information you have provided to us in connection with the Service and the transaction is complete, true, accurate, and current;
- (o) the transaction otherwise complies in all respects with your duties, obligations, and agreements under this Agreement;
- (p) you will only use the RDC Services, related software, technology and material for lawful purposes and in compliance with all laws; and,
- (q) you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble, decompile, copy, reproduce, interfere or attempt to interfere with, all or any part of any RDC related software, technology or materials

**YOU AGREE TO INDEMNIFY US AND TO HOLD US HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, COSTS, SUITS, DAMAGES, CLAIMS, LIABILITIES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY’S FEES) ARISING FROM OR RELATED IN ANY WAY TO YOUR BREACH OF THE FOREGOING REPRESENTATIONS AND WARRANTIES, YOUR USE OF THE SERVICE, AND/OR OUR PROVISION OF THE RDC SERVICE TO YOU. YOUR AGREEMENT TO INDEMNIFY US AND HOLD US HARMLESS WILL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.**

#### **Storage of Original Checks**

After you transmit any check image to us and receive confirmation from us that we have received the image, you agree to securely store the original check for a period of ninety (90) days (“Check Retention Period”). During the Check Retention Period, you agree to take appropriate measures to ensure that (a) only authorized persons will have access to the check; (b) the information contained on the check will not be improperly disclosed; and (c) the check will not be duplicated or negotiated in any form. Promptly after the expiration of the Check Retention Period, you agree to destroy the original check, mark it “VOID”, or otherwise render it incapable of further transmission, deposit, negotiation or presentment. During any time the original check or a copy or image thereof is available to you or in your possession, you agree to furnish it to us upon request.

**Transaction Limits**

We may from time to time impose or change limits on your use of the RDC Service, including but not limited to, limits on the dollar amount and/or the number of checks you may transmit using the RDC Service. We may accept or reject any transaction you attempt in excess of these limits in our sole discretion.

**Presentment and Collection**

The manner in which checks and images transmitted through the Service are cleared, presented for payment and collected shall be in our sole discretion subject to the Deposit Account Agreement governing your Account.

**Disclaimer of Warranties by Us**

**YOU AGREE YOUR USE OF THE RDC SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR OWN RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE RDC SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT THE RDC SERVICES (I) WILL MEET YOUR REQUIREMENTS, (II) WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICES WILL BE ACCURATE OR RELIABLE AND (IV) ANY ERRORS IN THE SERVICES OR TECHNOLOGY WILL BE CORRECTED.**

**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 RDC 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 THE SERVICES, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF.**

**WARNING: DEVICES SHOULD NOT BE USED WHILE YOU ARE OPERATING A MOTOR VEHICLE.**

**ADDITIONAL ONLINE BILL PAYMENT PROVISIONS:**

The Bill Pay Service allows you to access your account to pay many types of bills. By submitting an online request for the Bill Pay Service, each of you jointly and severally agree to the terms and conditions in this Agreement, and any amendments. By reference, this Agreement is made part of the Trademark Federal Credit Union Membership and Account Agreement. Acceptance of this Agreement indicates acceptance of the Credit Union Membership and Account Agreement.

## **Bill Pay Service**

You authorize us to process Bill Pays from your designated account. You may use the Bill Pay Service to initiate two (2) different types of payment transactions:

- a. "One-time payments" Use one-time payments to make a single payment or payments that vary from payment to payment for an individual or business. One-time payments may be deleted or edited through the Bill Pay Service prior to processing.
- b. "Recurring" Use recurring payments to schedule fixed recurring payments (e.g., mortgage payment, car payment, etc.). You may designate the start and end dates for payments. Recurring payments may be deleted or edited through the Bill Pay Service prior to processing. There is a minimum dollar limit on any one-bill pay of \$1.00.

There is a maximum dollar limit on any one bill pay of \$10,000.00, or the available balance in your designated account plus any available overdraft protection balance, whichever is less. Transfers to or from any account are subject to the terms and conditions applicable to that account as set forth in the Membership and Account Agreement and Rate and Fee Schedule.

