

BAYER HERITAGE FEDERAL CREDIT UNION

MOBILE DEPOSIT SERVICES AGREEMENT

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 Bayer Heritage Federal Credit Union or our processor with your Mobile Device. After you login to Mobile Banking, you may access Mobile Deposit if qualified for the service. By accepting the terms of this agreement, Bayer Heritage Federal Credit Union members (referred to hereafter as “you” or “member”) agree to be bound by the following Mobile Deposit terms and conditions of Bayer Heritage Federal Credit Union (referred to hereafter as “us”, “we” or “our”).

The service is subject to the following terms and conditions and to the instructions, rules and terms provided.

Limits Deposits are limited to \$2500 per day and \$5000 per rolling month. The rolling month limit is calculated using a 30 day look back period from the most recent deposit or deposit attempt. If you attempt to initiate a deposit in excess of these limits, we will 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.

Mobile Deposit Service Eligibility The following are requirements that must be met for initial approval to use the Mobile Deposit Service:

- You are at least 18 years old
- You are enrolled in Online Banking with a valid email address

We reserve the right to deny access to the Mobile Deposit service at any time due to any adverse circumstances with your membership account, including, but not limited to, intentional fraud or loan default.

Eligible Items You agree to scan and deposit only checks (*i.e.*, drafts drawn on a credit union, savings and loan or bank and payable on demand.)

You agree that you will NOT use Mobile Deposit to deposit:

- Checks payable to any person or entity other than you (*i.e.*, payable to another party and then endorsed to you).
- Checks payable to you and another party who is not a joint owner on the account.
- Incomplete items – Checks that do not contain signatures of the maker, endorsement signatures, or that are missing any of the information required.

- Checks that contain evidence of alteration, 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.
- Non-Negotiable items – Any item that is stamped with a “non-negotiable” watermark.
- Any item that is “stale dated” or “postdated”.

Requirements Each image must 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 by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

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. Your endorsement must include your signature and “**For Mobile Deposit Only**”. 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.

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 Membership and Account Agreement. When we receive an image, you will receive a confirmation message on your mobile screen. We shall not be deemed to have received the image for deposit unless you receive the confirmation message which indicates that the deposit was successful. Confirmation does not mean that the image contains no errors. 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. We will notify you of rejected images.

Original checks. After you receive confirmation that we have received an image, you must securely store the original check for 30 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.

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.

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

- 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.
- The amount, payee(s), signature(s), and endorsement(s) on the image and on the original check are legible, genuine, and accurate.
- You will not deposit or otherwise endorse to 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.
- There are no other duplicate images of the original check.
- 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.
- You are authorized to enforce and obtain payment of the original check.
- You have possession of the original check and no party will submit the original check for payment.

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.

Compliance with Law. You will use Mobile Deposit 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 have handled the original items in accordance with applicable laws, rules and regulations.

Mobile Deposit Unavailability. 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. In the event that Mobile Deposit is unavailable, you may deposit original checks at Bayer Heritage Federal Credit Union branches or through our ATMs.

Funds Availability. Any funds deposited into your account using Mobile Deposit will not be available until the next business day. The first \$200 of your deposits, however, will be available the first business day after the day of the deposit. Any funds over the \$200 will be available second business day. In some instances, funds you deposit by check may be delayed for five additional days under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit 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 computer or communications equipment.

If you are a new member, your funds may be delayed for 20 days. A new member is anyone having an account for less than 30 days.

Mobile Deposit Security. You will complete each deposit promptly. 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. 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.

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.

You are, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds associated with accessing the service. You will verify and reconcile any out-of-balance condition and promptly notify Bayer Heritage Federal Credit Union of any errors within the time periods established.

In addition, you agree that you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Service, copy or reproduce all or any part of the technology or Service; or interfere, or attempt to interfere, with the technology or Service. We and our technology partners, inclusive of, but not limited to, Access Sofittek and Ensenta Software, LLC, retain all rights, title and interests in and to the Services, Software and Development made available to you.

Credit Union's Obligations.

