

evolve FEDERAL CREDIT UNION HOME DEPOSIT AGREEMENT

This Home Deposit Capture Agreement (as amended and/or supplemented, this "Agreement") governs Member's use of evolve Federal Credit Union's ("evolve FCU") RDC Service ("RDC" or "Service"). evolve FCU offers RDC under this Agreement only in association with one or more deposit accounts maintained by Member at evolve FCU. The terms, provisions and conditions of this Agreement do not replace, but supplement, any and all other agreements (whether now or in the future) that govern any account maintained by Member at evolve FCU (whether now or in the future) or any other evolve FCU services utilized by Member (whether now or in the future). Member's use of the Service is Member's acknowledgement of and acceptance of the following terms and conditions.

Terms and Conditions

1. **General Description of RDC.** Subject to the terms, provisions and conditions of this Agreement, evolve FCU will provide RDC to Member, to allow Member to make deposits to Member's checking, money market accounts and the primary savings account, to the extent evolve FCU authorizes Member to use RDC for such account (each such deposit account an "**Account**" and, collectively, the "**Accounts**") from Member's home or office by scanning checks on a desktop scanner and delivering the images and information required hereby to evolve FCU or evolve FCU's designated processor (a "**Processor**"). The terms evolve FCU and Processor may be used interchangeably when used in relation to any services performed by a Processor on behalf of evolve FCU including, but not limited to, the receipt and processing of images and check data and any notices related thereto. The scanner must capture an image of the front and back of each Check (as herein defined) to be deposited (each an "**Image**" and, if more than one, "**Images**") in accordance with the Procedures (as herein defined), must read and capture the magnetic ink character recognition ("**MICR**") line on each check and must read and capture all such other data and information as is required by this Agreement. After capture of the Images, the MICR line on each check and all other required data and information from each check, Member will transmit one or more files containing the Images, the MICR line from each check and all other required data and information from or pertaining to all checks, data and other required information (each such file a "**File**" and, if more than one, "**Files**") to evolve FCU or Processor via the Internet. Subject to compliance with the terms, provisions and conditions of, and as provided in, this Agreement, and subject to evolve FCU's Funds Availability Policy, evolve FCU will provisionally credit the Account or Accounts designated by Member for the amount of the deposit(s) to which the File(s) pertains on the day of receipt of the File(s) and enter the images of the checks into the collection process in accordance with the provisions of evolve FCU's then current Disclosure for Personal Accounts pertaining to the Account(s) into which the deposit is to be made (the "**Deposit Agreement**") and this Agreement. Funds from deposits may not be available for immediate withdrawal and are subject to evolve FCU's Funds Availability Policy. Member acknowledges and agrees that evolve FCU may discontinue, and/or change the terms of, RDC or any related content, features, products or services associated therewith, at any time without notice or liability to Member or any third party. Member agrees to comply with and complete any Member training requirements of evolve FCU for the RDC Service.

2. **System Requirements.** Member understands it must, and hereby agrees to, at its sole cost and expense, use computer hardware and software that meets all technical requirements for the proper delivery of RDC and that fulfills Member's obligation to obtain, and maintain, secure access to the Internet. Member understands and agrees it may also incur, and shall pay, any and all expenses related to the use of RDC, including, but not limited to, telephone service or Internet service charges. Member is solely responsible for the payment of any and all costs and expenses associated with meeting and maintaining all technical requirements and additional items necessary for the proper use of RDC. Member understands and agrees that it is solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with RDC and the cost thereof, and Member hereby agrees that it will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements, and such performance shall be rendered by properly trained personnel. evolve FCU is not responsible for, and Member hereby releases evolve FCU from any and all claims or damages resulting from, or related to, any computer virus or related problems that may be associated with using electronic mail or the Internet. evolve FCU is not responsible for, and Member hereby releases evolve FCU from any and all claims or damages resulting from, or related to, defects in or malfunctions of Member's computer hardware or software, or failures of or interruptions in any electrical, telephone or Internet services. evolve FCU hereby advises Member, and Member hereby agrees, to scan its computer hardware and software on a regular basis using a reliable computer virus detection product in order to detect and remove computer viruses. In connection with its use of RDC, Member shall only use the hardware described as follows (the "**Hardware List**") or such other hardware as is approved in advance by evolve FCU and shall only use such software as is approved in advance by evolve FCU:

- Microsoft Windows 2000 Professional Sp4; Microsoft Windows XP SP1 and higher; Vista OS
- PC with a minimum 2 Ghz processor, Pentium 3 or better
- Minimum 512 MB of RAM
- 256K Access to internet
- Java SE 1.6 and higher
- Norton Security or similar Firewall, Virus, Malware, & Spyware protection
- Twain Compatible Flatbed Scanner with Twain Drivers Installed

All right, title and interest in and to (a) any and all computer programs, including, but not limited to, the object and source codes therefore, and any and all updates, upgrades, fixes and enhancements thereto and any and all documentation, user guides and instructions pertaining thereto (everything in this clause (a), collectively, "**Software**"), (b) RDC Procedure Manual (defined herein below) and (c) any and all users guides, instructions and other documentation provided to, or used by, Member in connection with the Service (everything in this clause (c) together with the RDC Procedure Manual, collectively, the "**Documentation**") shall be, and remain, the property of evolve FCU or any third-party Software provider, as applicable. Unless otherwise expressly authorized, Member may not (a) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the

technology or Service; (b) copy or reproduce all of any part of the technology or Service; and (c) interfere, or attempt to interfere, with the technology or Service.