## **Payees**

A payee is an individual or business to whom you want to make a payment. There is no limit to the number of payments you may schedule. Payees must be located in the United States, Guam, US Virgin Islands or Puerto Rico. When you transmit a Bill Pay instruction to us, you authorize us to transfer funds to make the Bill Pay transaction from your account. We will process Bill Pay requests only to those payees that you have provided within the Bill Pay Service.

## **Processing Payments**

The amount of your requested bill pay will be deducted from your account on the Processing Date and will be processed by us on that date or the next Business Day should the processing date fall on a Sunday or Federal Holiday. Therefore, you must have sufficient funds available to cover your payments on the Processing Date in order to have your payment made by your specified Due Date. However, if there is not an electronic payment relationship with the payee, the payment will be issued as a paper check drawn off your Account and the funds will clear the account when the check is paid.

Bill pays are delivered to the payee either electronically, which may take up to two (2) business days from the Processing Date, or by check to those payees not set up to accept electronic payments, which may take up to five (5) business days from the Processing Date. When you enter the merchant/payee name, you will be advised if the payment will be sent in electronic or paper form. It is your responsibility to schedule your bill pays in such a manner that your obligations will be paid on time. You should enter and transmit your bill pay instructions at least six (6) business days before a bill is due. If you do not allow sufficient time or your account has insufficient funds, you assume full responsibility for any late payments, finance charges that may be imposed, or other actions taken by a payee as a result of a late (or unpaid) payment. We will not automatically resubmit a payment.

Trademark will not process any Bill Pay transfer if we know the required transaction information is incomplete. In any event, we will not be liable for any transaction that contains incorrect information that we were not responsible for providing or entering. If there are insufficient funds in your Account to make the Bill Pay request, we may (in our sole discretion) either refuse to make the payment or make the payment and transfer funds from any overdraft protection account you have established. The Credit Union reserves the right to refuse to process payment instructions that reasonably appear to the Credit Union to be fraudulent or erroneous.

### **Stop Payment of Bill Pays**

You may cancel or stop payment on One-time and Recurring bill pays under certain circumstances (prior to check clearance) by following the instructions provided. If you discover an error in or want to change an amount for a Bill Pay that you have already scheduled for transmission through the Bill Pay Service, you will need to contact the Credit Union to stop your payment request prior to the check clearing. Your cancellation request must be made during Credit Union business hours, excluding holidays. Stop payments cannot be made on electronic items; they must be deleted in the Bill Pay Service prior to processing. The Credit Union may require you to confirm your stop payment request in writing within fourteen (14) days of the call.

### **Account Information Disclosure**

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

- a. As necessary to complete transfers;
- b. To verify the existence of sufficient funds to cover specific transactions upon the request of a third party, such as a credit bureau or merchant;
- c. To comply with government agency or court orders; and
- d. If you give us your express permission.

### **Limitation of Liability for Bill Pay Services**

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your actual losses or damages. Our sole responsibility for an error in a transfer will be to correct the error and in no case will we be liable for any indirect, special, incidental, or consequential damages. In states that do not allow the exclusion or limitation of such damages, our liability is limited to the extent permitted by applicable law. Trademark will not be liable for the following:

- a. If, through no fault of ours, you do not have adequate funds in your Account to complete the transaction, your account is closed, or the transaction amount would exceed your credit limit on your line of credit, if applicable.
- b. If you used the wrong access code or you have not properly followed any applicable computer, or user instructions for making transfer and Bill Pay transactions.
- c. If your computer fails or malfunctions or the phone lines or our computer system was not properly working and such problem should have been apparent when you attempted such transaction.



