

Mobile Check Deposit Agreement

This Agreement contains the terms and conditions for the use of the Niagara's Choice FCU (NCFCU) Mobile Check Deposit (MCD) and/or other remote deposit capture services that NCFCU may provide to you. The following terms and conditions apply to the Services for MCD; depositor acknowledges and agrees the Services or any portion of the Services may be provided by one or more subcontractors.

1. Services and Service Terms. The MCD Services are designed to allow you to make deposits to your checking account from a supported "Capture Device." Apple devices running operating systems of iOS5 or newer and Android devices using 2.3 or newer with a rear-facing camera will be able to utilize the Remote Deposit Capture feature in the app and are compatible with the Service. Although other operating systems may allow access to the Service, satisfactory performance is not assured as the systems are not supported. User assumes all risk associated with the use of a non-supported Capture Device.

2. Acceptance of these Terms. Your acceptance of these terms and/or use of the services constitutes acceptance of this Agreement. The agreement is subject to change; we will notify you of any material change via email or on our website with a link to the revised agreement. Further, Niagara's Choice Federal Credit Union (NCFCU) reserves the right in its sole discretion to change, modify, add or remove portions from the Services. Your continued use of the Services will indicate your acceptance of all such changes to the Services.

3. Definitions.

3.1 "Authorized User" means Depositor or agent of Depositor.

3.2 "Banking Day" means any day which Niagara's Choice Federal Credit Union is open to conduct substantially all of its banking services, but shall not include Saturday, Sunday or bank holidays.

3.3 "Capture Device" means any device acceptable to Niagara's Choice Federal Credit Union that provides for the capture of images from original Items and for transmission through a clearing process.

3.4 "Check" means an Original Check, as defined in Regulation CC and Check 21 and does not include a Substitute Check or a remotely created check.

3.5 "Check 21" means the Check Clearing for the 21st Century Act, as well as Subpart D of Federal Reserve Board Regulation CC, and to the extent applicable, Subpart A.

3.6 "IRD" or "Image Replacement Document" means (a) a Substitute Check as defined in Check 21; or (b) the paper reproduction that will be created when an Item cannot be converted to an Electronic Transaction.

3.7 "Item" means a Check, money order, cashier's check, official check, U.S. Treasury check, or any other payment instrument drawn on or payable through an Office of a United States financial institution from a Payor to Depositor

3.8 "Payor" means consumers or businesses that make payments to Depositor by means of Items.

3.9 "Service(s)" means the specific service(s) provided by NCFCU, including electronic check conversion and image archive systems that allow the use of a Capture Device to obtain and transmit the front and back images of Items and accompanying transaction data for the purpose of delivery to NCFCU for clearing as an IRD. Services also include any applicable support services.

3.10 "Service Start Date" means the date that the Services are first available to the Depositor.

3.11 "Technology" means NCFCU's or its subcontractor's deposit capture applications and processes designed to facilitate the electronic clearing of Items. Said applications are accessed through Capture Devices, utilizing software and hardware provided by or acceptable to NCFCU, and are proprietary access points to payment processing networks and systems used to complete the clearing of Items. Technology may include but is not limited to Depositor service support, reports, software, software tools, user interface designs, and documentation, and any derivatives, improvements, enhancements or extensions thereof developed or provided by NCFCU or its subcontractors and used in the provision of Services hereunder. Any software provided by NCFCU or its subcontractors pursuant to the Service shall be considered Software as defined in the Software License Agreement.

3.12 "Term" shall mean the term of this Agreement beginning as of the Service Start Date until terminated as provided herein.

4. Depositor Obligations; Suspension/Cancellation of Service.

4.1 **Eligible Items.** You agree to scan and deposit only checks as that term is defined in the Federal Reserve Regulation CC. You agree that the image of the check transmitted shall be deemed an "item" within the meaning article 4 of the Uniform Commercial Code. You agree that you will not use the Services to scan and deposit any checks or other items shown below:

- a. Checks payable to any person or entity other than the person or entity that owns the account that the check is being deposited into.
- b. Checks or items drawn on a financial institution located outside the United States.
- c. Checks or items not payable in United States Currency.
- d. Checks or items 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
- e. Checks or items previously converted to a substitute check, as defined in Reg. CC.
- f. Checks or items that are remotely created checks, as defined in Reg. CC
- g. Checks or items dated more than 6 months prior to the date of deposit.
- h. Checks or items prohibited or otherwise not acceptable under the terms of your NCFCU account.

4.2 Endorsement. In order for an item to be processed for deposit, it must be restrictively endorsed in the proper location on the back of the Item with the following words: "For Mobile Deposit Only at Niagara's Choice FCU Account # _____", payee signature and date.

