Maui Federal Credit Union

Mobile Deposit Service Agreement

This Agreement as amended from time to time sets forth the terms and conditions for the Mobile Deposit Service which is made available by Maui Federal Credit Union ("Credit Union"). It defines your rights and responsibilities and those of the Credit Union with respect to the Credit Union's Mobile Deposit Service ("Service"). Please read it carefully before using the Service. In this Agreement, the words "you", "your" and "yours" refer to the Member or anyone who applies for or uses this Service. The words "we"," us", "our" and "Credit Union" refer to Maui Federal Credit Union.

By enrolling or using the Service, you and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement, and any amendments. Subject to applicable law, this Agreement is subject to change by the Credit Union at any time in our sole discretion. If you do not agree to any of the terms, do not use the Service and contact us at (808) 873-5050 to deactivate the Service.

This Agreement supplements, but does not replace, any other agreements, disclosures, terms and conditions, and other information that we have provided to you, all of which continue to be applicable to your Credit Union accounts and services.

1. Service. Mobile Deposit is a service designed to allow you to make deposits of original checks to your accounts from a compatible mobile device by taking a photo of the original check(s), front and back, and delivering the digital images and associated deposit information to us or our processor with your mobile device. This service is not available for non-personal accounts.

   You are solely responsible for selecting your mobile device and making sure that you know how to properly use your mobile device and the Service. The Credit Union may change or upgrade the Service from time to time that could require a change, upgrade, or update in your mobile device or the software. You are solely responsible for any required upgrade to your mobile device or the software and any losses caused by your failure to properly use and maintain your mobile device.

2. Service Eligibility. You must be a member for at least 90 days and in good standing[1] to utilize this Service. In addition, your physical and mailing address and phone number on your account with us must be current and valid. Eligibility is at the sole discretion of the Credit Union. We may suspend or permanently revoke this service, in our sole and absolute discretion. This service is available exclusively to mobile banking users only through the Credit Union's mobile banking application.

3. Funds Availability. Imaged items transmitted using the Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. For the purposes of determining the availability of funds, funds will generally be available within 3 business days upon receipt of the check image by the Credit Union. We may delay availability of funds from any deposit you make through the Service at any time in our sole discretion, dependent on our ability to collect based upon any check image that you present. You also understand that credit is provisional[2] until we receive final payment. To avoid delay, you may go to any MauiFed branch to deposit the original check instead of using the Service.

4. Processing Times. Our business days are Monday through Friday, excluding federal holidays and other holidays observed by the Credit Union. Imaged items transmitted before 2:00 p.m. Hawaii Standard Time on a business day shall be considered received by the Credit Union on that day. Imaged items transmitted on a non-business day or after 2:00 p.m. on a business day shall be considered received by the Credit Union on the following

[1] A m*ember who is current with all obligations outstanding with the Credit Union and has not caused the Credit Union a loss*.

[2] *A provisional credit is a temporary credit made to your account.*

business day. The transmitted image is considered received by us only when we expressly acknowledged such receipt. Processing times may be delayed in the event of an emergency or a business disruption.

5. Deposit Limits. We reserve the right to impose limits on the amount(s) and/or number of deposits that you transmit using the Service and to modify such limits from time to time. Mobile deposits are limited to $2,500 per check and up to an aggregate total of $5,000 per day. If you attempt to initiate a deposit in excess of these limits, we will reject your deposit. The Credit Union may change the deposit limits based on its sole discretion.

6. Deposit Acceptance. We reserve the right to reject any item transmitted through the Service, at our discretion. We are not responsible for items we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from the Credit Union that we have received the image. Receipt of such confirmation does not mean that the transmission was error free or complete, the item was accepted for deposit, the funds are available for withdrawal, or that the Credit Union received payment from the issuer of the Check.

7. Member Account. You must designate a Credit Union share or share draft account as the account to be used for the purposes of receiving deposit transactions requested in connection with the Service. We will provide you with details of each specific transaction. You will be responsible for reviewing and the balancing of any settlement account.

8. Responsibility for Imaging. You are solely responsible for imaging deposit items, accessing the Service from the Credit Union and maintaining your mobile device. You will be responsible for the payment of all telecommunications expenses associated with the Service. The Credit Union shall not be responsible for providing or servicing any equipment or mobile device for you.

