



Southwest Montana Community Federal Credit Union (SWMCFUCU)

### Mobile Banking and Remote Deposit Agreements

This Agreement governs your use of Mobile Banking services and Remote Deposit services provided to you by SWMCFUCU.

#### **MOBILE BANKING TERMS AND CONDITIONS**

For purposes of this Agreement, Mobile Banking means the financial services that SWMCFUCU makes available, and to which you have access, using a wireless handheld device such as a cell phone, PDA, or tablet and includes, by way of example and not limitation, mobile web banking and banking initiated by means of a downloadable application.

Your use of Mobile Banking is subject to this Agreement and to the following, all of which are considered part of this Agreement:

1. Terms or instructions appearing on SWMCFUCU's website and elsewhere when enrolling for, activating, accessing, or using Mobile Banking;
2. SWMCFUCU's rules, procedures and policies, as amended from time to time, that apply to Mobile Banking or any Account you maintain with SWMCFUCU;
3. Current rules and regulations, if any, of any funds transfer system or payment system used in connection with any Account; and
4. State and Federal laws and regulations, as specifically applicable.

In addition, each Account will continue to be subject to the Membership Agreement applicable to such Account. If this Agreement conflicts with the separate agreement to which an Account is subject, then this Agreement will control and take precedence, unless this Agreement expressly states otherwise.

#### **USING A DOWNLOADABLE APPLICATION**

**Ownership.** You acknowledge and agree that a third party provider to SWMCFUCU, if applicable, is the owner of all right, title and interest in and to the downloadable software, the computer programs contained therein, and any accompanying user documentation (collectively called the Software).

**License.** Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive 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 the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.

**Restrictions.** You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sub-license, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

**Disclaimer of Warranty.** The software is provided on an as is and as available basis without warranties of any kind, either express or implied, including, but not limited to, the implied warranties of merchant-ability, fitness for a particular purpose and non-infringement. No warranty is provided that the software will be free from defects or viruses or that operation of the software will be uninterrupted. Your use of the software and any other material or services downloaded or made available to you through the software is at your own discretion and risk, and you are solely responsible for any damage resulting from their use.

**Limitation of Liability.** To the maximum extent permitted by applicable law, in no event will SWMCFUCU, the provider of any financial services available through or related to the software, any of their contractors or providers or any of each of their affiliates be liable for any damages arising out of the use or inability to use the software, including but not limited to any general, special, incidental or consequential damages, even if advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which any claim is based. In any case, liability of SWMCFUCU or any of the other persons or entities described in the preceding sentence arising out of the use or inability to use the software shall not exceed in the aggregate the lesser of \$10.00 or the sum of the fees paid by you for this license.

**Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning Mobile Banking. This Agreement will be governed by and construed in accordance with the laws of the state of SWMCFCU, excluding that body of laws pertaining to conflict of laws. The parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation is and will be in the English language. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.

**Content and Services.** Neither SWMCFCU nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither SWMCFCU 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.

### **REMOTE DEPOSIT TERMS AND CONDITIONS**

Remote Deposit provides you the ability to access and make deposits to your designated eligible Accounts using either the Software referenced above or a home scanner and personal computer. Remote Deposit is designed to take advantage of the Check Clearing for the 21st Century Act and its regulations (collectively, Check 21). Remote Deposit enables you to use a compatible handheld device or home scanner to capture an image of original paper checks (Original Checks) that are drawn on or payable through U.S. financial institutions (each a Check Image) and to electronically submit the Check Image and associated deposit information to SWMCFCU from your home or other remote locations for deposit into a designated eligible Account for collection thereafter by SWMCFCU. A Check Image submitted to SWMCFCU electronically for deposit is not deemed received until SWMCFCU accepts and confirms receipt of your Check Image deposit.

Your use of Remote Deposit is subject to these requirements:

1. You must have or acquire and maintain a compatible handheld device and a wireless plan from a compatible wireless carrier.
2. You must qualify, and SWMCFCU must approve, your eligibility.

You may scan and submit Check Images for deposit to SWMCFCU within the dollar limits (Deposit Limits) established for you by SWMCFCU. SWMCFCU reserves the right to limit the frequency and dollar amount of deposits submitted through Remote Deposit. If you exceed the Deposit Limits established for you, SWMCFCU may in its sole discretion accept or refuse the Check Image deposit. If at any time SWMCFCU accepts a Check Image deposit that exceeds your Deposit Limits, SWMCFCU will have no obligation to do so in the future. SWMCFCU may at any time at its sole discretion raise or lower your Deposit Limits.

By requesting access to Remote Deposit, you authorize SWMCFCU to provide you with access to all of the Share Accounts eligible for Remote Deposit, which are a Primary Savings Account or a Checking Account and other Accounts as may be eligible in the future.

Scanning and submitting Check Image deposits does not constitute approval of the deposit by SWMCFCU. Generally, Check Image deposits received prior to 3:30 PM Mountain Time are posted to your account on the Business Day of receipt. Any Check Image deposit that requires review or that is received after 3:30 PM Mountain Time or on Saturdays, Sundays, federal holidays, Good Friday, Friday after Thanksgiving, Christmas Eve and New Year's Eve will be posted on SWMCFCU's next Business Day. Acknowledgment that your Check Image deposit has been received by SWMCFCU does not mean that the Check Image deposit was received error free.

You agree that you will use Remote Deposit to scan only Original Checks payable to and properly endorsed by you, drawn on financial institutions in the United States with a valid ABA/Routing Number and denominated in U.S. Dollars, and intended for deposit by you to your designated Account with SWMCFCU. All other items may be deposited by alternate methods such as in person or by mail.

