

# Remote Deposit Agreement Terms & Conditions

## OVERVIEW

This Agreement establishes the terms and conditions under which Indus American Bank will provide the Service to you. When we use the term “you” we are referring to the customer executing this Agreement on the signature page. The “Service” or “RDC” means the merchant-capture software and related processing through which you will transmit checks to us for deposit to an Account.

The capitalized terms used in this Agreement are defined in the *Glossary* that appears later in this Agreement. The words “we,” “our,” “us” and the “Bank” refer to Indus American Bank and affiliated companies.

When you use the Service covered by this Agreement, you agree to be bound by the terms, conditions and procedures in it. We may change these terms, conditions and procedures by giving you 30 days prior written notice. You will accept these changes by using the Services after the effective date in the notice. To the extent we provide other services to you, those are controlled by other agreements.

The Service allows you to prepare deposits for electronic transmission to us. To use the Service, you will transport checks received at your business locations to your processing site. You will process deposits in conformance with the Operating Requirements.

Upon receipt of the transmission from you, we will verify receipt of the transmission and exchange images in the transmission with selected banks, or create Substitute Checks for clearing for non-exchange banks. We will then deposit funds to your Account. You agree to take all steps necessary to protect all of the items processed from being re-deposited at the Bank or any other financial institution, either electronically or as paper checks.

## GENERAL TERMS AND CONDITIONS

**1. Authorization to Act.** By subscribing to the Service, you authorize us to take any and all actions necessary to provide the Service, including making transfers to and from Accounts as described in this Agreement.

**2. Balancing and Controls.** On a daily basis, you will review all input and output, controls, reports, email messages, and documentation, to ensure the integrity of data we process. On a daily basis you will also check exception reports to verify that all file maintenance entries and non-dollar transactions were correctly entered. You are responsible for initiating timely remedial action to correct any improperly processed data which these reviews would disclose.

**3. Hardware, Fees and Taxes.** You agree to be responsible for ordering, obtaining and maintaining all Equipment. You may use only Bank-approved Equipment in connection with the Service. The bank or any designated third party will be allowed to inspect or review the hardware security.

You agree to pay us fees for the Service based on our fee schedule in effect and provided to you from time-to-time. As the owner of the hardware used to connect to the Service, you are

responsible for reporting the value of the scanner and any associated equipment on your personal property tax return

**4. Force Majeure.** We will not be liable to you if our delivery or performance of any Service is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; electrical equipment or availability failure; labor disputes; fires; floods; acts of God; federal, state, or municipal action; statute; ordinance or regulation; or, without limiting the foregoing, any other causes not within our reasonable control, and which by the exercise of reasonable diligence we are unable to prevent, whether of the class of causes listed here or not.

**5. Funds Availability.** The Bank shall grant provisional credit to the Account for Electronic Items in accordance with prudent business timeframes. You authorize us to place a hold on funds in the Account if, after performing risk management activities on remotely deposited Checks in a File, we have concerns about or doubt the validity or collectability of a Check. The items deposited will be treated the same under the bank's funds availability policy. The cutoff time for the deposit to be credited for RDC will be 5pm ET (4PM CT).

**6. Governing Law and Rules.** Applicable federal law and the laws of the state in which our branch that holds the Account is located will govern the Service (except to the extent this Agreement can and does vary such laws). The Service is also subject to rules established by Federal Agencies, the NCHA Rules, the Clearinghouse Rules and the ECCHO Rules.

**7. Limitation of Liabilities.** We will not be liable for any files or transmissions not received by us, nor for any intrusion into or any theft of data contained in such files or transmission that are not caused by our gross negligence or willful misconduct. You expressly waive all claims for additional, incidental, consequential, compensatory, or punitive damages and agree that the remedies contained in this Agreement and the laws and rules applicable to the Service will be your sole and exclusive remedies. You acknowledge that in addition to any other damages we may be entitled to collect from you under this Agreement or the laws and rules applicable to the Service, we will be entitled to consequential damages for your breach of your obligations set out in the *Performance* section of this Agreement, including your obligation to securely safe keep and subsequently destroy the checks which you deposit through the Service.

