

## MOBILE REMOTE DEPOSIT SERVICES AGREEMENT

This Mobile Remote Deposit Services Agreement (“Agreement”) constitutes a legal agreement between FD Community Federal Credit Union (“we”, “us”, “our”) and you governing your use on various computing devices, including mobile, tablet, or desktop, a remote deposit capture application (“Application”) and for conducting certain remote deposit financial transactions (“Mobile Deposit”).

**1. Introduction.** Mobile Deposit is designed to allow you to make deposits of checks (“original checks”) to your accounts from home or other remote locations by scanning the original checks and delivering the digital images and associated deposit information (“images”) to us or our processor. After you login to Mobile Banking, you may apply for Mobile Deposit.

**2. Acceptance.** BY EITHER DOWNLOADING THE APPLICATION OR BY ENROLLING TO USE MOBILE DEPOSIT OR BY USING MOBILE DEPOSIT, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, UNDERSTAND, AND AGREE, WITHOUT LIMITATION OR QUALIFICATION, TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT AS EACH MAY BE MODIFIED, AMENDED OR SUPPLEMENTED FROM TIME TO TIME BY US. WE MAY MODIFY THIS AGREEMENT AT ANY TIME WITHOUT NOTICE, CHANGES TO BE EFFECTIVE WHEN POSTED. YOU ARE RESPONSIBLE FOR REVIEWING THIS AGREEMENT BEFORE EACH USE OF THE APPLICATION AND MOBILE DEPOSIT AND YOUR CONTINUED USE OF THE APPLICATION OR MOBILE DEPOSIT CONSTITUTES YOUR AGREEMENT TO BE BOUND BY ALL SUCH CHANGES.

**3. Conditions and Restrictions on Use.** Use of the Application and Mobile Deposit are subject to compliance with this Agreement. You acknowledge and agree that we may terminate your right to use the Application and access to Mobile Deposit should you fail to comply with this Agreement or any other guidelines or rules published by us. Any such termination shall be in our sole discretion and may occur without prior notice, or any notice. We further reserve the right to terminate your right to use the Application and access to Mobile Deposit for any conduct that we, in our sole discretion, believe is or may be directly or indirectly harmful to other users, to us or our subsidiaries, affiliates, or technology partners, or to other third parties, or for any conduct that violates any local, state, federal, or foreign laws or regulations. We further reserve the right to terminate your right to use the Application and your access to Mobile Deposit for any reason or for no reason at all, in our sole discretion, without prior notice, or any notice.

**4. Limits.** We may establish limits on the dollar amount and/or number of checks or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times.

**5. Eligible Items.** You agree to scan and deposit only those "checks", as that term is defined in Federal Reserve Regulation CC, that are permissible under this Agreement. You agree that you will not use Mobile Deposit to scan and deposit any checks as follows:

- a. Checks payable to any person or entity other than you (i.e., payable to another party and then endorsed to you).
- b. Checks payable to any person or entity other than the person or entity that owns the account into which the check is being deposited.
- c. Checks containing alteration to any of the fields on the front of the check, including but not limited to any alteration to the MICR line, or that 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.
- d. Checks prohibited by our current guidelines or rules relating to Mobile Deposit or which we deem not acceptable.

Nothing in this Agreement shall be construed as requiring us to accept any check for deposit, even if we have accepted that type of check previously. Nor do we have any obligation to identify or reject any checks or items that you may scan and deposit that fail to meet the requirements of this Agreement.

**6. Requirements.** You are responsible for the image quality of any check that you transmit. Each image must be legible and 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 from time to time by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house we use, association or any higher standard set by us. You agree that we shall not be liable for any damages resulting from a check's poor image quality including those related to rejection of or the delayed or improper crediting of such a check or from any inaccurate information you supply regarding the check.