3. **Checks Deposited and Security Interest.** Member hereby agrees that it will only scan and deposit a check(s) as that term is defined in Federal Reserve Board Regulation CC (“**Reg CC**”). Member agrees that the image of the check that is transmitted to evolve FCU (each such check and other item a “**Check**” and, if more than one, “**Checks**”) shall be deemed an “item” within the meaning of Article 4 of the Uniform Commercial Code as in effect in <State>. Member further agrees that it will not remotely deposit any check(s) or other item(s) that: (a) are payable to any person or entity other than Member, (b) are drawn, or otherwise issued, by Member or any affiliate of Member on any account of Member or of such affiliate, (c) are prohibited by evolve FCU’s then current procedures pertaining to the Service (the “Procedures”) or are in violation of any law, rule or regulation, (d) Member knows or suspects, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn, (e) have not been previously endorsed by a evolve FCU and are either “substitute checks” (as defined in Reg CC or other applicable federal law or regulation) or “image replacement documents” that purport to be substitute checks, without evolve FCU’s prior written consent, (f) are drawn on financial institutions that are located outside of the United States or Territories of the United States, (g) is a Remotely Created Check, as that term is defined in Reg CC, (h) any single item of \$10,000.00 or more, or (i) which are not acceptable to evolve FCU for deposit into a deposit account as provided in the Deposit Agreement, which is incorporated herein by reference and made a part hereof (Checks described in clauses (a) through (h) each a “**Prohibited Check**” and, collectively, “**Prohibited Checks**”). If Member deposits a Prohibited Check, Member agrees to indemnify and reimburse evolve FCU for, and hold evolve FCU harmless from and against, any and all losses, costs and expenses (including reasonable attorneys fees) evolve FCU may incur associated with any warranty, indemnity or other claim related thereto. Furthermore, if, after first having obtained evolve FCU’s written consent to do so, Member provides evolve FCU with an electronic representation of a substitute check for deposit into an Account instead of an original Check, Member agrees to indemnify and reimburse evolve FCU for, and hold evolve FCU harmless from and against, any and all losses, costs and expenses (including reasonable attorneys fees) evolve FCU incurs because any such substitute check resulting from such electronic representation does not meet applicable substitute check standards and/or causes duplicate payments.

Member grants evolve FCU a security interest in all Accounts or other deposits (whether general or special) of Member’s at evolve FCU, and in all funds in such Accounts or other deposits, to secure Member’s obligations to evolve FCU under this Agreement. This security interest will survive termination of this Agreement. evolve FCU may hold any funds on deposit with evolve FCU by Member after termination of this Agreement for up to **14 calendar days** following the expiration of any return or chargeback rights regarding any Item processed by Member using the Service or, if later, until any other claims to such funds have expired.

Member may be required to maintain a reserve (“Settlement Reserve”) of an amount to be solely determined by the evolve FCU. Member acknowledges and agrees that any Settlement Reserve will be deposited in a evolve FCU account for exclusive use by the evolve FCU for purposes of offsetting any of

Member's obligations under this Agreement. Member grants the evolve FCU a security interest in any Settlement Reserve to enable the evolve FCU to enforce any obligation owed by Member under this Agreement without notice or demand to Member. Member's obligation to maintain a Settlement Reserve shall survive the termination of this Agreement, with such obligation lasting until all of Member's obligations under this Agreement have been fully offset.

4. **Scanning of Checks and Transmission of Files.** Member shall properly install and use all software and hardware required by this Agreement or otherwise required for, or related to, the use of RDC. Member shall (a) restrictively endorse each Check to be deposited in the proper location as follows:

The back of each item must include the following:

The words "For Mobile Deposit only"

evolve Federal Credit Union

The Membership Number

The Account Number to which it is being deposited

Payee's Endorsement

Example:

Back of item

For Mobile Deposit Only
evolve Federal Credit Union
Member # 0000000, Account # 0
Payee's Endorsement

(b) scan the front and back of each Check to be deposited and thereby capture the image of the front and back of each Check and capture the MICR encoding on, and any other required data from, each Check and (c) transmit the File containing the images of, the MICR line from and all other required data and information from or pertaining to, such Checks and other information to evolve FCU or its Processor in accordance with the Procedures, a copy of which Procedures have either heretofore been, or are herewith, provided to Member by evolve FCU, and Member acknowledges receipt thereof. evolve FCU reserves the right to amend the Procedures, with or without prior notice to Member. evolve FCU may also provide Member with, or require Member to establish, a User ID, a personal identification number ("PIN") and/or passwords and other procedures (collectively, "**Security Procedures**") to access RDC. The specific Security Procedures will be described in the Procedures. Member agrees to, at all times, (a) comply with the Procedures, (b) safeguard the confidentiality and security of the Procedures, Security

Procedures and all other proprietary property or information evolve FCU provides to Member in connection with RDC and (c) notify evolve FCU immediately if Member has any reason to believe the security or confidentiality required by this provision has been or may be breached. Member acknowledges, understands and agrees the Security Procedures are not designed for the detection of errors. evolve FCU is not, and will not be, obligated to detect errors by Member or others, even if evolve FCU takes certain actions from time to time to do so.

