

ACCESS Federal Credit Union

REMOTE DEPOSIT CAPTURE SERVICES TERMS AND CONDITIONS

Effective: February 01, 2019

In this Disclosure and Agreement, the words “customer,” “I,” “me,” “my,” “us” and “our” mean the consumer or business that applied for and/or uses any of the Remote Deposit Capture Services (the “Services”) described in this Disclosure and Agreement. This includes both “Mobile Check Deposit” and “Business Remote Deposit Capture” (aka “Business RDC”) The words “Financial Institution,” “you,” “your,” and “yours” mean ACCESS Federal Credit Union. My Application for use of the Remote Deposit Capture Services, your notification of approval of my application, and my ACCESS Federal Credit Union Account Terms and Conditions Disclosure are hereby incorporated into and made a part of this Disclosure and Agreement. In the event of a discrepancy between this Disclosure and Agreement and my Application, your approval, or the Account Agreement, this Disclosure and Agreement will control.

Use of the Services. Following receipt of your notification approving my use of the Services, I am authorized by you to remotely deposit paper checks I receive to my account with you (the “Account”) by electronically transmitting a digital image of the paper checks to you for deposit. My use of the Services constitutes my acceptance of the terms and conditions of this Disclosure and Agreement. In order to use this service, I must obtain and maintain, at my expense, compatible hardware and software as specified by ACCESS FCU from time to time. ACCESS FCU is not responsible for any third-party software I may need to use this service. Any such software is accepted by me and is subject to the terms and conditions of the software agreement I enter into directly with the third-party software provider at time of download and installation. I agree to comply with these hardware and software requirements.

Upon receipt of the digital image, you will review the image for acceptability. I understand and agree that receipt of an image does not occur until after you notify me of receipt of the image via onscreen messaging and/or email notification. I understand that, in the event I receive a notification from you confirming receipt of an image, such notification does not mean that the image contains no errors or that you are responsible for any information I transmit to you. You are not responsible for any image that you do not receive. Following receipt of the image, you may process the image by preparing a “substitute check” or clearing the item as an image. Notwithstanding anything to the contrary, you reserve the right, within your sole and absolute discretion, to accept or reject any item for remote deposit into my Account. I understand that any amount credited to my Account for items deposited using the Services is a provisional credit and I agree to indemnify you against any loss you suffer because of your acceptance of the remotely deposited check.

The software provided by Financial Institution to Customer contains software provided by one or more third parties (“Third-Party Software”) under contract with Financial Institution (each a “Third-Party”).

Restrictions: Customer agrees that it will not itself, and will not permit any parent, subsidiary, affiliate, agent or other third-party to: (i) sell, provide, distribute, lease, rent, lend, relicense, sublicense, or display Third-Party Software or related documentation except as necessary to utilize the Software for mobile check deposits; (ii) decompile, disassemble, reverse engineer or attempt to reconstruct the Third-Party Software, identify or discover any source code, trade secret, know-how, or ideas underlying user interface techniques or algorithms of Third-Party Software by any means whatsoever, or disclose any of the foregoing; (iii) create any derivative works or any other software program based upon Third-Party Software or related documentation or modify Third-Party Software in any way; or (iv) use Third-Party Software or documentation to develop or enhance any product that competes with Third-Party Software.

Intellectual Property: Financial Institution or the Third-Parties, as the case may be, retain all rights, title and interests, including intellectual property rights, in and to the Third-Party Software and services, any improvements, translations, modifications or derivatives thereof, and any related documentation provided or made available to Customer, including all intellectual property rights therein. Customer acknowledges that the Third-Party Software and related documentation contain copyrighted material, trade secrets, and other material that is proprietary to one or more Third-Parties. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights in the Third-Party Software, services, or any related documentation or materials and all rights not expressly granted herein are reserved by Financial Institution and the Third-Parties. Customer agrees to assign, and hereby does assign, to the Third-Party all rights, title and interest, including all intellectual property rights, in any ideas, modifications, enhancements, improvements, inventions, works of authorship or any other suggestions that Customer or any of its employees or agents propose, create, author or develop relating to that Third-Party's Software or services, and will take all necessary action, including execution of relevant documents, to perfect such party's ownership thereof.