**7. Procedures and Endorsements.** You agree to follow any and all procedures and instructions for use of the Mobile Deposit in this Agreement and as we may establish from time to time. You agree to supply any information in your possession that we request regarding a check deposited or attempted to be deposited through Mobile Deposit. Endorsements must be made on the back of the share draft or check within 1½ inches from the top edge, although we may accept endorsements outside this space. Before transmission, you agree to restrictively endorse any check transmitted through the Mobile Deposit with your signature and "via mobile deposit" or as otherwise instructed by us. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility.

A check payable to two payees must be endorsed by both payees. If the check is payable to you or your joint owner, either of you can endorse it. If the check is made payable to you and your joint owner, both of you must endorse the check.

**8. Receipt of Deposit.** All images processed for deposit through Mobile Deposit will be treated as “deposits” under your current Membership and Account Agreement with us and will be subject to all terms of the Account Agreement. When we receive an image, we will confirm receipt via email to you. We shall not be deemed to have received the image for deposit until we have confirmed receipt to you. Confirmation does not mean that the image contains no errors or that the funds will be credited for that check. We are not responsible for any image that we do not receive.

Following receipt, we may process the image by preparing a “substitute check” or clearing the item as an image.

We reserve the right, at our sole and absolute discretion, to reject any image for remote deposit into your account, without liability to you. We are not responsible for checks we do not receive in accordance with this Agreement nor for images that are dropped or damaged during transmission. We will notify you of rejected images.

**9. Original checks.** After you receive confirmation that we have received an image, you must securely store the original check for 60 calendar days after transmission to us and make the original check accessible to us at our request. Upon our request from time to time, you will deliver to us within 10 calendar days, at your expense, the requested original check in your possession. If not provided in a timely manner, such amount will be reversed from your account. Promptly after such period expires, you must destroy the original check by first marking it “VOID” and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. *After destruction of an original check, the image will be the sole evidence of the original check.*

You agree that you will never re-present the original check. You understand that you are responsible if anyone is asked to make a payment based on an original check that has already been paid.

**10. Returned Deposits.** Any credit to your account for checks deposited using Mobile Deposit is provisional. If original checks deposited through Mobile Deposit are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are 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 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.

**11. Your Warranties.** You make the following warranties and representations to us with respect to each image:

- a. Each image is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
- b. The amount, payee(s), signature(s), and endorsement(s) on the image and on the original check are legible, genuine, and accurate.
- c. You will not deposit or otherwise endorse to us or a third party the original check and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the original check or a paper or electronic representation of the original check such that the person will be asked to make payment based on an item that has already been paid.
- d. There are no other duplicate images of the original check.
- e. The original check was authorized by the drawer in the amount stated on the original check and to the payee(s) stated on the original check.
- f. You are authorized to enforce and obtain payment of the original check.
- g. You have possession of the original check and no party will submit the original check for payment.
- h. You will comply with this Agreement and all applicable rules, laws and regulations.
- i. You are not aware of any factor which may impair the collectability of the check.

With respect to each image, you make to us all representations and warranties that we make or are deemed to make to any party pursuant to law, regulation or clearinghouse rule. You agree that files and images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems. You agree to indemnify us and hold us harmless from any loss for breach of this warranty provision and/or the terms of this Agreement.

**12. Compliance with Law.** You will use Mobile Deposit for lawful purposes and in compliance with all applicable laws, rules, regulations and this Agreement. You warrant that you will only transmit acceptable checks for deposit and have handled the original checks in accordance with applicable laws, rules and regulations.

**13. Mobile Deposit Unavailability.** We may terminate, modify, update, add and remove features from the Application and Mobile Deposit in our sole discretion including, but not limited to, that Mobile Deposit may be unavailable temporarily due to system maintenance or technical difficulties, including those of the Internet service provider, cellular service provider and Internet software without notice to you. In the event that Mobile Deposit is unavailable, you may deposit original checks at our branches or through our ATMs.