To ensure accuracy, Member shall balance the dollar amount of each deposit to the sum of the Checks prior to transmitting the File in accordance with the Procedures. Member may send multiple Files to evolve FCU or Processor throughout the day. Member shall not make deposits in excess of the limits established by evolve FCU for the Member's RDCs (the "**Scan Limit**") evolve FCU is authorized to determine and to change the Deposit Limit for the Member in evolve FCU's sole discretion at any time. If the total dollar value of the Files sent by Member to evolve FCU exceeds the Scan Limit, evolve FCU may, at its option, refuse to accept the File that exceeds the Scan Limit, or evolve FCU may accept and process the File. Member agrees not to exceed the Scan Limit. To be eligible for processing on the day transmitted, Files must be received by evolve FCU no later than 3:00 P.M. Mountain Time on a business day we are open (the "**Cut-Off Time**"). A File is considered received by evolve FCU when a complete copy of such File has been written on a evolve FCU electronic storage device in conformity with evolve FCU's technical and operational requirements. To meet the Cut-Off Time, the entire File must be received by evolve FCU prior to the Cut-Off Time, and the File must successfully pass evolve FCU's review and approval for conformity with the technical requirements. For purposes of determining when a File has been delivered and received, evolve FCU's records shall be determinative. A File which is not balanced in accordance with the Procedures or which is received after the Cut-Off Time shall be deemed to have been received on the business day following the business day on which the File is actually received by evolve FCU ("business day" means any day which evolve FCU is open to conduct substantially all of its services, but shall not include Saturday, Sunday or federal holidays). evolve FCU reserves the right to change the number of Files that may be transmitted in a day, the Scan Limit and the Cut-Off Time. All such changes shall be effective immediately and may be implemented prior to Member's receipt of notice thereof. Member may contact evolve FCU during normal business hours to verify the current number of Files that may be transmitted in a day, the Scan Limit and the Cut-Off Time.

5. **Maintenance and Destruction of Original Check.** Member shall mark the original Check "Processed" or "Scanned" before or during the process of scanning the Check in accordance with Section 4 of this Agreement. Member shall securely store all original Checks for a period of sixty (60) days after Member has received notice from evolve FCU that the File containing the images of such Checks has been accepted (such period the "**Retention Period**"). During the Retention Period, Member shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to original Checks, (b) the information contained on such Checks shall not be disclosed, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Member shall destroy original Checks upon the expiration of the Retention Period applicable to such Checks. Member will use commercially reasonable methods of destruction approved by evolve FCU to destroy original Checks after expiration of the Retention Period. Member

hereby indemnifies evolve FCU for, and holds evolve FCU harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is (are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the destruction of original Checks by Member.

Member will promptly (but in all events within 5 business days) provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to evolve FCU as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check.

6. **Image and MICR Quality.** Each File transmitted by Member to evolve FCU shall contain Images of the front and the back of the Checks scanned and remotely deposited by Member. Each Image of each Check shall be of such quality that the following information can clearly be read and understood by sight review of such Image:

(a) the amount of the Check;

(b) the payee of the Check;

(c) the signature of the drawer of the Check;

(d) the date of the Check;

(e) the Check number;

(f) the information identifying the drawer and the paying evolve FCU that is preprinted on the Check, including the MICR line; and

(g) all 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 indorsements applied to the back of the Check.

Each Image shall also meet all standards for image quality established by the American National Standards Institute (“ANSI”), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

Member shall also capture and transmit to evolve FCU the full-field MICR encoding on each Check. In accordance with the Procedures, Member shall ensure that the following information is captured from the MICR line of each Check:

(aa) the American Bankers Association routing transit number (“RTN”);

(bb) the number of the account on which the Check is drawn;

(cc) when encoded, the amount of the Check; and

(dd) when encoded, the serial number and the process control field of the Check.

7. **Receipt of File.** Member agrees that Member shall be solely liable for, and evolve FCU shall not have any liability whatsoever to Member for, any File or the Images or other information contained therein that are not received by evolve FCU or for any File or the Images or other information contained therein that are intercepted or altered by an unauthorized third party.

