



ARBITRATION AGREEMENT AND CLASS ACTION WAIVER

Effective October 2021

Please read this Arbitration Agreement and Class Action Waiver (the “**Agreement**”) carefully. It affects your rights as an accountholder and will have a substantial impact on how legal claims concerning your account or any aspect of your relationship with New Covenant Dominion Federal Credit Union (the “**Credit Union**,” “**NCDFCU**,” “**we**,” “**us**,”) are resolved. Recall that this Agreement is a part of the Consumer Account Agreement or Commercial Account Agreement, as applicable (collectively, “**Account Agreement**”) and that you accept the Account Agreement by signing the Account-Opening Application.

- 1. Overview.** Most accountholder concerns can be resolved quickly and to your satisfaction by calling us. In the unlikely event that we are unable to resolve your concerns to your satisfaction in this manner, we each agree to resolve those claims through binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts.
- 2. Special Definition of Certain Terms.** For purposes of this Agreement only, references to “**you**,” “**we**,” “**our**,” and “**us**” in this Agreement include the accountholder’s and NCDFCU’s respective parent companies, subsidiaries, affiliates, agents, employees, officers, directors, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized account owners, custodians, users, or beneficiaries of accounts under this Agreement or prior agreements between us, as applicable.
- 3. Claims Subject to Arbitration.** We and you agree to arbitrate all disputes or claims between us arising out of or relating to your account and your agreements with us (“**Claims**”). This agreement to arbitrate is intended to be broadly interpreted. Claims include, but are not limited to: (a) Claims arising out of or relating to your Account, your Account Agreement and any document it incorporates by reference, or any transactions related to the foregoing, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (b) Claims that arose before the effective date of this Agreement or any prior Account Agreement (including, but not limited to claims relating to advertising, promotions, or disclosures); and (c) Claims that may arise after the termination of this Agreement.

This Agreement evidences a transaction in interstate commerce, and the Federal Arbitration Act, 9 U.S.C.A. §§ 1 et seq., governs the interpretation and enforcement of this Agreement. This Agreement survives the closing of your account and/or the termination of banking relationship with the Credit Union.

4. Notice of Dispute and Pre-Arbitration Procedures.

- a. Notice.** A party who intends to pursue a Claim must first send to the other a letter describing the Claim. Any notice of dispute sent to us should be addressed to: New Covenant Dominion Federal Credit Union, 1185 Boston Road, Bronx, NY 10456, ATTN: Legal Notices. Any notice of dispute sent to you by us shall be sent to the address in our records that is associated with your account at the time the notice of dispute is sent.

The notice of dispute must: (a) describe the nature and basis of the Claim; (b) propose the specific relief sought; (c) state the name and address of the claimant; and (d) include the account number to which the Claim relates. If we and you do not reach an agreement to resolve the Claim described in the notice of dispute within forty-five (45) days after the notice of dispute is received, you or we may commence a binding arbitration proceeding by filing a demand for arbitration with the American

Arbitration Association or any successor of that organization (“**AAA**”). A form for initiating arbitration proceedings is available on the AAA's website at adr.org. If the AAA is unwilling or unable to serve as the provider of arbitration or enforce any provision of this Agreement, the Credit Union may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

If you or we attempt to commence arbitration proceedings before providing the requisite notice of dispute, you or we hereby agree to withdraw the demand for arbitration without prejudice to re-filing it forty-five (45) days after the date on which the premature arbitration demand was first filed. Neither you nor we shall disclose to the arbitrator the existence, amount, or terms of any settlement offers made by either party until after the arbitrator issues a final award resolving the Claim.

- b. Fees. The Credit Union shall pay for any filing, administration, and arbitrator fees imposed on consumer accountholders by the AAA; commercial accountholders shall be responsible for paying the foregoing fees for themselves. However, both consumer and commercial accountholders will be responsible for their own attorneys' fees, unless they prevail on their Claim in the arbitration, in which case, the Credit Union will pay their attorneys' fees. Although NCDFCU may have a right under some laws to an award of attorney's fees and expenses if we prevail in an arbitration, we agree that we will not seek such an award unless you have retained an attorney and your Claim is determined to be frivolous or brought for an improper purpose (as determined by the arbitrator and measured by the standards set forth in Federal Rules of Civil Procedure Rule 11(b)).

