

# Remote Deposit Capture Service Agreement



**New England  
Federal Credit Union**

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This Remote Deposit Capture Service Agreement, ("Agreement") governs your and our rights and responsibilities concerning the Remote Deposit Capture Service ("Service" or "Remote Deposit Capture Service") offered to you by New England Federal Credit Union, ("Credit Union"). Your use of the Remote Deposit Capture Service is subject to the terms and conditions of this Agreement and any amendments made from time to time, and to any additional manuals, instructions, requirements, procedures, or specifications (collectively "Documentation") provided to you within the service, which are incorporated by reference herein. In this Agreement, the words "we," "our," and "us" refer to New England Federal Credit Union (NEFCU). The words "you" and "your" refer to the consumer member or business member using the Service.

## 1. Remote Deposit Capture Service

### a. Remote Deposit Capture Process

If we approve the Remote Deposit Capture service for you, you may access the service through any means we offer. You may scan or photograph checks to create an electronic image and you may transmit the electronic image that the Credit Union will use to credit the check to your account. The Credit Union may, in its discretion, convert items meeting the Credit Union's required standards into substitute checks to facilitate the collection of such items. You agree that the Credit Union in its sole discretion shall determine the manner in which checks are transferred or presented for payment. We reserve the right to select the clearing agents through which we clear checks.

### b. Funds Availability

You agree items transmitted using the Service are not subject to the funds availability requirements of Federal Reserve Board Regulation CC. For purposes of determining availability, business days are Monday through Friday, excluding holidays. In general, if an item you transmit through the Service is received and confirmed on a business day before 5:00 p.m. EST, we consider that day to be the day of your deposit. Deposits made after 5:00 p.m. EST; deposits not made on a business day; or deposits not yet confirmed by 5:00 p.m. EST are considered deposited on the next business day. Our general availability for confirmed deposits is to provide \$500 of each day's total deposit(s) on the business day deposited; with the remaining funds available on the 1st business day after the day of your deposit. We may delay availability of funds based on such factors as credit worthiness, the length and extent of your relationship with us, transaction and experience information, and such other factors as we, in our sole discretion, deems relevant. You understand that credit is provisional until settlement is final.

### c. Deposit Limitations

We will establish a deposit limit for your account based on a variety of factors. We will notify you of your limit at the time you use the service. For business users looking for a deposit limit above the standard limit, contact us toll free at 800-400-8790. The Credit Union may request additional financial documentation to assist in the limit increase request. If required, a Credit Union representative will contact you with details.

### d. Deposit Acceptance

You agree that Credit Union may at any time, in its sole discretion, refuse to accept deposits of checks from you via Remote Deposit Capture session. In the event that the Service is interrupted or are otherwise unavailable, you may deposit checks in-person at a Credit Union branch or via night drop or mail or other contractually acceptable method.

### e. Equipment/Software

For business accounts, all equipment used in connection with the Remote Deposit Capture service must satisfy technical specifications and requirements set forth in the Documentation. Such technical specifications and requirements may change from time to time in Credit Union's sole discretion. You assume responsibility for any loss, damages, claims, expenses, or liability arising from malfunction of your equipment. Credit Union will not be responsible in any manner for any deficiency caused in whole or in part by inaccurate or otherwise deficient

data programs, equipment, or communication facilities provided by you or parties other than the Credit Union. In addition, you agree you will not (i) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble, or decompile the Remote Deposit Capture technology or Service; (ii) copy or reproduce all or any part of the technology or Service; or (iii) interfere, or attempt to interfere, with the technology or Service.

## 2. Your Responsibilities

### a. Account

You must designate a Credit Union savings or checking account as the settlement account to be used for the purposes of settling, transactions requested in connection with the Service. We will provide you with details of each specific transaction. You will be responsible for reviewing and balancing of any settlement account.

### b. Responsibility for Imaging

You are solely responsible for imaging deposit items, accessing the service from the Credit Union and for maintaining your mobile device or scanning equipment. 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 scanning equipment or mobile device for you.

### c. Deposit Requirements

You agree that you will only use the Service to deposit checks drawn on financial institutions within the United States. For checks not falling within this requirement you must deposit those checks in person, using a night drop facility or by U.S. Mail. You agree that each check you deposit through the Service will meet the image quality standards directed in the application.

For all mobile check deposits, you must endorse the original paper check with your name and providing: "FOR NEFCU MOBILE DEPOSIT ONLY." If you fail to provide this endorsement, we may refuse the deposit and return it to you, and you agree to indemnify the Credit Union from any liability or loss to the Credit Union arising from the payment of the original paper check without such required endorsement. Eligible endorsements must include your signature.

### d. Deposit Prohibitions

You agree not to deposit, or attempt to deposit, or allow others, either directly or indirectly, to deposit, or attempt to deposit, by any means:

- Any check that is originally payable to someone other than you (the owner of the account);
- Any check that is originally made payable to more than one party;
- 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;
- Any original check, an image of which has already been presented for deposit via the Remote Deposit Capture Service or any similar service;
- Any check that you know or suspect, or should know or suspect bears a forged drawer's signature, is altered, or is otherwise fraudulent or unauthorized;
- Any check that is not payable in U.S. currency;
- Any check that is dated more than 6 months before the date of the deposit, or that is dated after the date of deposit;
- Any check that is payable through (but not payable at) a U.S. financial institution;
- Any check drawn on your own account with the Credit Union;
- Any check that is marked as "non-negotiable;"
- Any check that has previously been deposited and returned;
- Any check that bears a qualified or conditional endorsement (note that checks may be deposited with the restrictive endorsement "for deposit only);

In the event that you, or any third party, makes, or attempts to make, a deposit in violation of this Subsection you agree to defend, indemnify, and hold 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. You agree that the aggregate amount of any items which are deposited more than once will be debited from your account, and to the extent funds in your account are insufficient to cover such amount, any balance shall be debited by Credit Union from any other deposit accounts with Credit Union in its sole discretion. 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 of any item imaged using the service or liability arising from the Credit Union's printing of any substitute check from those images.