   Before sending the electronic image to the Credit Union, you agree to review the image for clarity and accuracy. You understand and acknowledge that images that are not clear cannot be processed by the Credit Union or may be processed inaccurately. Even if you are notified that an image has been received, that notification does not mean that the image has been accepted or that it contains no errors. The Credit Union reserves the right to reject any image. You are solely responsible for the image and information you transmit. You understand and agree that any amount credited to your account based on the images sent by you for deposit is a provisional credit and you are responsible for any loss, late fees or other service charges resulting from rejection of the image by the Credit Union.

9. Security Procedures. You are solely responsible for establishing, maintaining, and following such security protocols as deemed necessary to ensure that digital images transmitted directly to the Credit Union are intact, secure and confidential until received by the Credit Union. You shall take reasonable steps to safeguard the confidentiality and security of any passwords, mobile devices, and information provided in connection with the Service. You agree not to provide any of your access information to any unauthorized persons. If you permit other persons to use your computer or devices, login information or other means to access the Service, you will be held responsible for any transactions they authorize, and we will not be liable for any damages to you. You shall notify the Credit Union immediately if you have any reason to believe the security of confidentiality required by this provision has been or may be breached; and immediately change the password if the member knows or suspects the confidentiality of the password has been compromised in any way.

10. Deposit Requirements. You agree that you will only use the Service to deposit checks drawn on financial institutions within the United States. 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 be legible and 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.

All checks submitted for deposit will require the following statement "Mobile Deposit at Maui FCU Only" followed by all applicable signatures. Failure to properly endorse mobile deposit items will result in the rejection of the item.

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 payable to you and your joint owner, both of you must endorse the check. If the check is ambiguous as to whom the check is written, (i.e. in the absence of the word "and" or "or" between the names) all payees must endorse the check.

The Credit Union reserves the right to refuse, reject, or delay funds availability of deposits if and when all endorsement requirements stated are not met. In addition, any loss the Credit Union incurs from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility.

11. Deposit Prohibitions. You agree not to deposit, attempt to deposit, or allow others, either directly or indirectly, to deposit or attempt to deposit, by any means any ineligible items including but not limited to:

- Checks in excess of the Service deposit limit as described in Section 5 of this Agreement
- Checks not payable in United States currency
- Checks made payable individually or jointly to someone who is not an owner on your account
- Checks made payable to more than one party (including tax refund checks and other government checks), unless deposited into an account in the name of all payees
- Checks made payable to a third party or checks payable to cash
- Checks with any inconsistencies such as the numerical amount not matching the written amount or the payee not matching the account name (e.g. nicknames)
- Checks that are stale dated (generally if dated for more than 6 months prior to the date of deposit unless otherwise stated on the check, for example "void after 90 days").
- Checks post-dated with a date after the date of deposit
- Checks containing obvious alteration to any of the fields on the front of the check or item, or which 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 or item is drawn.
- Checks without the full Magnetic Ink Character Recognition (MICR) line of the face of the check
- Checks that are starter, counter or temporary checks
- Any Substitute Check, the original of which has already been presented for deposit via the Service
- Any image of a check that has already been deposited either as an original or as a substitute check via the Service or through a remote deposit capture service offered at any another financial institution
- Any original check, the Substitute Check of which has already been presented for deposit via the Service
- Checks drawn on financial institutions located outside the United States
- Checks that do not have the original manual signature of the person authorizing the check (facsimile signatures are ineligible)
- Checks with any endorsement on the back other than that specified in Section 10 of this Agreement
- Checks for which you do not have the original paper check in your physical possession
- Checks that have been re-deposited or returned such as "non-sufficient funds" or "refer to maker" or returned for any other reason.
- Checks made payable to a custodial and/or account governed by the Uniform Transfers to Minors Act
- Checks payable to a trust, trustee, or other fiduciary
- Checks to be deposited to an Individual Retirement Account (IRA)
- Checks that require a special endorsement or warranty (e.g. insurance and escrow checks)
- Checks payable on sight or payable through drafts, as defined in Regulation CC

- Checks payable to a business attempting to deposit to a personal account, even if you are the business owner
- Checks printed in light ink that does not reproduce a clear image
- Non-negotiable checks
- Traveler's Checks
- Money Orders
- Gift Checks
- Savings Bonds
- Checks that are in violation of any federal or state law, rule, or regulation.