5. Arbitration Procedures.

- a. Rules. The arbitration will be administered by the AAA and governed by the Commercial Arbitration Rules of the AAA (in the case of commercial accounts) and by the Consumer Arbitration Rules of the AAA (in the case of consumer accounts), as modified by this Agreement. The AAA Rules are available online at adr.org or by calling the AAA at 800-778-7879. In the event of any inconsistency between the AAA's rules and this Agreement, the terms of this Agreement shall control.
- b. Proceedings. All Claims shall be determined by one arbitrator. Any Claims and defenses that can be asserted in court can be asserted in the arbitration. The arbitrator shall be entitled to award the same remedies that a court can award, and the arbitrator's award can be entered as a judgement in a court of competent jurisdiction and enforced as such. Except as provided by applicable law, the arbitrator's award is not subject to judicial review and cannot be appealed.

Any determination as to whether this Agreement is valid or enforceable in part or in its entirety will be made solely by the arbitrator, including without limitation any issues relating to whether a Claim is subject to arbitration; provided, however, the enforceability of the Class Action Waiver set forth below shall be determined by a court of competent jurisdiction.

If the value of the relief sought (either to you or to us) is \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If the value of the relief sought (either to you or to us) exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Any in-person arbitration hearing will take place in the County of the Bronx of the State of New York, unless otherwise required by law.

Unless both you and we agree otherwise, you or we, as applicable, must bring all related or similar Claims in a single arbitration proceeding. If you or we later initiate a subsequent arbitration asserting Claims that are related or similar to ones that were raised by such party in a prior arbitration, the AAA or the arbitrator shall either: (i) consolidate the subsequent arbitration with the earlier

proceeding if it is ongoing; or (ii) dismiss the subsequent arbitration if it raises Claims that would be barred by applicable law if brought in court. The arbitrator will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit.

6. **Class Action Waiver.** The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual Claim. Any injunctive relief must be individualized in nature and cannot affect accountholders other than the claimant. **YOU AND THE CREDIT UNION AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, OR AS A PRIVATE ATTORNEY GENERAL, OR ON BEHALF OF THE GENERAL PUBLIC.** Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.
7. **Waiver of Jury Trial.** By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by law in respect of any Claim. Furthermore, without intending in any way to limit this arbitration provisions of this Agreement, to the extent that any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided, or found unenforceable.
8. **Severability.** If the Class Action Waiver is found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall also be unenforceable. If any provision in this Agreement other than the Class Action Waiver is found to be unenforceable, the remaining provisions shall remain fully enforceable.
9. **Right to Opt-Out.** You have the right to opt-out of this Agreement and it will not affect any other terms and conditions of your Account Agreement or your relationship with us. To opt-out, you must notify us in writing of your intent to do so within sixty (60) days after this Agreement was provided to you. Your opt-out will not be effective and you will be deemed to have consented and agreed to this Agreement unless your notice of intent to opt-out is received by the Credit Union in writing within such sixty (60) day time period. Your notice of intent to opt-out must include the account numbers to which the reject applies and can be a letter that is signed by you and mailed to us at New Covenant Dominion Federal Credit Union, 1185 Boston Road, Bronx, NY 10456, ATTN: Legal Notices, or a message sent via the secure chat feature of the NDCFCU online banking platform that states "I elect to opt-out of the Arbitration Agreement" or any words to that effect. If you request to opt-out of the Agreement, we will provide a confirmation communication back to you within ten (10) days of receipt of your written notice. If you reject this Agreement, the relevant dispute resolution provisions of the Account Agreement will apply to any Claims.
10. **Availability of Small Claims Court and Access to Government Agencies.** Notwithstanding the foregoing, either party may bring an individual action in small claims court. This Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf.
11. **Other Remedies.** This Agreement and the exercise of any of the rights you and we have under this provision shall not prohibit you or us from exercising any lawful rights either of us has to use other remedies available to preserve, foreclose or obtain possession of real or personal property or exercise self-help remedies, including setoff rights as described in your Account Agreement with us.