Member agrees that evolve FCU has no obligation to accept a File and, therefore, may reject any File or the Images or other information contained therein submitted by Member. evolve FCU has no obligation to notify Member of the rejection of a File or the Images or other information contained therein. evolve FCU shall have no liability to Member for the rejection of a File or the Images or other information contained therein or for the failure to notify Member of such rejection. Upon receipt of a File submitted by Member, evolve FCU may examine such File and the Images and other information contained therein to ensure that Member has complied with this Agreement and followed the Procedures. If evolve FCU determines that Member has not complied with this Agreement or followed the Procedures or if errors exist in the Images or other information contained in the File, evolve FCU, in its sole discretion, may either reject the File or elect to correct the error and accept and process the corrected File (a "**Corrected File**"). As a form of correction, evolve FCU may credit Member's Account for the full amount of the deposit and make any necessary adjustments to the Account to correct the error. evolve FCU may, at its option, also perform a risk management analysis of one or more Files submitted by Member to detect potentially fraudulent Checks, and, in its sole discretion, evolve FCU may reject any such File or the Images or other information contained therein. If after examination of a File and the Images and other information contained therein, evolve FCU determines that Member has complied with this Agreement and processed and transmitted the File in accordance herewith and with the Procedures, the File is balanced and the Images meet the requirements of Section 6 of this Agreement, then evolve FCU shall accept the File (an "**Accepted File**") for deposit to Member's Account. Upon acceptance of the File, evolve FCU shall electronically notify Member of receipt and acceptance of the Accepted File for deposit. Information and data reported hereunder: (a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Member agrees that evolve FCU shall have no liability for the content of payment-related information. Notwithstanding the fact that evolve FCU has accepted a File for deposit, any credit made to Member's Account shall be provisional, and Member shall remain liable to evolve FCU for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, evolve FCU.

8. **Provisional Credit and Availability of Funds.** Upon acceptance of the File, and subject to evolve FCU's Funds Availability Policy, evolve FCU will grant Member's Account Provisional Credit (as herein defined) for the total amount of the Corrected File or the Accepted File, as applicable. As used herein, "Provisional Credit" means that the credit is made to Member's Account subject to final payment of the Checks and subject to the terms of the Deposit Agreement. Member and evolve FCU agree that evolve FCU's Funds Availability Policy applies to Items deposited using this Service and that Funds from Deposits may not be available for immediate withdrawal.

9. **Laws, Rules and Regulations.** Member agrees to comply with all existing and future operating procedures used by evolve FCU for processing of transactions. Member further agrees to comply with, and 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, National Check Exchange (“**NCE**”), Small Value Payments Member (“**SVPCo**”), Viewpointe, Endpoint Exchange, the National Automated Clearing House Association (“**NACHA**”), Electronic Check Clearing House Organization (“**ECCHO**”) and any other clearinghouse or other organization in which evolve FCU is a member or to which rules evolve FCU 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.

10. **Collection of Checks.** evolve FCU, in its sole discretion, shall determine the manner in which Images shall be presented for payment to the drawee bank. evolve FCU, in its sole discretion, shall select the clearing agents used to collect and present the Images, and evolve FCU’s selection of the clearing agents shall be considered to have been designated by Member. evolve FCU shall not be liable for the negligence of any clearing agent. Collection of Checks is also subject to the Rules and the terms of the Deposit Agreement.

11. **Contingency Plan.** Member agrees that, in the event Member is not able to capture, balance, process, produce or transmit a File to evolve FCU, or otherwise comply with the terms hereof or of the Procedures, for any reason, including, but not limited to, communications, equipment or software outages, interruptions or failures, Member will transport the originals of all Checks to the closest office of evolve FCU and deposit original Checks with evolve FCU until such time that the outage, interruption or failure is identified and resolved. The deposit of original Checks at an office of evolve FCU shall be governed by the terms and conditions of the Deposit Agreement and not by the terms of this Agreement. Notwithstanding the foregoing, and to the extent applicable, Section 12 of this Agreement dealing with warranties shall apply to the deposit of original Checks.

12. **Warranties.** Member represents, warrants and covenants the following to evolve FCU:

(a) Checks Deposited. Member shall only deposit Checks that are authorized by this Agreement, the Procedures and the Deposit Agreement and the Checks do not contain any alterations and Member will only transmit acceptable items for deposit and will handle the original items in accordance with applicable laws, rules and regulations.

(b) Assistance. Member will provide all reasonable assistance to evolve FCU and its subcontractors in providing RDC set forth herein.

(c) Endorsements. Each Item bears all applicable endorsements and in a format as directed by evolve FCU.

(d) Image Quality. Each Image transmitted by Member to evolve FCU contains an accurate representation of the front and the back of each Check and complies with the requirements of this Agreement;

(e) Accuracy of Information. All data and other information submitted by Member to evolve FCU, including, but not limited, to data contained in the MICR line of each Check is complete and accurate and complies with the requirements of this Agreement;

(f) No Duplicates. Member will not: (i) create duplicate Images of the Checks, (ii) transmit a duplicate Image or File to evolve FCU, or (iii) deposit or otherwise negotiate the original of any Check of which an Image was created. Member further warrants that no subsequent transferee, including but not limited to evolve FCU, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Item(s);

(g) No Loss. No Subsequent transferees of the Item(s), including but not limited to evolve FCU, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check;

(h) Information. All information provided by Member to evolve FCU is true, complete and accurate and properly reflects the business, financial condition and principal partners, owners or officers, of Member. Member is not engaged in, or affiliated with, any businesses, products or methods of selling other than those disclosed by Member to evolve FCU;

(i) Authority and Legality.