Deposits of any prohibited checks or items listed in this section may result in the immediate termination of your use of the Service. The Credit Union reserves the right to modify the checks ineligible for deposit through the Service without prior notice.

In the event that you, or any third party, makes, or attempts to make, a deposit in violation of this section you agree to defend, indemnify, and hold the Credit Union and its agents harmless from and against all liability, damage and loss arising out of any claims, suits, or demands brought by third parties with respect to any such Substitute Check or original check.

12. Your Representations and Warranties. You represent and warrant:
    - That you will comply with this Agreement and all federal and state laws, and rules and regulations applicable to deposit and check transactions, including those of the National Automated Clearing House for ACH transactions, Uniform Commercial Code, Regulation CC and the rules of any Substitute Check.
    - That all checks deposited through the Service are made payable to you and not payable to another party.
    - That all checks deposited through the Service are made payable to you and/or another party who is a joint owner on the intended deposit account.
    - That all signatures on each check are authentic and authorized.
    - That each check has not been altered, 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.
    - That there are no duplicate presentments of a check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and you assume responsibility for any such duplicate presentment of any check.

    In the event you breach any of these representations or warranties, you agree to defend, indemnify and hold the Credit Union and its agents harmless from and against all liability, damages and loss arising out of any claims, suits or demands brought by third parties with respect to any such breach. You further authorize the Credit Union to charge your account for the amount of any such demand, claim or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

13. Check Retention and Destruction. You agree that all checks belong to you, and not to the Credit Union, and that those items shall be handled in accordance with this Agreement and your Membership and Account Agreement. After our receipt of a deposit transmission, we will acknowledge by electronic means our receipt of such transmission. Your electronic transmission is subject to proof and verification. You will retain the original of all imaged checks that have been deposited via the Service for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond ninety (90) days from the date processed. It is your responsibility to properly destroy and dispose of such original checks after such time. During the period that you maintain any original checks, you understand and agree that you must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service) and (ii) unauthorized use of information derived from the original checks. When you dispose of any original checks, you understand and agree that you must use a high degree of care when selecting and implementing disposal procedures to ensure that

the original checks are not accessed by unauthorized persons during the disposal process and, once destroyed, the original checks are no longer readable or capable of being reconstructed.

14. Your Financial Responsibility. You understand that you remain solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds associated with accessing the Service. The Credit Union shall not be liable in any manner for such risk unless the Credit Union fails to follow the procedures described in materials for use of the Service. You assume exclusive responsibility for the consequences of any instructions you give to the Credit Union, for your failures to access the Service properly in a manner prescribed by the Credit Union, and for your failure to supply accurate input information, including, without limitation, any information contained in an application.

15. Account Reconciliation. You will verify and reconcile any out-of-balance condition, and promptly notify the Credit Union of any errors within the time periods established in the Membership and Account Agreement after receipt of your account statement. If notified within such period, the Credit Union shall correct and resubmit all erroneous files, reports, and other data at the Credit Union's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Credit Union's error.

16. Financial Data. We will review and process your electronic file through batch processing at least one time per business day. The Credit Union agrees to transmit all the financial data, under its control, required to utilize the service selected by you and to act on appropriate instructions received from you in connection with such service. The Credit Union and third parties engaged in the installation, maintenance and operation of the Service, shall exercise due care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons. The Credit Union and associated third parties shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by you by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the Service. You assume full responsibility for the consequences of any misuse or unauthorized use of or access to the Service.

17. Service Availability. You understand that Service availability is at all times conditioned upon the corresponding operation and availability of the communication systems used in communicating your instructions and requests to the Credit Union. We will not be liable or have any responsibility of any kind for any loss or damage thereby incurred by you in the event of any failure or interruption of such communication systems or services resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union. It is your sole responsibility to verify that items deposited using the Service have been received and accepted for deposit by us.

    In the event this Service is not available, you may submit the original check for deposit at our Main Credit Union branch or via U.S. mail. If you have made a check image, notify us before you submit the original paper check for deposit.

18. Exception Items. When we review and process your electronic file, we will reject any electronic image that we determine to be ineligible for the Service as described in Section 11. We will notify you of any Exception Items. You agree that if you wish to attempt to deposit any Exception Item to any of your accounts with the Credit Union, you will only do so by depositing the original item on which the Exception Item is based. You acknowledge and agree that even if you do not initially identify an electronic image as an Exception Item, the substitute check created by the Credit Union may nevertheless be returned to the Credit Union because, among other reasons, the electronic image is deemed illegible by a paying bank. The Credit Union's failure to identify an Exception Item shall not preclude or limit your obligations to the Credit Union.