Guarantee Specific to Deposits Received for Credit to a Business Account: My use of the Services for the purpose of depositing to a Business Account constitutes my understanding and agreement that I may be personally liable for any expenses ACCESS Federal Credit Union incurs in attempting to obtain final payment for the item in question, outside of the routine costs associated with item processing, in the event of a default by the Business. This includes but is not limited to recovery of the amount credited in the event of non-payment, collection costs and attorney's fees as applicable, as well as any and all costs associated with ACCESS Federal Credit Union enforcing this Guarantee. This Guarantee shall benefit ACCESS Federal Credit Union and its successors and assigns.

Compliance with Law: Customer represents, warrants, and covenants that it will comply with all applicable laws, rules, regulations and prevalent industry standards in their use of Third-Party Software, including compliance with applicable requirements under state

and federal laws and regulations related to data security and nonpublic personal information, as defined or used in such applicable law or regulation.

Check Requirements: Any image of a check that I transmit to you must accurately and legibly provide all the information on the front and back of the check at the time presented to me by the drawer. Prior to capturing the original check, I will endorse the back of the original check within 1 ½ inches from the top edge, although you may accept endorsements outside this space. My endorsement will include "For Deposit Only at ACCESS FCU Via Mobile Check Deposit." Any loss you incur from a delay or processing error resulting from an irregular endorsement or other markings by me will be my responsibility. The image of the check transmitted to you must accurately and legibly provide, among other things, the following information: (1) the information identifying the drawer and the paying bank that is preprinted on the check, including complete and accurate MICR information and the signature(s); and (2) other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check. The image quality for the check will meet the standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

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

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

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

Unavailability of Services: I understand and agree that the Services may at times be temporarily unavailable due to the Financial Institution's system maintenance or technical difficulties including those of the Internet service provider, cellular service provider and Internet software. In the event that the Services are unavailable, I acknowledge that I can deposit an original check at your branches or through your ATMs or by mailing the original check to you at 6 Franklin Ave, Clinton, NY 13323. It is my sole responsibility to verify that items deposited using the Services have been received and accepted for deposit by you. However, you will email notification of items that are rejected by the next business day following rejection.

Business Days and Hours: <https://www.accessfcu.org/home/aboutus/locations>

Funds Availability: I understand and agree that, for purposes of deposits made using the Services, the place of deposit is Clinton, NY. With regard to the availability of deposits made using the Services, such funds will be available as set forth at <https://www.accessfcu.org/home/fiFiles/static/documents/Your%20Ability%20to%20Withdraw%20Funds.pdf>

Internal Controls and Audit: I understand and agree to adhere to the Internal Controls as described in this agreement and further detailed within this section. Furthermore, I agree to comply with the Audit requirements prescribed by the Financial Institution within this Agreement.

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

- 1) Each image of a check transmitted to you is a true and accurate rendition of the front and back of the original check, without any alteration, and the drawer of the check has no defense against payment of the check.
- 2) The amount, the payee, signature(s), and endorsement(s) on the original check are legible, genuine, and accurate.
- 3) I will not deposit or otherwise endorse to a third-party the original item (the original check) and no person will receive a transfer, presentment, or return of, or otherwise be charged for, the item (either the original item, or a paper or electronic representation of the original item) such that the person will be asked to make payment based on an item it has already paid.
- 4) Other than the digital image of an original check that I remotely deposit through your Services, there are no other duplicate images of the original check.
- 5) I have instituted procedures to ensure that each original check was authorized by the drawer in the amount stated on the original check and to the payee stated on the original check.
- 6) I am authorized to enforce each item transmitted or am authorized to obtain payment of each item on behalf of a person entitled to enforce such transmitted item.
- 7) The information I provided in my Application remains true and correct and, in the event any such information changes, I will immediately notify you of the change.
- 8) I have not knowingly failed to communicate any material information to you.
- 9) I have possession of each original check deposited using the Services and no party will submit the original check for payment.
- 10) Files and images transmitted to you will contain no viruses or any other disabling features that may have an adverse impact on your network, data, or related systems.
- 11) I will never re-present the original check unless explicitly requested by ACCESS Federal Credit Union.

Storage of Original Checks: I must securely store each original check. If I am using the Service to deposit items into an account in the name of a Business to which I am a party I understand this means the original check(s) must be accessible only by my authorized personnel, that I deposit using the Services for a period of sixty (60) days after

transmission to you. Persons who have access to the stored checks must be fully bondable and have passed a thorough screening. Upon your request from time to time, I will deliver to you within 5 calendar days, at my expense, the requested original check in my possession. If not provided in a timely manner, I agree that such amount will be reversed from my account. Promptly after such period expires, I will destroy the original check by first marking it "VOID" and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. I understand and agree that I am responsible for any loss caused by my failure to secure the original checks.

