

## **Mobile Check Deposit Application End User License Agreement**

This Mobile Check Deposit Application End User License Agreement constitutes a legal agreement between Energy Plus Credit Union, a financial institution organized and existing under the laws of the State of Indiana, its subsidiaries, affiliates, agents and/or licensors, organized and existing under the laws of the State of Indiana (collectively and individually referred as “we” “us” “our”) and you governing your use on various computing devices, including mobile, tablet, or desktop a remote deposit capture application for conducting financial transactions provided .

### **DESCRIPTION OF APPLICATION**

Mobile Check Deposit is a personal financial information management service that allows you to transmit and deposit checks through the use of the Application provided by us using compatible and supported mobile smart phones and/or other compatible and supported wireless devices or network devices under your control.

We reserve the right to modify the scope of the Services at any time. We reserve the right to refuse to make any transaction you request through the Service. You agree and understand that the Services may not be accessible or may have limited utility over some networks, such as while roaming.

Given the risks associated with Mobile Check Deposit, this product will be introduced to current and new members who meet suitable requirements.

#### **Eligibility Requirements**

- All accounts must be in good standing with Energy Plus Credit Union – No account may be negative 30 days or greater or have permanent holds or other restrictions placed upon it
- Be an active Energy Plus Credit Union Mobile Banking user
- Must have our Energy Plus Credit Union app downloaded
- All loans must be current
- Loans that are more than 10 days delinquent may have restricted access
- Must have a valid address on file

The Credit Union may terminate the Mobile Check Deposit agreement at any time with no notice to the member.

#### **Storage of Checks**

- After you have verified that your check is accepted and credited to your account, please keep your check in a secure place for 60 days and then properly shred or destroy the check. You will be able to view your check images through the mobile deposit history.

#### **Proper Endorsement**

- Endorse the check with your signature on the back along with “Mobile Deposit Only to EPCU Acct \_\_\_\_\_” written underneath.

#### **Limits**

- Maximum total dollar amount per day that can be deposited per day is \$2,500.
- The maximum dollar amount per check that can be deposited is \$2,500.
- The maximum number of deposits you can make in one day are 5.

### **LICENSE AND RESTRICTIONS**

Subject to the terms of this Agreement, we hereby grant you a limited, personal, revocable, nonexclusive, nonsublicensable, nonassignable, nontransferable, nonresellable license and right to use the Application for the sole purpose of your use of the Service.

You acknowledge and agree that any and all intellectual property rights in the Service and the Application are and shall remain the exclusive property to us. Nothing in this Agreement intends to or shall transfer any IP Rights to, or to vest any IP Rights in, you. You are only entitled to the limited use of the rights granted to you in this Agreement. You will not take any action to jeopardize, limit or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement, as well as a violation of applicable intellectual property laws. You acknowledge and understand that all title and rights in and to any third party content that is not contained in the Service and Application, but may be accessed through the Service, is the property of

the respective content owners and may be protected by applicable patent, copyright, or other intellectual property laws and treaties.

You agree not to sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Application or Service or any part thereof without our prior written consent.

You agree not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Application, the Service, or any part thereof. You agree not intercept, capture, emulate, or redirect the communications protocols used by us for any purpose, including without limitation causing the Service or Application to connect to any computer server or other device not authorized by us.

We reserve the right to add or delete features or functions, or to provide programming fixes, updates and upgrades, to the Service or Application. You acknowledge and agree that we have no obligation to make available to you any subsequent versions of the Application. You also agree that you may have to enter into a renewed version of this Agreement if you want to download, install or use a new version of the Service or Application.

We have no obligation whatsoever to furnish any maintenance and support services with respect to the Service or Application, and any such maintenance and support services provided will be provided at our discretion.

You grant to us a nonexclusive, perpetual, non-revocable, royalty free license to use, retain, and share any information transmitted through the Application by you, including, your location, device-based location information, account numbers, name, date, account amount, and endorsements solely for the purpose of providing the Services. This license shall survive termination of this Agreement for such period as necessary for us to provide the Services, comply with the law, or comply with an internal guidelines or procedures.

#### **COMPLIANCE AND INDEMNIFICATION**

You agree to use the products and Service for lawful purposes and in compliance with all applicable laws, rules and regulations. You warrant that you will only transmit acceptable items for deposit and will handle the original items in accordance with applicable laws, rules and regulations.

Any image of a check that you transmit using the Application must accurately and legibly provide all the information on the front and back of the check necessary to process the check, including any required endorsements

In the event any item that you transmit for remote deposit that is credited to your account is dishonored, you authorize us to debit the amount of such item from your account. You are responsible for any loss or overdraft plus any applicable fees to your account due to an item being returned.