- Financial Data.** We agree to transmit all the financial data under our control required to utilize the service selected by you and to act on appropriate instructions received from you in connection with such service. You assume full responsibility for the consequences of any misuse or unauthorized use of or access to the service or disclosure of any confidential information or instructions of you by your employees, agents, or other third parties.
- **Exception Items.** When Bayer Heritage Federal Credit Union reviews and processes Member's electronic file, we may reject any electronic image that we, in our sole discretion, determine to be ineligible for the Mobile Deposit service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. We will notify you of any Exception items.

Accountholder's Indemnification Obligation. You understand and agree that you are required to indemnify Bayer Heritage Federal Credit Union and hold us harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from your use of the Services and/or breach of this Disclosure and Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement.

Unless prohibited by law, by making Mobile Deposits you make the following warranties to us and agree to indemnify us and hold us harmless as fully described in the paragraph above:

- That you were entitled to deposit each of the Qualifying Items included in your Mobile Deposits;
- That only paper originals of bona fide Qualified Items have been submitted for Mobile Deposit;
- That each of the Qualifying Items included in your Mobile Deposits was duly authorized in the amount stated on the Qualifying Item and to the payee stated on the Qualifying Item;
- That there was and will be no duplication among Qualifying Items included in your Mobile Deposits;
- That you will not deposit or redeposit the paper originals of the Qualifying Items included in your Mobile Deposits;
- That we will not suffer any loss as a result of your Mobile Deposits;
- That we will not suffer any loss as a result of your retention or destruction of the paper originals of Qualifying Items included in your Mobile Deposits;
- That all information you provide to us regarding your Mobile Deposits will be accurate;
- That your Mobile Deposits and all information you provide to us will be virus-free;
- That your Mobile Deposits will not violate any laws; and
- That you have performed and will perform all your obligations under this Agreement

You understand and agree that you are required to indemnify our technology partners, including but not limited to Access Softtek (Access Softtek) and Ensenta Software, LLC (Ensenta), and hold harmless, its affiliates, officers, employees and agents, as well as 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 (Financial Institution) or End User's use of the Services, Ensenta or Access Softtek Applications, unless such claim directly results from an action or omission made by Access Softtek or Ensenta in bad faith. You understand and agree that this paragraph shall survive the termination of this Agreement.

DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF ANY 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 ANY 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 ANY 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 ANY REMOTE BANKING SERVICE 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 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 ANY 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.

Credit Union’s Liabilities.

Direct Damages. BAYER HERITAGE FEDERAL CREDIT UNION’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY MEMBER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY MEMBER FOR THE SERVICE RESULTING IN SUCH LIABILITY IN THE SIX MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. IN NO EVENT SHALL WE BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. OUR LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO MEMBER IN CONNECTION WITH ANY MATTER.

Credit Union’s Performance. Member acknowledges and agrees that Bayer Heritage

Federal Credit Union shall not be liable for any damages or losses of any kind resulting

from any unintentional error or omission by Bayer Heritage Federal Credit Union in performing the Services, in accordance with or unintentional deviation from the terms and conditions of this agreement, including exhibits or addenda. Member shall defend, indemnify, and hold us harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to the Services.

Limitation. Bayer Heritage Federal Credit Union shall have no liability to Member, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Services regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Services provided for in this Agreement. We will not be liable if Member fails to report timely any error or discrepancy reflected in a Statement prepared by us, or if Member fails to report a breach of a security procedure. If Bayer Heritage Federal Credit Union fails to perform under this Agreement in accordance with the standards set herein, our liability for damages, losses, and other compensation owing to Member shall be limited to the total fees paid by Member to Bayer Heritage Federal Credit Union for the Credit Union failure to perform resulting in such liability in the two (2) month period preceding the date the claim accrued. We shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control. In no event will Bayer Heritage Federal Credit Union be liable for any indirect, consequential, punitive, or special damages. We will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

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 any Remote Banking services. 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.

Errors or Questions. If an error occurs during a mobile deposit session or you have a question about this service, please contact Online Banking Support at 1-800-272-6003 extension #1492, email Online Banking Support at mail@bayerhfcu.com or write to Bayer Heritage Federal Credit Union, Attention: Online Banking Support, 17612 Energy Road Proctor, WV 26055. www.bayerhfcu.com.

