

## **DEPOSIT ANYWHERE SERVICES DISCLOSURE AND AGREEMENT**

Amended: June 25, 2019

In this Disclosure and Agreement, the words “I,” “me,” “my,” “us” and “our” mean the (consumer or business) that applied for and/or uses any of the Remote Deposit Capture Services (the “Services”) described in this Disclosure and Agreement. The words “you,” “your,” and “yours” mean Baxter Credit Union (“BCU”). My application for use of the Remote Deposit Capture Services (the “Services”), your notification of approval of my application, and my BCU Deposit Account Agreement are hereby incorporated into and made a part of this Disclosure and Agreement. In the event of a discrepancy or contradiction in terms between this Disclosure and Agreement, my application, your approval, or the BCU Deposit Account Agreement, this Disclosure and Agreement will control.

**Use of the Services.** Following receipt of your notification approving my use of the Services, I am authorized by you to remotely deposit paper checks I receive to my account with you (the “Account”) by electronically transmitting a digital image of the paper checks to you for deposit. My use of the Services constitutes my acceptance of the terms and conditions of this Disclosure and Agreement. I agree to comply with the hardware and software requirements set forth at Exhibit “A,” which is attached hereto and incorporated by this reference. I understand and agree that receipt of an image does not occur until after you notify me of receipt of the image via the Deposit History feature within Deposit Anywhere. I understand that notification from you confirming receipt of an image does not mean that the image contains no errors or that you are responsible for any information I transmit to you. You are not liable for any image that you do not receive. Following receipt of the image, you may process the image by preparing a “substitute check” or clearing the item as an image.

Notwithstanding anything to the contrary, you reserve the right, within your sole and absolute discretion, to accept or reject any item for remote deposit into my Account. I understand that any amount credited to my Account for items deposited using the Services is a provisional credit and I agree to indemnify you against any loss you suffer because of your acceptance of the remotely deposited check.

I agree that I will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the technology or Services, (ii) copy or reproduce all or any part of the technology or Service; or (iii) interfere, or attempt to interfere, with the technology or Services.

### **Guarantee Specific to Deposits Received for Credit to a Consumer or Business Account:**

My use of the Services for the purpose of depositing to a Consumer or Business Account constitutes my understanding and agreement that I am personally liable for any expenses BCU incurs in attempting to obtain final payment for the item in question,

outside of the routine costs associated with item processing, in the event of a default by myself and/or by my Business. This includes but is not limited to recovery of the amount credited in the event of non-payment, collection costs and attorney's fees, as well as any and all costs associated with BCU enforcing this Guarantee. This Guarantee shall benefit BCU and its successors and assigns.

**Compliance with Law, Rules and Regulations.** I agree to comply with all existing and future operating procedures used by BCU for processing of transactions and any and all actions related to the Services. I further agree to comply with, and unless otherwise described herein with regard to Reg. CC, be bound by, all applicable state or federal laws, rules, regulations, orders, guidelines, operating circulars and pronouncements, affecting checks and drafts and ACH transactions, including, but not limited to, all rules and procedural guidelines established by the Federal Trade Commission ("**FTC**"), the Board of Governors of the Federal Reserve, and any other clearinghouse or other organization in which BCU is a member or to which rules BCU has agreed to be bound. The Rules are incorporated herein by reference. These procedures, rules, and regulations (collectively the "Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Rules, the Rules will control. I also agree that I will not engage in any activity directly or indirectly related to the use of the Services that is illegal or fraudulent.

**Check Standards.** Any image of a check that I transmit to you must accurately and legibly provide all the information on the front and back of the check at the time presented to me by the drawer. Prior to capturing the original check, I will endorse the back of the original check. My endorsement will include my signature and the following information: Account Number, Date, and the words "for deposit via Deposit Anywhere." The captured image of the check transmitted to you must accurately and legibly provide the following information: (1) the information identifying the drawer and the paying bank that is preprinted on the check, including complete and accurate MICR information and the signature(s); and (2) other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check. The image quality for the check will meet the standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association. BCU reserves the right to reject any check image that is not clear, skewed, or that is suspicious in any manner.

**Rejection of Deposit.** You are not liable for any service or late charges levied against me due to your rejection of any item. In all cases, I am responsible for any loss or overdraft plus any applicable fees to your Account due to an item being returned.

**Items Returned Unpaid.** A notice will be sent to me of transactions you are unable to process because of returned items. With respect to any item that I transmit to you for remote deposit that you credit to my Account, in the event such item is dishonored, I authorize you to debit the amount of such item from the Account. Check images that are

returned for image quality adjustments will have to be submitted for physical processing in paper to BCU upon receipt of notice of such; they may not be re-scanned.

**Email Address.** I agree to notify you immediately if I change my email address, as this is the email address where you will send me notification of receipt of remote deposit items.