(i) Member is authorized to enter into, and perform its obligations under, this Agreement;

(ii) the person signing this Agreement on behalf of Member is duly authorized to execute this Agreement;

(iii) this Agreement is valid and enforceable against Member in accordance with its terms; and

(iv) the entry into, and performance of, this Agreement by Member will not violate any law, or conflict with any other agreement, to which Member is subject;

(v) the Member will only use the products and Service for lawful purposes and in compliance with all applicable laws, rules, and regulations;

(j) No Litigation. There is no action, suit or proceeding pending or, to Member's knowledge, threatened which, if decided adversely, would impair Member's ability to carry on its business substantially as now conducted or which would adversely affect Member's financial condition or operations.

(k) Transactions.

(i) All Checks and business transactions of Member are, and will be, bona fide;

(ii) all signatures on Checks are authentic and authorized;

(iii) the Member is a person authorized to collect each item transmitted or is authorized to obtain payment of each item transmitted on behalf of a person entitled to collect such transmitted item; (iv) any item transmitted has not been altered;

(v) the Member 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;

(l) Rule Compliance. Member conducts its business, and submits Checks and Files in compliance with this Agreement, the Procedures, applicable law and the Rules.

(m) Computer Virus. No Files or Checks contain any computer viruses or other harmful, intrusive or invasive codes.

(n) Indemnity. Member agrees to indemnify evolve FCU for, and hold evolve FCU harmless from and against, any and all claims, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from a breach of any of Member's warranties, representations and/or obligations under this Agreement or any other agreement with between Member and evolve FCU, including, but not limited to, the Deposit Agreement, and the terms of this paragraph shall survive the termination of this Agreement.

13. **Returned Checks.** If Images of Checks deposited by Member are dishonored or otherwise returned unpaid by the drawee bank, or are returned by a clearing agent for any reason, including, but not limited, to issues relating to the quality of the Image, Member understands and agrees that, since Member either maintains the original Check or has destroyed the original Check in accordance with Section 5 of this Agreement, the original Check will not be returned, and evolve FCU may charge back an Image of the Check to Member's Account. Member understands and agrees that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by evolve FCU, Member agrees not to deposit the original Check if an Image or other debit as previously described is charged back to Member.

14. **Fees and Charges.** So long as this Agreement remains in effect, Member agrees to pay to evolve FCU the normal deposit account service charges established from time to time by evolve FCU and, in addition thereto, the fees and charges set forth in the Fee Schedule as provided from time to time hereafter to Member, and all such other fees and charges as may be agreed upon from time to time by Member and evolve FCU.

Member authorizes evolve FCU to deduct any charges for RDC from any Account, even if such deduction causes an overdraft in the Account. Should Member fail or refuse to pay any charges under this Agreement, Member agrees to pay all collection costs (including reasonable attorney's fees) which may be incurred by evolve FCU. evolve FCU shall have the right to increase or decrease charges imposed for

RDC and will notify Member of the changes, to the extent required by law. Member's use of RDC after changes have been made shall constitute Member's agreement to the same.

In addition to RDC fees, Member agrees to pay all taxes, tariffs and assessments levied or imposed by any government agency in connection with RDC, this Agreement, and/or the software or equipment made available to Member (excluding any income tax payable by evolve FCU). Member is also responsible for the costs of any communication lines and any data processing charges payable to third parties.

15. **Amendments.** Unless applicable law provides otherwise, this Agreement may be amended by notice sent electronically or by mail to Member at Member's last address known to evolve FCU to be effective not less than thirty (30) days after the day transmitted or mailed. evolve FCU shall not be bound by any modification of this Agreement unless evolve FCU expressly agrees to the modification in writing. Member shall have the right to terminate the Agreement prior to the effective date of amendment. This Agreement supersedes all prior agreements and amendments.

16. **Confirmation: Account Reconciliation.** evolve FCU will provide notice of receipt of deposits to Member's Account on the periodic statement for such Account. Member is responsible for detecting and reporting to evolve FCU any discrepancy between Member's records and the records evolve FCU provides to Member. If Member does not detect and notify evolve FCU of such a discrepancy within 60 days of Member's receipt of any terminal printout, mailed report or periodic statement (each a "Report"), whichever is received first, then such transactions shall be considered correct, and Member shall be precluded from asserting such error or discrepancy against evolve FCU.

17. **Update Notice.** Member shall provide written notice to evolve FCU of any changes to the information previously provided by Member to evolve FCU, including, but not limited to, any additional locations, any change in business, any new business, the identity of principals and/or owners, the form of business organization, type of goods and services provided and method of conducting sales. Such notice must be received by evolve FCU within 5 business days of the change.

Member shall provide any additional information requested by evolve FCU within 5 days of such request. evolve FCU retains the right to: (i) review Member's Checks, Files and business activities from time to time to confirm Member is conducting business as stated by Member at the time of the execution of this Agreement and (ii) re-price or terminate RDC based on changes to information previously provided to evolve FCU by Member.

18. **evolve FCU's Duties.** evolve FCU's duties and responsibilities are limited to those described in this Agreement, the Deposit Agreement and any other agreements governing the Accounts. evolve FCU will use commercially reasonable care in performing its responsibilities under this Agreement.