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

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

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

Telephone you at: 315-693-2002

or e-mail you at: access@accessfcu.org

Limitation of Liability: FINANCIAL INSTITUTION AND EACH THIRD-PARTY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND ANY SOFTWARE PROVIDED BY OR ON BEHALF OF A THIRD-PARTY UNDER THIS AGREEMENT ARE PROVIDED "AS IS." WITHOUT LIMITING THE FOREGOING, EACH THIRD-PARTY DOES NOT REPRESENT OR WARRANT, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, THAT THE OPERATION OF THE SERVICES OR THIRD-PARTY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE FUNCTIONS OR FEATURES OF THE SERVICES OR SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES OR SOFTWARE WILL OPERATE COMPATIBLY WITH PRODUCTS, SERVICES, HARDWARE OR SOFTWARE USED OR OFFERED BY ANY OTHER PARTY. IN NO EVENT WILL ANY THIRD-PARTY BE LIABLE HEREUNDER FOR AN AMOUNT EXCEEDING THE LESSER OF THE ACTUAL DAMAGES INCURRED BY CUSTOMER OR THE FEES

PAID BY CUSTOMER FOR USE OF THE RESPECTIVE THIRD-PARTY SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE EVENT GIVING RISE TO THE LIABILITY TOOK PLACE, WHETHER IN CONTRACT, TORT, OR OTHERWISE. IN NO EVENT WILL A THIRD-PARTY BE LIABLE FOR ANY LOSS OF PROFITS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, OR LOSS OF BUSINESS) IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Indemnification: Customer shall indemnify, defend and hold harmless each Third-Party and its respective affiliates, officers, employees and agents from and against any third-party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to Customer's use of the Third-Party Software, unless such claim directly results from an action or omission made by such Third-Party in bad faith.

Charges for Use of the Services: All charges associated with the Services are disclosed at

<https://www.accessfcu.org/home/fiFiles/static/documents/Fee%20Schedule%20and%20Disclosure.pdf>

Warranties: I UNDERSTAND THAT THE FINANCIAL INSTITUTION DOES NOT MAKE ANY WARRANTIES ON EQUIPMENT, HARDWARE, SOFTWARE OR INTERNET PROVIDER SERVICE, OR ANY PART OF THEM, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR ANY LOSS, INJURY OR DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, CAUSED BY THE INTERNET PROVIDER, ANY RELATED SOFTWARE, OR THE FINANCIAL INSTITUTION'S USE OF ANY OF THEM OR ARISING IN ANY WAY FROM THE INSTALLATION, USE, OR MAINTENANCE OF MY PERSONAL COMPUTER HARDWARE, SOFTWARE, OR OTHER EQUIPMENT.

Change in Terms: You may change the terms and charges for the Services indicated in this Disclosure and Agreement by notifying me of such change in writing and may amend, modify, add to, or delete from this Disclosure and Agreement from time to time. My use of the Services after receipt of notification of any change by you constitutes my acceptance of the change. Termination of the Services. I may, by written request, terminate the Services provided for in this Disclosure and Agreement. You may terminate my use of the Services at any time upon written notice. In the event of termination of the Services, I will remain liable for all transactions performed on my Account.

Relationship to Other Disclosures: The information in these Disclosures applies only to the Services described herein. Provisions in other disclosure documents, as may be revised from time to time, remain effective for all other aspects of the account.

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

Periodic Statement: Any remote deposits made through the Services will be reflected on my monthly account statement. I understand and agree that I am required to notify you of any error relating to images transmitted using the Services by no later than sixty (60) days after I receive the monthly periodic statement that includes any transaction I allege is erroneous. I am responsible for any errors that I fail to bring to your attention within such time period.