**8. Ownership of Data.** You are the owner of data supplied to us for processing in connection with this Service. You acknowledge that the software, systems documentation, guidelines, procedures, and similar related materials or any modifications

of them, referred to in this Agreement as the “Program Materials,” are copyrighted property and constitute trade secrets and proprietary data. You further acknowledge that you have no title to or ownership of such Program Materials and that you waive any and all rights and claims which you now or hereafter may have against us with respect to the Program Materials.

You may make one (1) copy of the Program Materials to be used exclusively for back-up purposes. Except for this back-up copy, you may not make any other copies of the Program Materials, nor may you transfer or disclose any of the Program Materials to any other person, firm or corporation, except for your employees requiring such knowledge in the ordinary course and scope of their employment with you. You shall not reverse assemble or reverse compile any of the Program Materials, in whole or in part, or permit any other person, firm or corporation to do so. The provisions of this section shall survive termination or expiration of this Agreement.

**9. Passwords and Access Codes; Unauthorized Access.** To use the Service, you will be provided Codes. You and the Administrator are responsible for creating and maintaining subsequent user accounts for you, including assigning and revoking access privileges for those users and providing new and subsequent Codes to those users. You understand that the Administrator has the capability of providing administrative privileges identical to that of the Administrator to any user, including the ability to create and maintain subsequent user accounts and assigning and revoking access privileges. If the Administrator grants these privileges to a user, that user will also be considered an Administrator. You are required to use the Codes every time you access the Service. It is your responsibility to maintain the confidentiality of the Codes. You agree to accept full responsibility over the control of the Codes. It is your responsibility to maintain and delete Codes for each individual user, and we are not liable for any losses caused by improper or negligent maintenance. You agree that we are not responsible for any actions of a third party as a result of unauthorized use of the Codes. YOU UNDERSTAND THAT STATE AND FEDERAL STATUTES MAKE IT A CRIME TO GAIN UNAUTHORIZED ACCESS INTO OUR COMPUTER NETWORK AND THAT VIOLATORS WILL BE PROSECUTED.

**10. Performance.** We will perform the Service in a commercially reasonable manner, which is similar to the services provided to our other customers, and no other or higher degree of care. We make no warranties with respect to the image quality or validity of any items deposited through the Service. With the exception of errors caused by our negligence, you are expressly assuming all other risks of error. WE WILL IN NO EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED BY YOU INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR BUSINESS OPERATION LOSS, REGARDLESS OF WHETHER WE WERE ADVISED OF THE POSSIBLE OCCURRENCE OF SUCH DAMAGES.

We will process items, transactions and data and perform the Service on the basis of information furnished by you. We reserve the right, at our discretion, to reject any transmission we receive from you through the Service. We will promptly notify you if we reject any transmission and inform you of the reasons for such rejection. If any error results from incorrect input supplied by you, you will use commercially reasonable efforts to discover and report such error to us. We will use commercially reasonable efforts to reprocess any transactions based upon data supplied by you, which is necessary to correct

such error. You will indemnify and hold us harmless from any claim, loss, liability, action, cause of action, cost, expense, including but not limited to reasonable attorneys' fees and payments pursuant to settlements, arising out of, resulting from, or relating to (i) the alteration of any item deposited through the Service, (ii) such data, information or instructions, or any inaccuracy or inadequacy in the data (iii) any material breach of this Agreement by you or failure to comply with its material terms, and (iv) any act or omission to act by you or any of your employees or agents that results, directly or indirectly, in the payment or distribution of funds to any person, real or fictitious, not entitled to all, or any part of such funds or that result in an inaccurate, incorrect, untimely, improper or failed automatic clearinghouse fund transfer in connection with such funds or the redeposit of any item processed for deposit through the Service.