- d. If circumstances beyond our control (such as fire, flood, telecommunication outages or strikes, equipment, power or ATM network failure) prevent making the transaction.
- e. If the funds in your Account are subject to an administrative hold, legal process or other claim.
- f. If you have not given us complete, correct and current instructions so we can process a transfer or Bill Pay.
- g. If, through no fault of ours, a Bill Pay or funds transfer transaction does not reach a particular payee due to changes in the payee address, account number or otherwise; the time you allow for payment delivery was inaccurate; or the payee failed to process a payment correctly, or in a timely manner, and a fee, penalty, or interest is assessed against you.
- h. If the error was caused by a system beyond our control such as a telecommunications system, an Internet service provider, any computer virus or software related problems for software not provided by us.
- i. If there are other exceptions as established by us from time to time.

#### **ENFORCEMENT**

You agree to be responsible to Trademark for any liability, loss, or expense as provided in this Agreement that Trademark incurs as a result of any dispute involving your Accounts or Services. You authorize the Credit Union to deduct any such liability, loss, or expense from your account without prior notice to you. In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on Accounts accessed under this Agreement, the prevailing party shall be entitled, subject to applicable law, to payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this Agreement be determined illegal or unenforceable in any relevant jurisdiction, then such provision be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other provision of this Agreement.

#### **II. MOBILE BANKING END USER SOFTWARE LICENSE AGREEMENT**

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THIS PRODUCT. BY CLICKING THE ACCEPTANCE BUTTON AND INSTALLING THE SOFTWARE, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE BUTTON THAT INDICATES YOU DO NOT ACCEPT THE TERMS, AND DO NOT INSTALL THE SOFTWARE.

This Agreement sets forth the terms and conditions of your use of the accompanying Mobile Finance Manager software (the "Software"). For the purposes of this Agreement, "you" means you, the end user, and "Licensor" means Access Softek, Inc. and its subsidiaries and affiliates, and Licensee means Trademark Federal Credit Union and its subsidiaries and affiliates.

1. **Ownership.** You acknowledge and agree that Licensor is the owner and will remain the owner of all rights, title and interest in and to the downloaded software, to be used for access to mobile banking

services from your financial services provider, as well as any accompanying user documentation and all copies, improvements, modifications, enhancements, upgrades, derivative works, or other changes thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software"). Such rights, title, and interest include but are not limited to all copyright, patent, trade secret, trademark and other intellectual property rights therein. Access Softek has licensed the Software to your financial services provider to enable it to make it available to you subject to the following terms and conditions.

2. **License.** Licensor grants you a limited, personal, nonexclusive, nontransferable license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by Licensor. Nothing in this license entitles you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. The rights granted to you hereunder include no rights whatsoever with respect to any source code. Licensor retains all rights not expressly granted to Licensee hereunder. No right of license to you will be implied by or inferred from this Agreement except as expressly provided herein.

3. **Restrictions.** You may **not**:

- a. Publish, display, disclose, rent, lease, modify, loan, distribute or create derivative works based on the Software or any part thereof;
- b. Copy, decompile, reverse engineer, disassemble, translate, adapt or otherwise reduce the Software to human readable form;
- c. Create or attempt to create the source code from the object code of the Software;
- d. Make any third-party software contained in the Software a standalone product;
- e. Take any action that will infringe on the intellectual property or other proprietary rights of Licensee or any third party software provider; or
- f. Sublicense or assign the Software.

4. **Import/Export Restrictions.** You agree not to import or export the Software or any documentation (or any copies thereof) or any products utilizing the Software or any documentation in violation of any applicable laws or regulations of the United States or the country to which you have imported or exported. You agree to indemnify Licensee and Licensor from liability if you violate any such laws or regulations.

5. **Representations and Warranties.** You represent, warrant and covenant that you shall comply with all applicable laws, rules, regulations and prevalent industry standards in your use of the Software, including compliance with applicable requirements under state and federal laws and regulations related to data security and nonpublic personal information, as defined or used in such applicable law or regulation.

6. **Termination.** This Agreement may be terminated by you or Access Softek at any time, for any reason. Your rights under this License will terminate immediately if you fail to comply with any term or condition

of this License. Upon termination, you agree to immediately destroy all copies of the Software and any documentation in your possession or control, together with any and all copies thereof.