You understand and agree that the Services may at times be temporarily unavailable due to the system maintenance or technical difficulties including those of the Internet. In the event that the Services are unavailable, you acknowledge that you can deposit an original check at our branches or at a Credit Union Shared Branch location or at a Depository ATM or by mailing the original check to Energy Plus Credit Union at its then current address. It is your sole responsibility to verify that items deposited using the Services and Application have been received and accepted for deposit.

Processing of transactions may be limited based on our normal hours of operation, or those of third party financial service organizations involved in a transaction.

You make the following warranties and representations with respect to each image of an original check you transmit to utilizing the Application:

- Each image of a check transmitted to us 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.
- The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
- You will NOT deposit or otherwise indorse to a third party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already been paid.
- Do not deposit a third party check, foreign check, stale-dated check (check past the expiration date), post-dated check (a dated check with a future date), or a savings bond. If your check has been submitted through mobile deposit, do not in any

way submit it again or take it to another financial institution to deposit. ALL duplicate checks will be rejected and may be a reason for Mobile Check Deposit to be disabled on your account. Any altered checks will be rejected.

- Other than the digital image of an original check that you remotely deposit through the Application, there are no other duplicate images of the original check.
- You have instituted procedures to ensure that each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check.
- You are authorized to enforce each item transmitted or are authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
- The information you provided remains true and correct and, in the event any such information changes, you will immediately notify us of the change.
- You have not knowingly failed to communicate any material information to us.
- You have possession of each original check deposited using the Application and no one will submit, or has submitted, the original check for payment.
- Files and images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on your network, data, or related systems.
- In the event that you believe there has been an error with respect to any original check or image thereof transmitted for deposit, you will immediately contact us regarding such error or breach as set forth below.

You agree to indemnify and hold us harmless, along with our directors, officers, employees, shareholders, and agents from and against all liabilities, losses, costs, expenses (including reasonable attorney's fees), and damages resulting from: (1) any negligent acts, omissions or willful misconduct by you; (2) your use of the Service and Application; (3) any breach of this Agreement by you; and/or (4) your violation of any law or of any rights of any non-party. The provisions of this section are for the benefit of us and our officers, directors, employees, shareholders, and agents, licensors. Each of these individuals or entities expressly retains the right to assert and enforce those provisions directly against you on its own behalf.

#### **TERMINATION**

This Agreement and your use of the Service and Application may be immediately terminated if you use the Application in a manner that violates any term of this Agreement or any other applicable agreement between you and us.

Upon termination of this Agreement you: (a) acknowledge and agree that all licenses and rights to use the Service and Application shall terminate; (b) will cease any and all use of the Application; and (c) will remove the Application from all computing devices, hard drives, networks, and other storage media in your possession or under your control.

#### **LEGAL COMPLIANCE AND EXPORT RESTRICTIONS**

You represent and warrant that: (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties. You also acknowledge that the Service and Application may be subject to other U.S. and foreign laws and regulations governing the export of software by physical or electronic means. You agree to comply with all applicable US and foreign laws that apply to us as well as end-user, end-use, and destination restrictions imposed by U.S. and foreign governments.

#### **WARRANTY DISCLAIMER**

WE CANNOT FORESEE OR ANTICIPATE ALL TECHNICAL OR OTHER DIFFICULTIES RELATED TO THE APPLICATION OR SERVICES. THESE DIFFICULTIES MAY RESULT IN LOSS OF DATA, PERSONALIZATION SETTINGS OR OTHER APPLICATION INTERRUPTIONS. WE ASSUME NO RESPONSIBILITY FOR ANY DISCLOSURE OF ACCOUNT INFORMATION TO NON-PARTIES, THE TIMELINESS, DELETION, MISDELIVERY OR FAILURE TO STORE ANY USER DATA, COMMUNICATIONS OR PERSONALIZATION SETTINGS IN CONNECTION WITH YOUR USE OF THE APPLICATION.

WE ASSUME NO RESPONSIBILITY FOR THE OPERATION, SECURITY, FUNCTIONALITY OR AVAILABILITY OF ANY COMPUTING DEVICE OR NETWORK WHICH YOU UTILIZE TO ACCESS THE APPLICATION OR USE SERVICE.

YOU AGREE TO EXERCISE CAUTION WHEN UTILIZING THE APPLICATION ON YOUR COMPUTING DEVICE AND TO USE GOOD JUDGMENT AND DISCRETION WHEN OBTAINING OR TRANSMITTING INFORMATION.

THE SERVICES AND APPLICATION PROVIDED HEREUNDER IS PROVIDED "AS IS," WITH ALL WARRANTIES DISCLAIMED, INCLUDING, ALL EXPRESS OR IMPLIED WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY SIMILAR WARRANTY WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF. THERE IS NO REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE IS FREE OF RIGHTFUL CLAIMS OF ANY THIRD

PARTY FOR INFRINGEMENT OF PROPRIETARY RIGHTS. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE SERVICES AND LICENSED APPLICATION SHALL BE BORNE SOLELY BY YOU.

THERE IS NO WARRANTY THAT THE SERVICES AND APPLICATION WILL MEET YOUR REQUIREMENTS, THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR FREE, OR THAT ANY DEFECTS IN THE SERVICES AND APPLICATION WILL BE CORRECTED. YOU ACKNOWLEDGE THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICE AND APPLICATION ARE AT YOUR SOLE RISK AND DISCRETION AND WE WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO YOU OR YOUR PROPERTY. YOU ACKNOWLEDGE THAT IT IS YOUR RESPONSIBILITY TO FOLLOW PROPER BACKUP PROCEDURES TO PROTECT AGAINST LOSS OR ERROR RESULTING FROM USE OF THE SERVICES AND LICENSED APPLICATION.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU.

#### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL WE BE LIABLE TO YOU FOR SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC (INCLUDING, BUT NOT LIMITED TO LOST REVENUES OR LOST PROFITS) OR CONSEQUENTIAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY. OUR TOTAL LIABILITY FOR ANY AND ALL DAMAGES, REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED AND CAPPED IN THEIR ENTIRETY TO THE GREATER OF FIVE HUNDRED DOLLARS OR THE TOTAL AMOUNT PAID, IF ANY, BY YOU FOR THE LICENSED APPLICATION AND ANY MONTHLY FEES CHARGED TO YOU DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE THAT THE EVENTS GIVING RISE TO THE ACTION OR CLAIM FIRST OCCURRED. THE LIMITATION OF LIABILITY REFLECTS THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY IN ANY AND ALL CIRCUMSTANCES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO CERTAIN OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

#### **NOTICES/CONTACT INFORMATION**

All communication with us should specify your name and Account information. **Our contact information is as follows: Energy Plus Credit Union, 1230 W Morris St, Indianapolis, IN 46221.** All notices from you must be made in writing. Legal notice to us shall be effective when directed to our Legal Department and received at our address.

#### **GENERAL INFORMATION**

The laws of the State of Indiana and applicable provision of federal law, excluding its conflicts-of-law rules, govern this Agreement.

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.

The failure of us to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

You agree not to transfer or assign this Agreement or any of your rights under this Agreement. Any purported transfer or assignment by you in violation of this section is void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties, their successors, permitted assigns and legal representatives.

The provisions of this Agreement relating to intellectual property ownership, restrictions on use, disclaimers of warranties, limitations of liability and indemnification shall survive termination or expiration of this Agreement for any reason.

The section titles in this Agreement are for convenience only and have no legal or contractual effect.

Any controversy or claim arising out of or relating to this Agreement is to be resolved by arbitration. The arbitration is to be administered by the American Arbitration Association and is to be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration is to be held before a panel of three arbitrators, each of whom must be independent of the parties. No later than 15 days after the arbitration begins, each party shall select an arbitrator and request the two selected arbitrators to select a third neutral arbitrator. If the two arbitrators fail to select a third on or before the 10th day after the second arbitrator was selected, either party is entitled to request the American Arbitration Association to appoint the third

neutral arbitrator in accordance with its rules. Before beginning the hearings, each arbitrator must provide an oath or undertaking of impartiality. Either party may seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party. By doing so, that party does not waive any right or remedy under this Agreement. The interim or provisional relief is to remain in effect until the arbitration award is rendered or the controversy is resolved. The arbitrators are to have no authority to award punitive damages or other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the provisions of this Agreement. Any arbitration proceeding under this Agreement must be commenced no later than two years after the controversy or claim arose. Failure timely to commence an arbitration proceeding constitutes both an absolute bar to the commencement of an arbitration proceeding with respect to the controversy or claim, and a waiver of the controversy or claim. The arbitrators are to interpret all controversies and claims arising under or relating to this Agreement in accordance with the laws set forth in Section 9(a). The arbitration is to be conducted in writing. Each party shall submit to any court of competent jurisdiction for purposes of the enforcement of any award, order or judgment. Any award, order or judgment pursuant to arbitration is final and may be entered and enforced in any court of competent jurisdiction.

### **FUNDS AVAILABILITY**

The credit union reserves the right to delay the availability of funds deposited to accounts that are not transaction accounts for periods longer than those disclosed in this policy. Please ask us if you have a question about which accounts are affected by this policy.

**General Policy.** For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 3:00pm on a business day that we are open, we may consider that day to be the day of your deposit. However, if you make a deposit after 3:00pm or on a day we are not open, we may consider that the deposit was made on the next business day we are open.

**Right to hold.** Funds that you deposit via Mobile Deposits may be subject to review and our internal check hold policy. Funds may not be available until the second business day after the day of your deposit. However, the first \$200.00 of your deposit will be available on the first business day after the day of your deposit. If you need the funds from a deposit right away, you should ask us when the funds will be available.

**Longer delays may apply.** We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$2,500 on any one day.
- You deposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the 9th business day after the day of your deposit.