You agree to securely safe keep the checks which you deposit through the Service in a securely locked location with access restricted to only those employees with a specific need for such access, and then permanently destroy them by shredding or other comparable means immediately after retaining for 60 days, to ensure that they are not separately deposited to us or any other financial institution.

If you are aware of a defect in a Service, you agree to notify us promptly after your discovery of the defect. We will assist you, at our expense, in making such corrections through the most cost-effective means, whether manual, by system reruns, or program modifications. We will make every effort to correct any known material defect as soon as commercially reasonable at our expense.

**11. Regulatory Assurances.** You specifically acknowledge that you while using any Service will not originate any transaction that does not comply with the laws of the United States. This prohibition includes, but is not limited to, the OFAC laws and regulations.

**12. Resolution of Disputes through Arbitration.** Any Claim will be resolved, upon the election of you or us, by binding arbitration under this arbitration provision and the Arbitration Rules. A party who has asserted a claim in a lawsuit in court may elect arbitration with respect to any claim(s) subsequently asserted in that lawsuit by any other party or parties. Any participatory arbitration hearing (other than telephonic hearings) will be held in Iselin, New Jersey, unless both parties agree otherwise. If you would like to obtain a copy of the Arbitration Rules and filing forms, you may contact the AAA by calling 1-800-778-7879. The Arbitration Rules and filing forms also can be obtained from the AAA website at [www.adr.org](http://www.adr.org). All Claims shall be filed at an AAA office. If the applicable Arbitration Rules are modified, superseded, or replaced, an equivalent set of rules of the AAA will govern the arbitration. If for any reason AAA is unable or unwilling or ceases to serve as arbitration administrator, we will substitute an equivalent national arbitration organization utilizing a similar code or procedure.

There shall be no authority for any Claims to be arbitrated on a class action basis. Further, arbitration can only decide our or your Claim and may not consolidate or join the claims of other persons who may have similar claims.

The arbitrator will decide whether you or we will ultimately be responsible for paying any fees in connection with the arbitration. Unless inconsistent with applicable law, each party

shall bear the expense of their respective attorneys', experts' and witness fees, regardless of which party prevails in the arbitration.

Both parties fully understand and agree that they will not have a right to litigate any Claim in any court if either party chooses to have the Claim resolved by binding arbitration. Further, in agreeing to arbitrate all Claims you are waiving your right to a jury trial.

This arbitration provision and the exercise of any of the rights you and we have under it do 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, exercise self-help remedies, including any setoff rights which we may have.

This arbitration provision relates to a transaction involving interstate commerce, and is governed by the FAA. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims or privileges recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration provision will survive termination of your use of the Service. Either of us may bring an action to compel arbitration of any Claim and/or stay the litigation in any court having jurisdiction; such motion may be brought at any time in a lawsuit in court, until the entry of a final judgment. If any portion of this arbitration provision is deemed invalid or unenforceable, it should not invalidate the remaining portions of this arbitration provision.

**13. Return Items.** You understand that we may convert items you deposit through the Service into Replacement Checks or ARCs. As a result, in the event that any such item is return unpaid, you will only be entitled to receive back a copy of the Substitute Check or, in the case of an ARC, the Automated Clearinghouse information. In addition, in the event that you wish to redeposit an item which we have converted into a Substitute Check that is returned unpaid, you may only redeposit the Substitute Check through the Service and not the original item, regardless of whether such original item has not yet been destroyed by you.

**14. Risks of Using the Internet.** You understand that, while we and our service providers have established certain security procedures, such as firewalls, Codes and data encryption designed to prevent unauthorized access to your accounts or transactions, there can be no assurance that inquiries or transaction activity will be completely secure. You also understand that access to the Service will not be free from delays, malfunctions, or other inconveniences generally associated with this electronic medium. You agree that we are not responsible for any such unauthorized access, delays or malfunctions, and we are not responsible for the acts of third parties.