19. **evolve FCU's Responsibilities.** Member agrees to monitor its account balances and charges, to promptly notify evolve FCU if any Report conflicts with Member's records, and to refrain from acting on information it has reason to believe is erroneous. In all instances, evolve FCU's and, if the services of a third party provider are utilized in the provision of RDC, such third party's sole liability to Member shall

be limited to the correction of any errors made. evolve FCU shall not be responsible for suspension of performance of all or any of its obligations, responsibilities or covenants hereunder, whether expressed or implied, if at any time, or from time to time, compliance therewith is prevented or hindered by, or are in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, any act of God or of the public enemy, war, epidemic, strike, or work stoppages of the U.S. Postal Service and commercial carrier(s), or electric power disruption or shortage, telecommunications failure or computer failures; acts, omissions or errors of any carrier and/or agent operating between Member and evolve FCU or evolve FCU and any Federal Reserve Bank or other agency utilized to exercise transfers or any recipients of transferred funds; any incorrect, unauthorized or fraudulent use or other fraud by any person other than evolve FCU's employees; or, without limiting the generality of the foregoing, any other cause or circumstance beyond evolve FCU's control or other conditions or circumstances not wholly controlled by evolve FCU, which would prohibit, retard or otherwise affect evolve FCU's complete or partial performance under this Agreement.

20. **Internet Disclaimer.** evolve FCU does not, and cannot, control the flow of any documents, files, data or other information via the Internet, whether to or from evolve FCU's network, other portions of the Internet or otherwise. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. Actions or inactions of such third parties can impair or disrupt Member's connections to the Internet (or portions thereof). evolve FCU cannot guarantee that such events will not occur. Accordingly, evolve FCU disclaims any and all liability arising out of, resulting from or related to, such events, and in no event shall evolve FCU be liable for any damages of any kind (whether in contract, in tort or otherwise) that are attributable or in any way related to the Internet infrastructure or Member's or evolve FCU's ability or inability to connect to the Internet.

21. **Indemnification and Liability; Third Party Claims.** Member hereby indemnifies evolve FCU and each of its parents, subsidiaries and affiliates and their respective officers, directors, employees, members, partners, agents, insurers and attorneys (each an "**Indemnified Party**" and, collectively, the "**Indemnified Parties**") for, and holds each of the Indemnified Parties harmless from and against, all actions, causes of action, claims, damages, liabilities and expenses (including reasonable attorneys' fees) of any nature or kind (including those by third parties) arising out of, or related to, this Agreement, including all actions, causes of action, claims, damages, liabilities and expenses arising out of, related to or resulting from:

(a) Member's

- (i) failure to report required changes,
- (ii) transmission of incorrect data to evolve FCU or
- (iii) failure to maintain compliance with the Rules,

(b) evolve FCU's

- (i) provision of RDC,

(ii) evolve FCU's action or inaction in accordance with, or in reliance upon, any instructions or information received from any person reasonably believed by evolve FCU to be an authorized representative of Member,

(c) Member's breach of any of Member's representations, warranties, covenants or other agreements or responsibilities under this Agreement and/or

(d) Member's breach or violation of any Rules; provided, however, Member is not obligated to indemnify evolve FCU for any damages solely and proximately caused by evolve FCU's gross negligence or willful misconduct.

22. Limit of Liability.

(a) ANY PROVISION IN THIS AGREEMENT, ANY OTHER AGREEMENT OR THE RULES TO THE CONTRARY NOTWITHSTANDING, evolve FCU SHALL ONLY BE LIABLE FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND evolve FCU'S LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF

(i) MEMBER'S ACTUAL DAMAGES OR

(ii) THE TOTAL FEES PAID BY MEMBER TO evolve FCU FOR RDC.

IN NO EVENT SHALL evolve FCU 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 RDC OR ANY SERVICE OR THE FAILURE OF evolve FCU OR ANY PROVIDER TO PROPERLY PROCESS AND COMPLETE TRANSACTIONS THEREUNDER, EVEN IF evolve FCU OR SUCH PROVIDER(S) HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR INJURIES.

(b) MEMBER ACKNOWLEDGES AND AGREES THAT MEMBER'S USE OF RDC SHALL BE AT MEMBER'S SOLE RISK, AND THAT RDC IS PROVIDED BY evolve FCU ON AN "AS IS" BASIS.

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

(d) TO THE FULLEST EXTENT ALLOWED BY LAW, AND SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION DEALING WITH evolve FCU'S LIABILITY FOR DAMAGES SOLELY AND PROXIMATELY CAUSED BY

ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, evolve FCU'S LIABILITY TO MEMBER UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTING ERRORS RESULTING FROM evolve FCU'S FAILURE TO EXERCISE ORDINARY CARE.

(e) evolve FCU MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, IN LAW OR IN FACT, TO MEMBER OR TO ANY OTHER PERSON AS TO ANY COMPUTER HARDWARE, SOFTWARE OR EQUIPMENT IN CONNECTION WITH RDC, INCLUDING, BUT NOT LIMITED TO, MEMBER'S COMPUTER SYSTEMS OR RELATED EQUIPMENT, MEMBER'S SOFTWARE, OR MEMBER'S INTERNET SERVICE PROVIDER OR ITS EQUIPMENT, OR AS TO THE SUITABILITY OR COMPATIBILITY OF evolve FCU'S SOFTWARE, INTERNET DELIVERED SERVICE, EQUIPMENT OR COMMUNICATION INTERFACES WITH THOSE THAT MEMBER USES, 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) evolve FCU SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS OR FAILURES RESULTING FROM DEFECTS IN, OR MALFUNCTIONS OF, MEMBER'S COMPUTER HARDWARE OR SOFTWARE, FOR THE QUALITY OF PERFORMANCE OR LACK OF PERFORMANCE OF ANY COMPUTER SOFTWARE OR HARDWARE OR INTERNET DELIVERED SERVICES SUPPLIED BY evolve FCU TO MEMBER IN CONNECTION WITH THIS AGREEMENT, OR FOR THE TRANSMISSION OR FAILURE OF TRANSMISSION OF ANY INFORMATION FROM MEMBER TO evolve FCU, FROM evolve FCU TO MEMBER, FROM MEMBER TO ANY PROCESSOR, FROM ANY PROCESSOR TO evolve FCU, OR OTHERWISE. evolve FCU SHALL NOT BE RESPONSIBLE FOR NOTIFYING MEMBER OF ANY UPGRADES OR ENHANCEMENTS TO ANY OF MEMBER'S COMPUTER HARDWARE OR SOFTWARE.

23. Third Parties; Maintenance.

(a) Services from Others. Member may be using special equipment, services or software provided by a third party to assist it in processing Checks and Files hereunder (each a "**Third Party**" and, if more than one, "**Third Parties**"). Member

(i) agrees that any Third Party is acting as Member's agent in the delivery of Checks and Files to evolve FCU, and

(ii) agrees to assume full responsibility and liability for any failure of that Third Party to comply with the Rules or this Agreement. evolve FCU will not be liable for any losses or additional costs incurred by Member as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Member shall provide at least 10 days advance written notice to evolve FCU in the event it uses any such Third Party. Member is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. evolve FCU shall not have any responsibility for any Check or File handled by a Third Party until that point in time when evolve FCU accepts and approves a Check or File from such Third Party for processing.

(b) Equipment Maintenance. Member shall be solely responsible for obtaining and properly maintaining its equipment and system requirements, including computer equipment, Internet connectivity, scanning terminals (unless contracted with evolve FCU) and any other equipment or items necessary to receive RDC. evolve FCU shall not be liable to Member, in any manner whatsoever, for any type of errors, losses, damages or other claims related to Member's failure to do so.

24. **Use of Trademarks.** Member may not use evolve FCU's name or trademarks without the express written consent of evolve FCU. If Member is permitted to use any of evolve FCU's name, trademarks or promotional materials, Member will not indicate, directly or indirectly, that evolve FCU endorses, or is connected in any way with, any of Member's goods or services.

25. Financial Information. evolve FCU may from time to time request information from Member in order to evaluate a continuation of RDC to be provided by evolve FCU hereunder and/or adjustment of any limits set by this Agreement. Member agrees to provide the requested financial information immediately upon request by evolve FCU, in the form required by evolve FCU.

Member authorizes evolve FCU to investigate or reinvestigate at any time any information provided by Member in connection with this Agreement or RDC and to request reports from credit bureaus and reporting agencies for such purpose. Upon request by evolve FCU, Member hereby authorizes evolve FCU to enter Member's business premises for the purpose of ensuring that Member is in compliance with this Agreement. If Member refuses to provide the requested financial information, or if evolve FCU concludes, in its sole discretion, that the credit risk of Member is unacceptable, or if Member refuses to give evolve FCU access to Member's premises, evolve FCU may terminate RDC according to the provisions hereof.

26. **Confidential Information.**

a. evolve FCU Information.

Member acknowledges that the Technology and Services contain valuable trade secrets, which are the sole property of evolve FCU or its subcontractors ("Credit Union Confidential Information"), and Member agrees to hold same in strict confidence and disclose only to those agents whose duties reasonably require access to same, provided that all such agents are informed of such use or disclosure restrictions as set forth herein. Member agrees to use no less than reasonable care to prevent other parties from learning of these trade secrets. Member will take no less than all reasonable steps to prevent the unauthorized use, disclosure, duplication or access to the Credit Union

b. Member Information.

evolve FCU acknowledges that Member's information may contain information regarding its Members, which are the sole property of Member ("Member Confidential Information," and, collectively with Financial Institution Confidential Information, "Confidential Information"), and evolve FCU agrees to hold same in confidence and will protect Member Confidential Information pursuant to evolve FCU's privacy policies.

c. Exceptions.

The obligations of this Section 26 shall not apply to any information that:

(a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party (the "Receiver"), generally known or available;

(b) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records;

(c) is hereafter furnished to the Receiver by a third party, as a matter of right and without restriction on disclosure;

(d) is independently developed by the Receiver without reference to or use of the disclosing party's information; or

(e) is required to be disclosed by law or in connection with a legal or administrative proceeding, provided that the party to whom the information belongs is given prompt prior written notice of such proposed disclosure, if not otherwise prohibited.

d. Unauthorized Use.

Both parties acknowledge that the unauthorized use, disclosure or duplication of trade secrets or other confidential information belonging to each party shall constitute a material breach of this Agreement and is likely to cause irreparable injury to the owner, for which there is no adequate remedy at law. Accordingly, evolve FCU and Member each hereby agree that the other party may seek injunctive relief against it to prevent or remedy any breach of the confidentiality obligations described herein without the other party being required to post bond, or if bond is required, only nominal bond.

27. **Attorneys' Fees.** In the event of any arbitration or other adversarial proceeding between the parties concerning this 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.

28. **Successors.** This Agreement and all the terms and provisions herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

29. **Assignment.** No right or interest hereby conferred shall be assignable without the prior written consent of the other party, and any assignment made without such consent shall be null and void; provided, however that evolve FCU may assign this Agreement or any part of it to any of evolve FCU's affiliates or to a successor of evolve FCU by merger or acquisition upon written notice to Member.

30. **No Third-Party Beneficiaries.** This Agreement shall not be construed to confer any rights or remedies upon any person not a party to this Agreement, whether as a third-party beneficiary or otherwise, against Member or evolve FCU, their respective successors, assigns and affiliates.

31. **Captions and Headings.** The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.

32. **Entire Agreement.** The terms of the Deposit Agreement, all other agreements with evolve FCU pertaining to the Accounts and the Rules, are incorporated by reference and made a part of this Agreement. In the event of any inconsistency between such agreements, the Rules and this Agreement, the provisions of this Agreement shall control to the extent necessary. Member agrees that this Agreement is the entire statement of the terms and conditions which apply to the subject matter hereof. This Agreement supersedes any prior agreements between the parties relating to RDC.

33. **No Waiver.** No delay or failure on the part of evolve FCU in exercising any of evolve FCU's rights under this Agreement shall constitute a waiver of such rights, and no exercise of any remedy hereunder by evolve FCU shall constitute a waiver of its right to exercise the same or any other remedy hereunder. Except for changes made in accordance with this Agreement, no deviation, whether intentional or unintentional, will constitute an amendment of this Agreement or will constitute a waiver of any right or duty of either party.

34. **Severability.** In the event all or any part of any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable, in any respect, the remaining provisions or parts thereof shall be binding and enforceable as if any such invalid, illegal or unenforceable provision had never been contained herein.

35. **Construction.** This Agreement is an agreement between parties who have carefully reviewed these terms and represent that they have reviewed and understand this Agreement and the transactions contemplated by this Agreement, and this Agreement is entered into by both parties in reliance upon the economic and legal bargains contained herein, and shall be interpreted and construed in a fair and impartial manner, without regard to such factors as the party which prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties or the domicile of any party.

36. **Termination.** In addition to the denial, suspension, revocation and termination provisions in this Agreement, evolve FCU may immediately terminate the Service or any portion of the Service if evolve FCU determines that such Service or portion of any Service is in violation of the any other law or regulation, or in its sole discretion and without notice, decides to cease providing this Service. Member may terminate the Service with notice to evolve FCU. Upon the termination of this Agreement for any reason: (a) Member's access to, and use of, the Services will terminate;

(b) Member will return to evolve FCU any and all evolve FCU Services, equipment, software, documentation, Technology or other deliverables provided to Member by evolve FCU, including any copies thereof held by Member;

(c) evolve FCU will deliver to Member all Member documentation and other materials stored by Member on evolve FCU's or its subcontractor's network; and

(d) each party shall return any and all Confidential Information in its possession to the party that disclosed such Confidential Information or destroy same, and provide written verification of same.

Notwithstanding the foregoing, evolve FCU's obligations with respect to subsections (c) and (d) shall be subject to evolve FCU's record retention policies and applicable laws and regulations. Notwithstanding the foregoing, evolve FCU may immediately terminate this Agreement without notice if, in evolve FCU's sole discretion, evolve FCU determines that Member has abused RDC or evolve FCU believes that it will suffer a loss or other damage if the Agreement is not terminated. evolve FCU's election to terminate this Agreement is in addition to any and all other remedies that may be available to evolve FCU and will not affect any obligations Member may have to evolve FCU. Any reinstatement of RDC under this Agreement will be at evolve FCU's sole discretion and must be agreed upon in writing by an authorized representative of evolve FCU.

evolve FCU and Member agree that Sections 3, 5, 12, 13, 21, 22, 24, 26, 27, 28, 29, 30, 31, 33, 34, and 37 shall survive the termination of this Agreement.

37. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of <State>, without reference to its conflict of laws provisions, and applicable federal law. The Parties further agree and voluntarily consent to the jurisdiction of courts located in Albuquerque, <State> as the sole and exclusive venue for any court proceedings related to this agreement.

38. **Notices.**

Any notice required hereunder to Member shall be given by electronic mail to the address shown for Member in the home banking "User Options"

Any notice required hereunder to evolve FCU shall be given by electronic mail to: info@evolvefcu.org or to such other electronic mail address or by other method as designated by evolve FCU by notice to Member.