Limitations on Frequency and Dollar Amount: We may establish limits on the dollar amount and/or number of items or deposits from time to time. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit. If we permit you to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and we will not be obligated to allow such a deposit at other times. I agree to scan and deposit only checks (i.e. drafts drawn on a credit union, savings and loan, or bank, and payable on demand). I understand and agree that I am not permitted to deposit the following items using the Services:

- 1) Any item drawn on my account or my affiliate's account.
- 2) Any item payable to any person or entity other than me (i.e. payable to another party and then endorsed to me).
- 3) Checks payable to me and another party who is not a joint owner on the account.
- 4) Any item that is stamped with a "non-negotiable" watermark.
- 5) Any item that contains evidence of alteration to the information on the check.
- 6) Any item issued by a financial institution in a foreign country.
- 7) Any item not payable in United States currency.
- 8) Any item that is incomplete.
- 9) Any item that is "stale dated" or "post dated".
- 10) Checks previously converted to a substitute check, as defined in Regulation CC.
- 11) Savings Bonds.
- 12) Any item that has previously been submitted through this service or through a remote deposit capture service offered at any other institution.

Changes in Financial Circumstances: I understand and agree that I must inform you immediately in the event a material change in my financial circumstances as or in any of the information provided in my Application including any supporting financial information. If I am using the Service to deposit items into an account in the name of a Business to which I am a party, this includes, but is not limited to, notification of the

following: (a) changes in transaction volumes at my business; (b) any change in a representation or statement made or furnished to you by me or on my behalf in my Application; (c) a material change occurs in my ownership or organizational structure (acknowledging that any change in ownership will be deemed material when ownership is closely held); (d) I liquidate or dissolve, or enter into any consolidation merger, partnership, or joint venture; (e) I sell any assets except in the ordinary course of my business as now conducted, or sell, lease, assign or transfer any substantial part of my business or fixed assets or any property or other assets necessary for the continuance of my business as now conducted including, without limitation, the selling of any property or other assets accompanied by the leasing back of the same; (f) I cease doing business, become insolvent, a receiver is appointed for all or any part of my property, I make an assignment for the benefit of creditors, or any proceeding is commenced either by me or against me under any bankruptcy or insolvency laws or any other law or laws relating to debtors; (g) any guaranty of my indebtedness to you, whether related or unrelated to the Account or the Services, ceases to be in full force and effect or is declared to be null and void; or the validity or enforceability thereof is contested in a judicial proceeding; or any guarantor denies that it has any further liability under such guaranty; or any guarantor defaults in any provision of any guaranty, or any financial information provided by any guarantor is false or misleading); (h) I or any guarantor dies; if I am a sole proprietorship, the owner dies; if I am a partnership, any general or managing partner dies; if I am a corporation, any principal officer or 10.00% or greater shareholder dies; if I am a limited liability company, any managing member dies; if I am any other form of business entity (any person(s) directly or indirectly controlling ten percent (10.00%) or more of the ownership interests of such entity dies; (i) any creditor tries to take any of my property on or in which you have a lien or security interest, including a garnishment of any of my accounts with you; (j) a judgment or judgments is entered against me or any guarantor(s) in the aggregate amount of \$250 or more that is not satisfied within thirty (30) days or stayed pending appeal; (k) an involuntary lien or liens is attached to any of my assets or property and not satisfied within thirty (30) days or stayed pending appeal; (l) an adverse change occurs in my financial condition or applicable credit histories; and (m) I am in default under any agreement for borrowed money or any other material contract. I agree to provide you any financial records you reasonably request to determine my financial status during the term of this Disclosure and Agreement.

Confidentiality:

- i. "Third-Party Confidential Information" means trade secrets, know-how, data, methods, documents, devices, software code, technology, technical information, as well as, business, financial or customer information of a Third-Party. Confidential Information will not include any information that Customer can prove: (i) was publicly known in the trade or business prior to its receipt of the Third-Party Software; or (ii) was entirely and independently developed by the Customer without any use or reference to Confidential Information of the other Party.
- ii. Customer acknowledges that Third-Parties own all rights, titles and interests, including all IP Rights in Third-Party Confidential Information. Customer may use Third-Party Confidential Information only in connection with its utilization of the

Third-Party Software and Financial Institution's services, and not for any other purpose. Customer will protect Third-Party Confidential Information from unauthorized use or access.

- iii. Customer acknowledges that Third-Party Confidential Information may still be under development or may be incomplete or may relate to products that are under development or planned for development. **NO THIRD-PARTY MAKES ANY WARRANTIES REGARDING THE ACCURACY OF ITS CONFIDENTIAL INFORMATION OR ITS USE FOR A PARTICULAR PURPOSE.** Neither Financial Institution nor any Third-Party grants any license or right to Third-Party Confidential Information except for the limited use of such information in connection with this agreement.

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

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