**7. Disclaimer Warranty.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY LAW, LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR WILL MEET YOUR REQUIREMENTS. LICENSEE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY SOFTWARE, OR ANY HARDWARE OR OTHER MATERIALS NOT PROVIDED BY LICENSOR. LICENSOR HAS NO OBLIGATION TO MAINTAIN OR SUPPORT THE SOFTWARE EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF YOU FAIL TO UPGRADE THE SOFTWARE TO THE MOST RECENT VERSION AFTER BEING GIVEN THE OPPORTUNITY TO DO SO BY LICENSOR, ALL REPRESENTATIONS AND WARRANTIES REGARDING THE SOFTWARE ARE VOID.

**8. Limitation of Remedies.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WILL LICENSEE, LICENSOR, OR THEIR SUPPLIERS OR RESELLERS, BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, BUSINESS INTERRUPTIONS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER PERSONAL OR COMMERCIAL DAMAGES OR LOSSES ARISING FROM THE USE OR INABILITY TO USE THE PROGRAMS (WHETHER OR NOT DUE TO ANY DEFECTS THEREIN). IN NO EVENT WILL LICENSEE OR LICENSOR BE LIABLE FOR ANY DAMAGES EVEN IF LICENSEE OR LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM LICENSEE'S OR LICENSOR'S NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

**9. Indemnification.** You agree to defend, indemnify, and hold harmless Licensee, Licensor, their suppliers and their resellers from and against liabilities, costs, damages and expenses (including settlement costs and reasonable attorneys' fees) arising from any claims from anybody that result from or relate to your use, reproduction or distribution of the Software.

**10. Content and Services.** Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.

**11. Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of California, without reference to conflicts of laws principles. You agree to be subject to personal jurisdiction in the State of California for the purposes of enforcing the provisions of this Agreement.

12. **Severability.** If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions will not in any way be affected or impaired.

13. **Entire Agreement.** You further agree that this Agreement is the complete and exclusive statement of the agreement between you and Licensor which supersedes all proposals or prior agreements, oral or written, and all other communications between you and Licensor relating to the subject matter of this agreement. This Agreement may only be modified by a written agreement signed by both you and Licensor; provided, that no provision of this Agreement relating to Licensee may be modified without the additional written agreement of Licensee.

14. **Acknowledgement.** By downloading, installing or using any part of this Software, you indicate that you have read this Agreement, understand it, and agree to be bound by its terms and conditions.

15. **Third Party Beneficiary.** Licensee and its affiliates are hereby made express third party beneficiaries of this Agreement.

### **III. ONLINE BILL PAYMENT ADDITIONAL TERMS OF USE**

In addition to the foregoing, you agree follows with respect to the Online Bill Payment Services:

1. You will limit the use the Licensed Services and the Software for only the purposes permitted by the Agreement, and not for resale, re-license or other use by third parties.
2. You agree that Trademark's performance warranties and support obligations shall be limited to those that have been provided by Payveris.
3. You will refrain from copying, reproducing, modifying, altering, abridging, enhancing, customizing or making derivative works of or improvements or enhancements to the Online Bill Payment Services or the Software.
4. You will refrain from impairing or altering the functionality of the Bill Payment Services or the Software.
5. You will refrain from causing or permitting the reverse engineering, disassembly, translation, adaptation, or decompilation of the Bill Payment Software, or any attempts to derive source code or algorithms of the Bill Payment Software, and prohibits using the results of such processes.
6. You agree to be bound by confidentiality obligations with respect to any information furnished or disclosed to you that are at least as protective as those undertaken by Trademark with respect to the Bill Payment Services and the Software.
7. You will comply fully with all relevant laws and regulations, including related to export, of the United States and any other applicable jurisdiction to ensure that the Licensed Services or the Software or any direct product thereof are not exported, directly or indirectly, in violation of United States law.

8. You will refrain from any assignment and sublicensing of the license to use the Bill Payment Services or the Software.
9. You agree that no right, title and interest (including all intellectual property rights) in and to the Bill Payment Services or the Software shall pass to you.