4.3 Image Quality. Items transmitted using the Services must be legible, and must comply with requirements established from time to time by ANSI, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house, or association.

4.4 Withdrawal of Access/Suspension of Service. NCFCU reserves the right to deny, suspend or revoke access to the Services immediately, in whole or in part, in its sole discretion, without notice, if the Credit Union believes Depositor and/or its Authorized users are in breach of this Agreement or are otherwise using or accessing the Services inconsistent with the terms and conditions hereof. Further, NCFCU or its subcontractor shall have the right to suspend the Service immediately in the event of an emergency or in the event of force majeure as set forth in the Service Agreement.

4.5 Account Statement Examination. All deposits made through the Services shall be deemed to be correct, unless Depositor notifies Niagara's Choice Federal Credit Union of any errors to deposits made through the Services within 60 days after the applicable account statement is mailed or otherwise provided to Depositor.

5. Payment Processing.

5.1 IRD Processing. Depositor authorizes NCFCU to convert Items to IRDs or transmit Items as an image and further authorizes NCFCU or any other financial institution to which an item is sent for process. Items may be transmitted to a printing facility for printing and clearing through traditional paper processing channels, at NCFCU's sole discretion. The IRDs will be created in accordance with Check 21; alternatively, NCFCU may process Items as photocopies in lieu of originals, under guidelines established between NCFCU and Depositor and applicable industry standards. Items that fail to satisfy the warranties made to NCFCU by Depositor, that fail to meet the requirements of NCFCU or Check 21, or that are otherwise not able to be processed may be charged back to Depositor's account and/or returned to Depositor. Depositor agrees to be bound by any applicable laws, rules and regulations to which NCFCU is a party.

5.2. Processing of Items. Images of Items transmitted by Depositor are not considered received by NCFCU until Depositor has received an electronic confirmation of the receipt of the deposit from NCFCU. We are not responsible for items we do not receive or for images that are dropped during transmission. Receipt of the confirmation from NCFCU does not mean that the transmission was error free or complete. NCFCU reserves the right to reject any item transmitted through the Services, at our discretion.

5.3. Handling of Transmitted Items. Upon receiving electronic confirmation of receipt of an item, Depositor agrees to store the original item in a safe and secure environment for at least Ten (10) days following the day of deposit; and agrees to never re-present the item. Depositor will promptly (within 5 business days) provide any retained original item to NCFCU when requested to aid in the clearing and collection process to resolve claims by third parties with respect to any item or as NCFCU otherwise deems necessary.

5.4. Availability of Funds. Customer understands and agrees that items transmitted using the Services are not subject to the funds availability requirements of Reg. CC. Funds from Items

deposited under the terms of this Agreement will be placed on hold for three (3) days. Once received and reviewed by NCFCU, the Credit Union may make funds available sooner on certain deposits at its sole discretion and may place extended holds on items as it deems necessary.

5.5. Depositor Liability. Depositor shall be solely responsible if any Item for which Depositor has been given provisional credit is subject to return or reversal, and neither NCFCU nor its subcontractors shall be liable or responsible for any loss, costs, or fees you may incur as a result of the return or reversal. Depositor acknowledges that all credits received for deposit are provisional and are subject to verification and final settlement. Any dishonored Items will be returned as an image of the original or a substitute check as the charged-back item. Applicable Returned Item Fees will apply and are the responsibility of the Depositor presenting the item.

5.6. Limits. NCFCU reserves the right to impose limits on the amounts(s) and/or number of deposits that you transmit using the Services, and to modify such limits from time to time. Current standard limits for MCD are available on our website www.niagaraschoice.org and are found on the "Mobile Check Deposit F&Q" document.

6. Warranties and Disclaimers.

6.1. Depositor Warranty. Depositor represents and warrants to NCFCU:

(A) Depositor has the authority to enter into this agreement and perform its obligations hereunder and all information supplied by depositor to NCFCU is accurate and true; (B) Depositor will provide all reasonable assistance to NCFCU and its subcontractors in providing the services set forth herein; (C) Depositor and authorized users will only use the services for lawful purposes and in compliance with all applicable rules and regulations and with NCFCU's reasonable instructions, rules, policies, specifications, terms and conditions, and operating procedures and will not violate any law of any country or the intellectual property rights of any third party; (D) Depositor has only transmitted acceptable items for deposit and has handled the original items following transmission to NCFCU as agreed, directed by with NCFCU and in accordance with applicable law; (E) Depositor is a person authorized to enforce each item or is authorized to obtain payment of each item on behalf of a person entitled to enforce an item; (F) The items have not been altered; (G) Each item bears all applicable endorsements in a restricted format as directed by NCFCU; (H) All the warranties set forth in and subject to applicable laws and regulatory agencies; (I) (1) The electronic image portion of each item accurately and legibly represents all of the information on the front and back of the original check as of the time the original check was deposited, (2) The information portion of the item contains a record of all applicable MICR-line information required for a substitute check, and (3) The item conforms to the technical standards for an electronic item as specified by NCFCU from time to time; (J) Depositor will submit an accurate and clear image of the front and back of each item to NCFCU only one time; (K) Depositor will not deposit the original item 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) The amount of an item entered by depositor or any authorized user for transmission to NCFCU is accurate.