**15. Termination.** Either party may end the Service at any time upon 10 days written notice to the other party.

**16. Usage.** You agree to comply with the following conditions of and limitations on the usage of the Service:

- a. Only items you receive from your customers in the ordinary course of business may be deposited through the Service. In no case may you use the Service to deposit items

drawn on your other depository accounts, whether or not such accounts are maintained at the Bank.

- b. All items deposited through the Service shall include the following specific handwritten or stamped endorsement: “For Deposit Only at Indus American Bank, Account Number [NUMBER].”
- c. Only items payable directly to you may be deposited through the Service.
- d. Only items drawn on Qualified United States Financial Institutions may be deposited through the Service.
- e. You will make sure that the image quality of the items submitted will be clear and be in accordance to Appendix D to Part 229 – Endorsement, Reconverting Bank Identification and Truncating Bank Identification Standards of 12CFR229.
- f. You will maintain the ink on the hardware provided so that the qualities of the images are in accordance and compliant to the standards mentioned in Section 16(e), above.
- g. You will notify the Bank regarding material changes in transaction volume, and/or financial conditions immediately.
- h. You will examine the periodic account statements and report any errors in RDC transactions immediately.

**17. Privacy Laws.** You agree to comply with the privacy laws. You will be responsible for maintaining and destroying all personal identifying information, but not limited to checks received for deposit. You may store these items for a reasonable period of time. If there is any breach or concern, regarding the infringement of privacy, you will inform the bank immediately within two days of the incident so that necessary steps can be taken to protect everyone involved.

**18. Deposit and File Limits.** You will have limits on the transaction that can be done through the RDC, which will be conveyed to you separately.

**19. Fees.** The fee for this service will be \$50 monthly and will be charged to your account. The bank reserves the right to change the fee, and will notify the customers in writing of such changes.

**20. Warranties.** We represent and warrant that:  
We have the right to provide the Service, using the computer software we provide to you or to which we give you access for the purpose of using the Service. We make no warranty as to the performance or operation of any computer hardware, equipment or software which we have not provided to you.

*EXCEPT AS DESCRIBED IN THIS AGREEMENT, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.*

Executed and agreed to as of Business Tax ID: \_\_\_\_\_  
\_\_\_\_\_, 20\_\_.

Business Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## GLOSSARY

*AAA* means the American Arbitration Association.

*Account* means one or more deposit accounts maintained by you with us and used in connection with the Service.

*Administrator* means the user of your Codes.

*Arbitration Rules* means the “Commercial Arbitration Rules,” administered by the AAA, and any amendment of them, in the form in effect at the time the Claim is filed.

*ARC* means accounts receivable conversion of an original check into an electronic deposit.

*Claim* means any claim, dispute or controversy arising from or relating to your use of the Service, the terms and conditions set out in this Agreement or the validity, enforceability or scope of the arbitration provision set out in this Agreement.

*Clearinghouse Rules* means the rules for check clearing promulgated by any clearinghouse association, check clearing consortium or any other arrangements we may participate in to collect checks, including the Clearing House Payment Company.

*Codes* means password, user ID, personal identification numbers and other security devices used by you to access the Service.

*ECCHO Rules* means the rules for check electronification promulgated by the Electronic Check Clearing House Organization.

*FAA* means the Federal Arbitration Act.

*NCHA Rules* means the rules for check clearing promulgated by the National Clearing House Association.

*OFAC* means the U.S. Treasury Department’s Office of Foreign Asset Control and its regulations relating to economic sanctions or embargo programs or other similar restrictions.

*Operating Requirements* means the operating requires for the use of the Service as set out in Attachment A to this Agreement.

*Qualified United States Financial Institution* means an institution that: (1) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state; (2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks; and (3) is a member of the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

*Substitute Check* means a paper reproduction of an original check that contains an image of the front and back of the original check, is suitable for automated processing in the same manner as the original check and meets other technical requirements set out in the Check Clearing for the 21<sup>st</sup> Century Act, 12 USC §§ 5001-5018 and the regulations relating to the Act.