#### **e. Check Retention & 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 Member Service Agreement (MSA) or Business Member Service Agreement (BMSA). 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 Remote Deposit Capture 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:

- theft or reproduction of the original checks (including by employees) 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
- 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.

#### **f. Your Representations and Warranties**

You represent and warrant:

- That each check deposit made using the Service complies with all terms and conditions of this Agreement;
- That you will comply with all federal and state laws, and rules and regulations applicable to deposit and check transactions;
- That all checks deposited through the Service are made payable to you;
- That all signatures on each check are authentic and authorized; and
- That each check has not been altered.

In addition you agree that you will not: (a) transfer or otherwise sublicense the right to use the Services; (b) attempt to copy or otherwise reproduce the Services; (c) attempt to access, decompile, reverse engineer or otherwise derive the source code for the Services; (d) resell or use the Services for the benefit of any other U.S. financial institution or other such entity or any third party that is not an User; or (e) alter, remove or fail to include any copyright notice or other proprietary rights notices that appear on any user interfaces related to the Services or authorized reproductions thereof.

If you breach any of these representations or warranties, you agree to defend, indemnify, and hold 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 its 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.

#### **g. 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 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.

#### **h. 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.

### **3. Credit Union's Obligations**

#### **a. Financial Data**

We will review and process your electronic file through a batch processing at one time per 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 shall exercise due care in seeking both to preserve the confidentiality of the username, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons (and in this connection it is understood and agreed that implementation by the Credit Union of its normal procedures for maintaining the confidentiality of information relating to its members, and where practicable the obtaining by the Credit Union from any third parties engaged in the installation, maintenance and operation of the system of similar undertakings, shall constitute fulfillment of its obligation to exercise due care) but 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.

#### **b. 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.

#### **c. Exception Items**

When we review and process your electronic file, we may reject any electronic image that we determine to be ineligible for the service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality or otherwise), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. 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 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 there from may nevertheless be returned to Credit Union because, among other reasons, the electronic image is deemed illegible by a paying bank. Credit Union's failure to identify an Exception Item shall not preclude or limit your obligations to Credit Union.

**d. Account Information**

We will provide you with daily transaction history via the Internet and the Digital Banking service detailing items processed, return items, and deposit adjustments.

**4. Services Fees**

Currently there is no monthly service charge for the Remote Deposit Capture Service. You agree to pay all fees and charges for deposit account services as set forth on the Rate and Fee Disclosure. All fees and charges are subject to change by the Credit Union upon written notice to you.

**5. Disclaimer of Warranties**

***You acknowledge that the service 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.***

**6. Credit Union's Liabilities****a. Limitation of Liability**

***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. 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.***

**b. Your Duty to Report Errors**

You will notify Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within fourteen (14) days of the date of the earliest notice to you which reflects the error. Your failure to notify Credit Union of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve Credit Union of any liability for such error, omission, or discrepancy. 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 Credit Union fails to perform under this Agreement in accordance with the standards set herein, Credit Union's liability for damages, losses, and other compensation owing to you will be limited as set forth above.

**c. Credit Union's Performance**

You acknowledge and agree that 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 Credit Union's systems and procedures established for providing the Service are commercially reasonable.

**d. 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:

1. 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;
2. The ownership of funds involving a transaction is in question;
3. We suspect a breach of the security procedures;
4. We suspect that your account has been used for illegal or fraudulent purposes; or
5. 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 the 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.

**7. Alternate Deposit Method**

The Credit Union makes no warranty that the Service will be available at any particular time or for any particular deposit. You agree to maintain procedures and capability to make deposits through another method if the Service is inoperative or unavailable.

**8. Force Majeure**

The Credit Union shall 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.

**9. Termination**

You agree that we may terminate this Agreement and your Remote Deposit Capture services, if you, or any authorized user of your Remote Deposit Capture services or username and password breach this or any other agreement with us; or if we have reason to believe that there has been an unauthorized use of your Accounts or username and password; or if you conduct or attempt to conduct any fraudulent, illegal or unlawful transaction; or if we reasonably believe your account conduct poses an undue risk of illegality or unlawfulness. You or any other party to your account can terminate this Agreement by notifying us in writing. Termination of service will be effective the first business day following receipt of your written notice. Termination of this Agreement will not affect the rights and responsibilities of the parties under this Agreement for transactions initiated before termination.

**10. Modification of Services**

Credit Union reserves the right to modify the Service from time to time without making prior notice to you, provided, however, that Credit Union will give you at least thirty (30) days' notice prior to making any modifications to the Service that would materially alter their functionality.

**11. 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 services. 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 Vermont. 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 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 illegal or unenforceable in any relevant jurisdiction, then such provision may be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other provision of this Agreement.