**Unavailability of Services.** I understand and agree that the Services may at times be temporarily unavailable due to system maintenance or technical difficulties, including without limitation those of the Internet service provider and Internet software. In the event that the Services are unavailable, I acknowledge that I can deposit an original check at your branches or through your ATMs or by mailing the original check to you at 340 N Milwaukee Ave Vernon Hills IL 60061. It is my sole responsibility to verify that items deposited using the Services have been received and accepted for deposit by you. You will send notification, by email or other method, of items that are rejected by the next business day following rejection.

I understand that you may add, delete or change the feature or functionality of the Service, at any time, at your discretion.

**Business Day and Availability Disclosure.** I understand the Services are available Monday through Friday between 8:00 a.m. to 3:00 p.m., Central Time, excluding holidays, any other day you are not open for business, or such other hours as established by you from time to time. Transmissions processed after these business hours on a business day, or on any other day that is not a business day are treated as occurring on the next business day.

**Funds Availability.** I understand and agree that, for purposes of deposits made using the Services, the place of deposit is Vernon Hills, Illinois. With regard to the availability of deposits made using the Services, please review Member Service Agreement – Funds Availability Disclosure. Additional delays may occur on a case-by-case basis. For determining the availability of my deposits, every day is a business day except Saturdays, Sundays, and Federal Holidays. Please note that the Expedited Funds Availability Act (Reg. CC) does not apply to deposits made using the Service, thus for determining funds availability, the terms of this Disclosure and Agreement apply. If I need the funds from a deposit made available sooner than provided under the Services, I understand I should contact BCU.

**Internal Controls and Audit.** I understand and agree to adhere to the internal controls and Audit requirements as described in this Disclosure and Agreement.

**Accountholder's Warranties.** I make the following warranties and representations with respect to each image of an original check I transmit to you utilizing the Services:

1. Each image of a check transmitted to you 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.
2. The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
3. I 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 paid.
4. Other than the digital image of an original check that I remotely deposit through your Services, there are no other duplicate images of the original check.
5. I 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.
6. I am 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.
7. The information I provided in my Application remains true and correct and, in the event any such information changes, I will immediately notify you of the change.
8. I have not knowingly failed to communicate any material information to you and will provide you all reasonable assistance with any questions related to my deposits.
9. I have possession of each original check deposited using the Services and no party will submit the original check for payment.
10. Files and images transmitted to you will contain no viruses or any other disabling features that may have an adverse impact on your network, data, or related systems.
11. I am not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed by me to BCU. I am not in the business of cashing checks.

**Limitations on Frequency and Dollar Amount.** I understand and agree that I cannot exceed the limitations on frequency and dollar amounts of remote deposits that are set forth by you.

**Unacceptable Deposits.** I understand and agree that I am not permitted to deposit the following items using the Services:

1. Any item drawn on my account or my affiliate's account.
2. Any item that is stamped with a "non-negotiable" watermark.
3. Any item that contains evidence of alteration to the information on the check.
4. Any item issued by a financial institution in a foreign country.
5. Any item that is incomplete.
6. Any item that is "stale dated" or "postdated."
7. Any third party check, i.e., any item that is made payable to another party and then endorsed to me by such party.
8. Savings Bonds

**Storage of Original Checks.** I must securely store each original check. If I am using the Services to deposit items into an account to which I am a party I understand this means the original check(s) that I deposit using the Services, must be accessible for a period of 45 days after transmission and final credit is given in my Account. After such period expires, all checks must be destroyed in a manner that will assure that the check cannot be reconstituted after 45 days. I understand and agree that I am responsible for any loss caused by my failure to secure or destroy the original checks.

**Accountholder's Indemnification Obligation.** I indemnify you and hold you harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from my use of the Services and/or breach of this Disclosure and Agreement. I understand and agree that this requirement shall survive the termination of this Agreement.

**Securing Images on Mobile Devices.** When using the Services, I understand that check images captured using my mobile device are stored on the device only until the associated deposit has been successfully submitted. I agree to promptly complete each deposit. In the event that I am unable to promptly complete my deposit, I agree to ensure that my mobile device remains securely in my possession until the deposit has been completed or to delete the associated images from the application.

**In Case of Errors.** In the event that I believe there has been an error with respect to any original check or image thereof transmitted to you for deposit or a breach of this Disclosure and Agreement, I will immediately contact you regarding such error or breach as set forth below.

Telephone: 800-388-7000

Please send a secure message by logging into BCU.org

#### **Limitations of Liability.**

(a) ANY PROVISION IN THIS DISCLOSURE AND AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, BCU SHALL ONLY BE LIABLE FOR DAMAGES CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND BCU'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF (i) MY ACTUAL DAMAGES OR (ii) THE TOTAL FEES PAID BY ME TO BCU FOR SERVICES. IN NO EVENT SHALL BCU OR ANY PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSSES OR INJURIES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR COST OF COVER) ARISING OUT OF, OR RELATED TO, THE USE BY MEMBER OF SERVICE OR ANY SERVICE OR THE FAILURE OF BCU OR ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER EVEN IF BCU OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.