**14. Funds Availability.** For purposes of funds availability, Mobile Deposits are considered deposited at a branch or ATM of this financial institution. Mobile Deposits confirmed as received before close of business on a business day will be credited to your account within 24 hours of receipt. Deposits confirmed as received after close of business, and deposits confirmed as received on holidays or days that are not business days will be credited to your account within 24 hours of the following business day. Funds will be available as described in our Funds Availability Disclosure.

**15. Mobile Deposit Security.** You will complete each deposit promptly. You are responsible for maintaining the confidentiality and security of your mobile devices, access number(s), login information, and any other security or access information used by you to access the Mobile Deposit including that if you are unable to complete your deposit promptly, you will ensure that your mobile device remains securely in your possession until the deposit has been completed. It is your responsibility to establish and maintain procedures to safeguard against unauthorized deposits and to prevent unauthorized access or use of the information, files or data that you store, transmit or use in or with Mobile Deposit. You will notify us immediately by telephone with written confirmation if you learn of any loss or theft of original checks. You will ensure the safety and integrity of original checks from the time of receipt until the time of destruction. If warranted in our reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring, to confirm that you have satisfied your obligations under this Agreement.

**16. Your Responsibility.** You are solely responsible for the quality, completeness, accuracy, validity and integrity of the image. You are solely responsible if you, intentionally or unintentionally, submit fraudulent, incorrect or illegible images to us or, if Mobile Deposit is used by authorized or unauthorized persons, to submit fraudulent, unauthorized, inaccurate, incorrect or otherwise improper or unusable images to us.

In addition you agree that you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology, Application, or Mobile Deposit, copy or reproduce all or any part of the technology, Application, or Mobile Deposit; or interfere, or attempt to interfere, with the technology, Application or Mobile Deposit. We and our technology partners, inclusive of, but not limited to, Digital Insight, and Vertifi Software, LLC, retain all rights, title and interests in and to the Application, Mobile Deposit, services, software and development made available to you.

**17. Your Indemnification Obligation.** You acknowledge and agree that this Section 17 shall survive the termination of this Agreement.

a. By either downloading the Application or by enrolling to use Mobile Deposit, you agree to indemnify us and our parents, subsidiaries, affiliates, officers, technology partners and each of their respective officers, directors, agents, representatives and employees (the “Indemnified Parties”) and hold them harmless from any and all claims and expenses, including attorney's fees, arising from your use of the Application, your use of Mobile Deposit, or your submission of any check or other item to us or from any person's use of any mobile device, account or

password you maintain with any portion of Mobile Deposit, regardless of whether such use is authorized by you. By either downloading the Application or by enrolling to use Mobile Deposit, you are hereby agreeing to release the Indemnified Parties from any and all claims, demands, debts, obligations, damages (actual or consequential), costs, and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, that you may have against them arising out of or in any way related to such disputes and/or to the Application or Mobile Deposit or to any disputes relating to the submission of a check or other item to us. YOU HEREBY AGREE TO WAIVE ALL LAWS THAT MAY LIMIT THE EFFICACY OF SUCH RELEASES. FOR EXAMPLE, YOU SPECIFICALLY AGREE TO WAIVE THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

b. You understand and agree that you are required to indemnify our technology partners, including but not limited to Digital Insight. (Digital Insight) and Vertifi Software, LLC (Vertifi), and hold harmless Digital Insight, its affiliates, officers, employees and agents, as well as Vertifi, its affiliates, officers, employees, and agents, from and against any third party claims, suits, proceedings, actions or demands, including to claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to FI or your use of the Application, services, Vertifi or Digital Insight applications, or Mobile Deposit, unless such claim directly results from an action or omission made by Digital Insight or Vertifi in bad faith. You understand and agree that this paragraph shall survive the termination of this Agreement.