6.2. Niagara's Choice Federal Credit Union Warranty. NCFCU warrants that: (A) NCFCU has the authority to enter into this agreement and perform its obligations hereunder; and (B) It has developed each service (other than any portion furnished by a subcontractor or third party

vendor) and owns and/or has the right to furnish the same (including any portion furnished by a subcontractor or third party vendor.)

6.3. Disclaimer. Except as set forth above in Section 6.2, NCFCU and its subcontractors make no representations or warranties, whether express, implied or statutory regarding or relating to any of the technology or services and/or access to or use of the services or technology provided to depositor hereunder. NCFCU and its subcontractors specifically disclaim any and all implied warranties of merchantability, fitness for a particular purpose and non-infringement. NCFCU and its subcontractors also do not guarantee that depositors' access to the services provided under this agreement will be uninterrupted, error free or secure. NCFCU and its subcontractors also do not guarantee the accuracy of, and specifically disclaim liability for, information or data that is supplied or key-entered by depositor or agents. NCFCU and its subcontractors do not warrant the accuracy, reliability, completeness or timeliness of the content of internet websites or other data received by depositor or payors via the internet.

7. Limitation of Liability / Indemnification.

7.1. Limitation of Liability. You agree that NCFCU will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for a loss of profits, goodwill, use, data or other losses incurred by you or any third party arising from or related to the use of, inability to use, or the termination of the use of any remote banking service, regardless of the form of action or claim (Whether contract, tort, strict liability or otherwise), even if NCFCU has been informed of the possibility thereof except as otherwise required by law.

7.2. Indemnification. In addition to its indemnification obligations in this agreement, and except for losses or expenses attributable to NCFCU's own lack of good faith or failure to exercise ordinary care, depositor agrees to indemnify NCFCU for any loss or expense sustained (including interest, costs, attorney's fees and expenses of litigation) resulting from (i) Depositor's lack of authority to make the warranty in subsection 6.1 (E); (ii) any action taken or not taken by NCFCU within the scope of its authority in handling an item; (iii) any warranty required to be made by NCFCU with respect to an item under applicable law or regulation; and (iv) breach of the warranties in subsections 6.1(A) through 6.1(L).

8. Termination. In addition to the denial, suspension, revocation and termination provisions in this Agreement, NCFCU may immediately terminate the Service or any portion of the Service if NCFCU determines that such Service or portion of any Service is in violation of any law or regulation, or in its sole discretion and without notice, decides to cease providing this Service. Depositor may terminate the Service with notice to NCFCU. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same.

9. Miscellaneous Provisions.

9.1 Relationship of Parties. NCFCU and Depositor are independent parties and this Agreement will not establish any relationship between NCFCU and the Depositor. Neither NCFCU nor Depositor will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

9.2 **Notices.** Depositor agrees that any notices required or permitted under this Agreement or the Service Agreement may be given electronically.

9.3 **No Waiver.** The failure of either party to enforce at any time any provision of this Agreement or to exercise any right herein provided shall not in any way be construed to be a waiver of such provision or right, and shall not in any way affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of either party to subsequently enforce any provision or exercise any right hereunder.

9.4 **Severability.** The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision.

9.5 **Governing Law.** This Agreement is entered into in the State of New York, and shall be governed by the laws of the State of New York and of the United States, and any rule or regulation of the State of New York or a federal agency having jurisdiction over NCFCU. A determination that any provision of this Agreement is unenforceable or invalid shall not render any other provision of this Agreement unenforceable or invalid. The rights of NCFCU under this Agreement are cumulative of all other rights NCFCU may have by law or otherwise.

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

9.7 **Force Majeure** – In no event shall the Bank be liable for delays which happen for reasons beyond its control, including without limitation, acts of civil, military, or banking authorities, national emergencies, riots, weather, unavoidable difficulties with equipment, the unavailability of the internet, any errors in information provided, any difficulties caused by an internet or other service provider or any hardware or software failure, whether caused by a virus or otherwise.

9.8 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all existing agreements and all other related communications, written or oral.