You understand that SWMCFCU is not obligated to accept for deposit any Check Image that SWMCFCU in its sole discretion determines to be ineligible for Remote Deposit. Ineligible items include: Check Images of items drawn on banks located outside the United States, Check Images that are illegible, images of checks previously converted to Substitute Checks as defined by Check 21, and Check Images with unreadable MICR information. The quality of any Check Image must comply with the requirements established from time to time by any regulatory agency, clearing house or association. You acknowledge and agree that even if SWMCFCU does not identify a Check Image as ineligible, the Check Image may be returned to SWMCFCU because, among other reasons, the Check Image or any Substitute Check created from the Check Image is deemed ineligible by the financial institution upon which it is drawn or any intermediate collecting financial institution. SWMCFCU's failure to identify a Check Image you transmit to SWMCFCU as ineligible shall not preclude or limit your obligations.

You agree to be responsible for safekeeping and destruction of original items which are scanned, transmitted electronically and deposited using Remote Deposit and indemnify and hold SWMCFCU harmless from any liability with respect to (i) the safekeeping, use or destruction of the original items after they are scanned, transmitted and deposited electronically, or (ii) for any Items being submitted for deposit or presented for payment more than once. There are no laws or regulations that state how long original items should be retained prior to destruction; therefore, retention time frames are set at the Member's discretion. You are responsible if an Original Check is misused following submission by Remote Deposit.

You make the following representations and warranties:

1. You shall not alter any Original Check or Check Image and shall review the Check Image to ensure that it accurately represents all of the information on the front and the back of the Original Check at the time you scanned the Check Image.
2. You shall submit to SWMCFCU only Check Images that are suitable for processing, including, but not limited to, Check Images that are legible and contain machine-readable MICR data.
3. You shall be responsible for safekeeping or destruction of the Original Checks as stated above.
4. You shall not submit to SWMCFCU or to any other person or entity for deposit or credit any Original Check if a Check Image of the Original Check has already been submitted and accepted for deposit into your Account with SWMCFCU or which you previously submitted to and was accepted by any other person or entity for deposit.
5. You shall not deposit into your Account with SWMCFCU or any other deposit taking institution, or otherwise negotiate or transfer to anyone, any Original Check that you submitted as a Check Image deposit to SWMCFCU, unless following receipt of your submission, SWMCFCU notifies you that the Check Image is ineligible and not accepted for deposit or that the Check Image or any Substitute Check created from the Image is refused by the financial institution upon which it is drawn.
6. You shall indemnify, defend, and hold SWMCFCU and its agents from and against all liability, damage and loss arising from any claims, suits, or demands, brought by third parties with respect to any Check Image, Substitute Check, or Original Check processed through Remote Deposit as described above.
7. You shall use Remote Deposit only for your own personal, home office, or small business use in accordance with the terms of this Agreement. You shall not make Remote Deposit available or transfer your rights to use Remote Deposit for the benefit of any third party.

SWMCFCU will acknowledge receipt of your Check Image deposit submitted through Remote Deposit and notify you if a Check Image is not eligible for deposit. SWMCFCU's ability to provide Remote Deposit is conditioned upon the availability of the wireless or computer services and systems used in transmitting your requests and SWMCFCU's response. SWMCFCU shall not be liable or responsible for any loss or damage incurred due to the failure or interruption of Remote Deposit, wireless or computer services, or systems, resulting from the act or omission of any third party or other causes not reasonably within SWMCFCU's control. All fees and charges stated in the Truth in Savings Rate and Fee Schedule will remain in effect when you access your Account using Remote Deposit.

**Disclaimer of Warranties.** You agree your use of Remote Deposit 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. SWMCFCU disclaims all warranties of any kind as to the use of the services, whether express or implied, including, but not limited to the implied warranties of merchant-ability, fitness for a particular purpose and non-infringement. SWMCFCU makes no warranty that Remote Deposit (i) will meet your requirements, (ii) will be uninterrupted, timely, secure, or error free, (iii) that the results obtained from Remote Deposit will be accurate or reliable, and (iv) that any errors in the services or technology will be corrected. In no event will SWMCFCU be liable to you for any consequential, incidental, or indirect damage arising out of the use, misuse or inability to use Remote Deposit or for any loss of data, even if SWMCFCU has been advised of the possibility of such damage.

You agree that SWMCFCU may provide you with all disclosures, notices, and other communications about Remote Deposit, and any future amendments, changes, or additions to this Agreement in electronic form. At your request, SWMCFCU agrees to provide you with a paper copy of this Agreement by calling 406-563-8484. Your consent to receive notices and updates in electronic form only will apply for as long as you use Remote Deposit. You may withdraw your consent to receive electronic communications at any time by calling 406-563-8484. This Agreement may be downloaded at [swmcfcu.org](http://swmcfcu.org).

SWMCFCU may amend or change the terms and conditions stated in this Agreement (including changes in the fees and charges hereunder) by giving notice to you as required by law or regulation. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of Remote Deposit or the safety of SWMCFCU's relationship with you or is otherwise required immediately by law or applicable regulation.

The following provisions are applicable to sole proprietorships, partnerships, limited liability companies, corporations, and other forms of business organization that are not consumer accounts and are not maintained primarily for personal, family, or household purposes:

1. SWMCFCU is not responsible for any loss, injury or damage, whether direct, indirect, special, consequential, exemplary, economic or otherwise, caused by Remote Deposit or the use of Remote Deposit except as otherwise expressly provided for in this Agreement or by applicable law. You are responsible for any unauthorized use of Remote Deposit and any loss or damages incurred due to the unauthorized access to your Accounts.

2. If any person with authorized access through Remote Deposit is no longer authorized, it is your responsibility to notify SWMCFCU. SWMCFCU shall not be liable or responsible to you for any transactions conducted by any person whose authority to conduct transactions is no longer in effect until SWMCFCU is expressly notified.