(b) I ACKNOWLEDGES AND AGREES THAT MY USE OF SERVICES SHALL BE AT MY SOLE RISK, AND THAT SERVICES ARE PROVIDED BY BCU ON AN "AS IS" BASIS.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BCU MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO ME OR TO ANY OTHER PERSON, AS TO SERVICE OR ANY ASPECT THEREOF, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY, AND BCU HEREBY DISCLAIMS ANY AND ALL OF THE SAME. I AGREE THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY BCU EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS DISCLOSURE AND AGREEMENT OR SERVICE TO BE PERFORMED PURSUANT HERETO.

(d) TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH BCU'S LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BCU'S LIABILITY TO ME UNDER THIS DISCLOSURE AND AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM BCU'S FAILURE TO EXERCISE ORDINARY CARE.

(e) BCU MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO ME OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH THE SERVICES, INCLUDING, BUT NOT LIMITED TO, MY COMPUTER SYSTEMS OR RELATED EQUIPMENT, MY SOFTWARE, OR INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF BCU'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT I USE, OR AS TO WHETHER ANY SOFTWARE OR INTERNET DELIVERED SERVICE WILL PERFORM IN AN UNINTERRUPTED MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(f) BCU SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, MYCOMPUTER HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY BCU TO ME IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM ME TO BCU,

FROM BCU TO ME, FROM ME TO ANY PROCESSOR, FROM ANY PROCESSOR TO BCU, OR OTHERWISE. BCU SHALL NOT BE RESPONSIBLE FOR NOTIFYING ME OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF MY COMPUTER HARDWARE OR SOFTWARE.

**Change in Terms.** You may change the terms and charges for the Services indicated in this Disclosure and Agreement by notifying me of such change and may amend, modify, add to, or delete from this Disclosure and Agreement from time to time my use of the Services after receipt of notification of any change by you constitutes my acceptance of the change.

**Termination of the Services.** I may, by written request, terminate the Services provided for in this Disclosure and Agreement. At your sole discretion, you may revoke my privilege of using the Services at any time. In the event of termination of the Services, I will remain liable for all transactions performed on my Account.

**Relationship to Other Disclosures.** The information in this Disclosure and Agreement applies only to the Services described herein. Provisions in other disclosure documents, as may be revised from time to time, remain effective for all other aspects of the Account.

**Governing Law.** I understand and agree that this Disclosure and Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Illinois, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. I also agree to submit to the personal jurisdiction of the courts of the State of Illinois.

**Attorneys' Fees.** In the event of any arbitration or other adversarial proceeding between the parties concerning this Disclosure and Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

**Periodic Statement.** Any remote deposits made through the Services will be reflected on my monthly account statement. I understand and agree that I am required to notify you of any error relating to images transmitted using the Services within 60 days for consumer accounts and within 10 days for business accounts after I receive the monthly periodic statement that includes any transaction I allege is erroneous. I am responsible for any errors that I fail to bring to your attention within such time period.

**Changes in Financial Circumstances.** I understand and agree that I must inform you immediately in the event a material change in my financial circumstances as or in any of the information provided in my Application including any supporting financial information. This includes, but is not limited to, the bankruptcy, insolvency, sale, transfer or assignment of a business associated with the Service and my account, or if I am in default under any agreement for borrowed money or any other material contract. I agree to provide you any financial records you reasonably request to determine my financial status during the term of this Disclosure and Agreement.

**Confidentiality.** I acknowledge and agree that confidential data relating to your Services, marketing, strategies, business operations and business systems (collectively, “Confidential Information”) may come into your possession in connection with this Disclosure and Agreement. I understand and agree that I am prohibited from disclosing and agree to maintain the confidentiality of your Confidential Information.

**Waiver.** The failure of either party to seek a redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms or of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

**Relationship.** This Disclosure and Agreement does not create, and shall not be construed to create, any joint venture or partnership between the parties. No officer, employee, agent, servant, or independent contractor of either party shall at any time be deemed to be an employee, servant, agent, or contractor of the other party for any purpose whatsoever.

**Fees.** I will pay the amount listed in your Fee Schedule for the Services, if any. I understand you may add, increase, alter, or otherwise change the fee and other amounts for the Services from time to time.

## **EXHIBIT “A”**

### **INSTRUCTIONS FOR REMOTE DEPOSIT CAPTURE SERVICES**

[View complete instructions on how to use Deposit Anywhere.](#)

[View completed instruction on how to use your mobile Deposit Anywhere.](#)