**18. DISCLAIMER OF WARRANTIES.** YOU AGREE THAT YOUR USE OF THE APPLICATION, MOBILE DEPOSIT, ANY OTHER ASPECT OF THE REMOTE BANKING SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE APPLICATION, MOBILE DEPOSIT AND ANY OTHER ASPECT OF THE REMOTE BANKING SERVICE, 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 APPLICATION, MOBILE DEPOSIT AND ANY OTHER ASPECT OF THE REMOTE BANKING SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN THE APPLICATION, MOBILE DEPOSIT, AND ANY OTHER ASPECT OF THE REMOTE BANKING SERVICE OR TECHNOLOGY WILL BE CORRECTED. WITHOUT LIMITING THE FOREGOING, WE DISCLAIM ANY RESPONSIBILITY OR LIABILITY FOR ANY HARM RESULTING FROM

DOWNLOADING OR SENDING ANY INFORMATION OR MATERIAL THROUGH THE APPLICATION AND MOBILE DEPOSIT, INCLUDING, WITHOUT LIMITATION, FOR HARM CAUSED BY VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES.

**19. 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 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 APPLICATION, MOBILE DEPOSIT OR ANY OTHER ASPECT OF THE REMOTE BANKING SERVICE, 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, EXCEPT AS OTHERWISE REQUIRED BY LAW.

**20. Financial Information.** You must inform us immediately of any material change in your financial circumstances or in any of the information provided in your application for Mobile Deposit. You agree to provide us any financial information we reasonably request during the term of this Agreement. You authorize us to review your history from time to time.

**21. Termination and Survival.** This Agreement shall continue in effect for as long as you use the Application and Mobile Deposit, unless specifically terminated by us. All provisions of this Agreement which imposes obligations continuing in their nature shall survive termination of this Agreement.

**22. Arbitration, Governing Law and Forum for Disputes.** All legal issues arising from or related to the use of the Application and Mobile Deposit shall be construed in accordance with, and all questions with respect thereto shall be determined by, the laws of the State of Connecticut, County of New Haven, applicable to contracts entered into and wholly to be performed within said state. Any controversy or claim arising out of or relating to this Agreement or any you use of the Application and Mobile Deposit shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in New Haven, Connecticut and judgment on the arbitration award may be entered into in any state or federal court having jurisdiction thereof. Any party seeking temporary or preliminary injunctive relief may do so in any state or federal court in Connecticut having jurisdiction thereof. Except as set forth above, the state and federal courts of Connecticut shall be the exclusive forum and venue to resolve disputes arising out of or relating to this Agreement or any your use of the Application and Mobile Deposit. By using the Application and Mobile Deposit and thereby agreeing to this Agreement, you consent to personal jurisdiction and venue in the state and federal courts in Connecticut with respect to all such disputes.

**23. Limitation of Claims.** You acknowledge and agree that, regardless of any statute or law to the contrary, any claim or cause of action you may have arising out of, or relating to, your use of the Application or Mobile Deposit must be filed within one (1) year after such claim or cause of action arises, or forever be barred.

**24. Your Consent to Certain Activities.** You agree that we may, currently or at any time in the future, (i) collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, to facilitate the provision of software updates, product support and other services (if any) related to the Application. We may use this information, as long as it is in a form that does not personally identify you, to improve products or to provide services or technologies; and (ii) at our discretion, use your mobile device's capabilities to obtain your geolocation for fraud prevention services. We may choose to capture either your current location or the last location stored on your Mobile Device.

**25. Export Controls.** Certain software, and related documentation or technical information, available through the Application and Mobile Deposit may be subject to applicable laws and regulations of the United States pertaining to export controls. By using such software or related documentation or technical information, you represent and warrant that you are not located in, or under the control of, or a national or resident of any embargoed country or any country on the U.S. Department of Commerce's Table of Denial Orders. You agree not to export or re-export such software or related documentation or technical information directly or indirectly to any countries that are subject to United States export restrictions.

**26. Miscellaneous.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and supersedes any other agreement, proposals and communications, written or oral, between us and you with respect to the subject matter hereof; except that any other guidelines or rules we publish in connection with the Application and Mobile Deposit are incorporated herein by reference to the extent they do not conflict with this Agreement.

Effective as of February 20, 2014.