19. Account Information. We will provide you with your account activity through Mobile Banking, Online Banking, and monthly statements detailing items processed, return items, and deposit adjustments.

20. Credit Union Retention of Check Images. The Credit Union will retain any substitute checks it generates for seven (7) years for credit union use only. You agree and accept to be assessed applicable photocopy and research fees if copies are requested.

21. Service Fees. Currently there is no monthly fee for the Service. You agree to pay all fees and charges for deposit services as set forth on our Schedule of Fees. All Service Fees are subject to change by the Credit Union upon thirty (30) days written notice to you, the Member.

22. Your Indemnification Obligation. You understand and agree that you indemnify, defend and hold harmless the Credit Union and our service providers, and our and their respective affiliates, directors, officers, employees, members and agents from and against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from any use of the Service or for any breach of this Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement.

23. Disclaimer of Warranties. You agree that your use of the 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. The credit union is not responsible for any errors or omissions in or to any information resulting from your use of the Service. The credit union makes no, and expressly disclaims, all warranties, express or implied, regarding the service including the warranty of title and the implied warranties of merchantability, fitness for a particular purpose and noninfringement. Without limiting the generality of the foregoing, the credit union disclaims any warranties regarding the operation, performance or functionality of the service (including, without limitation, that the service will operate without interruption or be error free). You further acknowledge that there are certain security, corruption, transmission error and access availability risks associated with using open networks such as the internet and/or telecommunication lines or circuits. You hereby assume all risks relating to the foregoing.

24. Your Duty to Review Transactions and to Report Errors. You agree to regularly review your account transaction history and account statements to confirm whether transactions have been processed properly. You agree to notify the Credit Union of any suspected errors regarding items deposited through the Service right away, and in no event later than 60 days after the applicable Credit Union account statement is sent to you. Unless you notify the Credit Union within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against the Credit Union for such alleged error.

25. Corrections. You authorize us to initiate any reversing entry or reversing file, and to debit your accounts at the Credit Union or elsewhere, in order to correct any rejected or erroneous transaction. You agree to cooperate with any action to reverse a transaction that was rejected or made in error or in violation of this Agreement, and to offset any benefit you receive against any loss we suffer.

26. Returned Deposits. Any credit to your account for checks deposited using the Service is provisional. If checks deposited through the Service 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. With respect to any item that you transmit to us for remote deposit that we credit to your account, in the event such item is dishonored, you authorize us to debit the amount of such item from your account, plus a returned check fee as stated in our Fee Schedule. We will notify you via email of transactions we are unable to process because of returned items. Should the email be returned as undeliverable, the Credit Union will have completed its obligation to alert you of a rejected item and is under no obligation to attempt any redelivery of the email. 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.

Unless prohibited by law, you pledge and grant as security for all obligations you may have now or in the future, except obligations secured by your principal residence, all shares and dividends and all deposits and interest, if any, in all accounts you have with us now and in the future. You agree we have the right to offset funds in any of your accounts against the obligation owed to us. Federal law gives us a lien on all shares and dividends and all deposits and interest, if any, in accounts you have with us now and in the future. Except as limited by federal or state law, the statutory lien gives us the right to apply the balance of all your accounts to any obligation on which you are in default. After you are in default, we may exercise our statutory lien rights without further notice to you.

Your pledge and our statutory lien rights will allow us to apply the funds in your account(s) to what you owe when you are in default, except as limited by federal or state law. If we do not apply or offset the funds in your account(s) to satisfy your obligation, we may place an administrative freeze on your account(s) in order to protect our statutory lien rights and may apply or offset the funds in your account(s) to the amount you owe us at a later time. The statutory lien and your pledge do not apply to any Individual Retirement Account or any other account that would lose special tax treatment under federal or state law if given as security. By not enforcing our right to apply or offset funds in your account(s) to your obligations that are in default, we do not waive our right to enforce these rights at a later time.

You will be responsible for any deficiencies after all accounts have been exhausted. You agree to pay all the costs of collecting the amount you owe under this Agreement, including collection and court costs and reasonable attorney fees. You further acknowledge that you and not the Credit Union is responsible for the processing and handling of any original items which are imaged and deposited utilizing the Service; and you assume all liability to the drawer for any item imaged using the Service arising from the Credit Union's printing of any substitute check from those images.

27. Attempted Cancellation of Mobile Deposit Check. You shall have no right to cancel any check after receipt of the check image by the Credit Union through the Service.

28. Credit Union's Performance. You acknowledge and agree that the Credit Union shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by Credit Union in performing the Service, in accordance with or unintentional deviation from the terms and conditions of this Agreement. You acknowledge that the Credit Union's systems and procedures established for providing the Service are commercially reasonable.

29. The Credit Union's Liability – Direct Damages. The credit union's liability shall be limited to direct damages sustained by you 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 $100. In no event shall the Credit Union be liable for special, incidental, punitive or consequential loss or damage of any kind including lost profits whether or not the credit union has been advised of the possibility of such loss or damage. The credit union's licensors or suppliers will not be subject to any liability to you in connection with any matter. You agree to cooperate with any loss recovery efforts and to subrogate the Credit Union to your rights to the extent of any liability.

30. Limitation of Liability. The Credit Union shall have no liability to you, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Service 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 Service provided for in this Agreement, and we shall have no liability for not effecting a transaction, if:

- We receive actual notice or have reason to believe that you filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- The ownership of funds involving a transaction is in question;
- We suspect a breach of the security procedures;
- We suspect that your account has been used for illegal or fraudulent purposes; or
- We reasonably believe that a transaction is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

The Credit Union will not be liable if you fail to report timely any error or discrepancy reflected in an account statement prepared by Credit Union, or if you fail to report a breach of a security procedure. If the Credit Union fails to perform under this Agreement in accordance with the standards set herein, the Credit Union's liability for damages, losses, and other compensation owing to you will be limited as set forth above in Section 28 of this Agreement.

The Credit Union will not be responsible for liability, loss, or damage of any kind resulting from any delay in the performance of or failure to perform its responsibilities hereunder due to causes beyond the Credit Union's reasonable control.

31. Termination of Service. You may request to terminate the Service provided for in this Agreement. Upon your request, we will terminate your service within five (5) business days of receipt of your notification. Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. The Credit Union may immediately suspend or terminate your access to the Service in the event that the Credit Union reasonably determines such suspension or termination is necessary in order to protect the Service or the Credit Union from harm or compromise of integrity, security, reputation, or operation. We reserve the right to terminate this Agreement or limit your use of the Service at any time and for any reason at our discretion, with or without cause and without prior notice.

    Upon any termination of this Agreement:
    (i) you will immediately cease using the Service, and
    (ii) you shall promptly remit all unpaid monies due under this Agreement. You may terminate the Service by contacting the Credit Union during business hours at 808.873.5050 or in writing at Maui Federal Credit Union, 107 East Wakea Avenue, Kahului, HI 96732.

    Termination will not affect your liability or obligations under this Agreement for transactions that have been processed on your behalf prior to the date of termination. You will remain responsible for all outstanding fees and charges incurred prior to the date of termination. This Agreement will remain in effect after Service termination until all outstanding liabilities through the utilization of this Service are resolved Termination will apply only to the Service and does not terminate your other relationships with us.

    In addition, you will keep your account(s) at the Credit Union open until final payment with respect to all processing fees, and will maintain funds in your account(s) in amounts and for a period of time determined by the Credit Union in its reasonable discretion to cover any outstanding checks and your obligations for returns of checks, warranty claim fees and other obligations. If any such liabilities exceed the amount in the applicable account, we may charge such excess against any of your other accounts, and you will pay immediately upon demand any amount remaining unpaid.

32. Modification of Services. The Credit Union reserves the right to modify the Service from time to time without prior notice to you. However, we will notify you of any material change via email or on our website by providing a link to the revised Service Agreement.

33. **Enforcement.** You agree to be liable to the Credit Union for any liability, loss, or expense as provided in this Agreement that the Credit Union incurs as a result of any dispute involving your accounts or the Service. You authorize the Credit Union to deduct any such liability, loss, or expense from your account without prior notice to you. This Agreement shall be governed by and construed under the laws of the State of Hawaii as applied to contracts entered into solely between residents of, and to be performed entirely in, the State of Hawaii. In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this Agreement, the prevailing party shall be entitled, subject to Hawaii law, to payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this Agreement be determined invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect.