



# Atlanta Business Bank

## REMOTE DEPOSIT SERVICE AGREEMENT

CUSTOMER: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT NAME/TITLE: \_\_\_\_\_

ACCOUNTS PAYABLE FAX #: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

This Remote Deposit Service Agreement ("Agreement") is entered into by and between Atlanta Business Bank, herein referred to as "ABB", and the customer, herein referred to as "Customer", subject to the terms and conditions as follows:

**SERVICE:** ABB agrees to supply the merchant remote deposit service hereto, ("Service") and ABB Equipment/Software, ("Equipment"), to the Customer, and both parties agree to abide by the provisions as set forth in this Agreement.

**TERM/TERMINATION:** This Agreement is effective from the date of execution and shall continue in effect for an initial term of one (1) year, except as set forth below. Thereafter, this Agreement will automatically renew for successive one (1) year terms. Either party hereto may terminate this Agreement for cause during the initial term upon at least sixty (60) day prior written notice. During any successive term, either party may cancel at any time, with or without cause, upon at least sixty (60) days prior written notice and the return by Customer of all Equipment to ABB. Notification of cancellation must be by registered or certified mail to the applicable address listed above, or as otherwise provided in writing.

**NETWORK ACCESS FEES:** An initial and monthly access fee will be assessed to the Customer, pursuant to ABB's Fee Schedule as compensation to ABB for the provision of training and installation of the Equipment, access to the Service through ABB's remote deposit service vendor, and ABB's customer support.

**TRANSACTION FEES:** A transaction fee will be assessed to the Customer for each deposit item processed through the Service, pursuant to ABB's Fee Schedule. A transaction is defined as a check or any other depository item which is processed via the service.

**OTHER COSTS:** Customer will be responsible for all telecommunications-related costs as well as the costs of any equipment or supplies necessary to access the Service. ABB will not be obligated to supply any special equipment (e.g., electrical outlets, telephone outlets, surge protectors, extension cords) necessary to operate any equipment.

**PAYMENT:** Invoices are payable upon receipt. If not paid within thirty (30) days from date of invoice, ABB may, in its sole discretion, immediately terminate this Agreement and Customer's access to the Service without prior notice. Regardless of whether ABB exercises this termination right, ABB will assess and Customer agrees to pay a finance charge equal to 1.5% per month (18% per year) on all outstanding balances 31 days and older. Customer shall be responsible to ABB for all costs incurred by ABB to collect any outstanding balances due ABB, including, but not limited to, reasonable attorney's fees and court costs. The charges applicable to the Service do not include sales, use, excise or similar taxes. Consequently, in addition to the specified charges, Customer is solely responsible for and agrees to pay amounts equal to any such taxes resulting from this Agreement or any activities hereunder. In the event any dispute arises involving any of the items contained on ABB's invoice, Customer agrees to promptly notify ABB of said dispute but will not withhold payment. ABB shall investigate such disputed items within fifteen (15) days and promptly notify Customer of the findings of its investigation.

**OWNERSHIP:** ABB will retain ownership of the Equipment provided by ABB for the Service. Upon termination of this Agreement by either party for any reason, Customer shall return the Equipment in the condition as originally provided to Customer excepting ordinary wear and tear resulting from proper use, packed for proper shipment, shipped FOB to such place or carrier as ABB shall specify. In the event the Equipment has not been returned within fifteen (15) days of the date of termination, Customer shall make payment to ABB in an amount equivalent to ABB's replacement cost.

**WARRANTY:** ABB warrants that, upon delivery, the Equipment provided will conform to ABB's then current applicable standards. ABB at its own expense will repair or replace any nonconforming Equipment during the initial term of this Agreement, provided that: (1) the deficiency is attributable solely to ABB and (2) Customer notifies ABB of the alleged deficiency within fifteen (15) days of its occurrence. ABB 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 Customer or third parties other than ABB. Customer shall bear the entire risk of loss, theft, damage or destruction of Equipment from the date of installation until return shipment FOB to ABB. Such loss, theft, damage or destruction of equipment shall not relieve Customer of the obligation to make payments or to comply with any other obligation under this Agreement.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**CONFIDENTIALITY:** Customer, its employees, vendors and clients each recognize, acknowledge, and hereby agree that all information or data provided through the Service will be treated as confidential and propriety and shall not be used or disclosed, in whole or part, to any person, firm, corporation, association, or other entity, except as provided for in this Agreement or as required by law.

**THIRD PARTY SERVICES:** Customer acknowledges that, in providing the Service hereunder, ABB may utilize and rely upon certain third party service providers ("TPSPs") to provide database storage, database access, switching and other data communications services to ABB. The Customer further acknowledges and agrees that the Customer's rights under this Agreement shall be solely and exclusively against ABB, and the Customer shall have no right or recourse against any TPSP hereunder whatsoever, and hereby waives any and all such rights or recourse, directly or indirectly, against any TPSP, the State of Georgia and the Federal Deposit Insurance Corporation.

**DEPOSITED ITEMS:** All checks deposited through the remote deposit service will be deposited under the provisions of the current Customer deposit agreement with ABB. In addition, Customer agrees to follow Automated Clearing House Rules and Regulations and the provisions of The Check Clearing for the 21st Century Act for all checks deposited where applicable. Customer agrees that original checks will not be deposited through the remote deposit service more than once and the original checks will be securely stored then destroyed within thirty (30) days from the date of deposit unless otherwise agreed to in writing. Customer also agrees to review and validate the accuracy of the check data captured including the amount of the check and the legibility of the check image through the remote deposit service. Customer agrees to only deposit checks drawn on United States financial institutions through the remote deposit service. Customer also acknowledges that there is a 6:00 pm Eastern Standard Time cutoff for same day credit. Customer agrees that at the banks discretion Regulation CC rules may apply to deposits. Customer is aware that they will not receive credit on days that the bank is closed or holidays recognized by the Federal Reserve Bank see Schedule A.

**REMEDIES:** The remedies set forth in this Agreement constitute the sole and exclusive remedies for the Customer at law and in equity. ABB's maximum liability for damages to Customer, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, will be limited to the lesser of (1) \$25,000, (2) the total amount payable for the Service during the 12 months before the cause of action arose, or (3) the damages incurred.

In no event will ABB be liable for any damages caused by Customer's failure to perform Customer's responsibilities, or for any indirect or consequential damages, including, but limited to, loss of profits or anticipated savings, or for any claim made against Customer by an employer, employee, agent, or any other party.

**INDEMNIFICATION:** Each party shall (1) indemnify the other party and all its TPSPs for any damage or claim, including, but not limited to, reasonable attorney's fees and court costs, arising out of a cause of action whereby a party, its agents, employees, or subcontractors, are either directly or indirectly responsible for such action, be it error or omission, under this Agreement, and (2) notify anyone asserting such claims in writing that such other party, and all its TPSPs, have no liability for such actions.

Customer indemnifies and holds harmless the State of Georgia and the Federal Deposit Insurance Corporation, their agents and employees, and any commercial database holder, its agent and employees, from any and all claims, including fees, costs, attorney's fees and penalties incurred by or on behalf of Customer or any recipient, arising from the use of and information received from the Service as provided in the Agreement. Should Customer receive bad data, Customer must notify ABB within 24 hours of its discovery in order for ABB to provide timely response and prompt resolution thereof.

This indemnification provision shall survive the termination of this Agreement.

**GENERAL:** This Agreement is not assignable or transferable by either party without the other party's prior written consent.

Customer agrees to use the Equipment in a manner consistent with the terms of this Agreement. Customers are prohibited from utilizing any Equipment provided hereunder in another fashion, manner, or use.

ABB reserves the right, with the appropriate governmental approval, if applicable, to change the Service as it may deem necessary or desirable. ABB reserves the right, without penalty or liability, to withdraw or discontinue any Service from a Customer who causes a system to malfunction or from a Customer who fails to make changes which ABB determines, in its sole discretion, would prevent future malfunctions. ABB reserves the right to service, repair, exchange, test, and perform reasonable and occasional quality assurance exams on all Equipment, if deemed necessary by ABB, both on and off the Customer's premise(s) throughout the duration of the Agreement. Such exams shall not exceed a frequency of one (1) per month unless mutually agreed upon by both parties. ABB reserves the right to process test system inquiries on Customer's behalf and at Customer's expense in order to monitor network performance and Quality Assurance. After the initial installation of the Equipment, any relocation thereafter must be approved and/or performed by an authorized ABB representative. Failure to comply will constitute grounds for termination of this Agreement and immediate repossession of all Equipment.

ABB shall not be liable for delays in performance under this Agreement or for failure to perform hereunder by reason of any third party's failure to provide ABB with the data necessary for complete and proper transmission of the Service. In the event that ABB shall be delayed, hindered in or prevented from the performance of any work, service of other acts required of ABB under this Agreement due to strikes, walk-outs, telecommunications equipment and power failures, government restrictions, civil commotion, riots, acts of terrorism, acts of war, fire, or acts of God, all of such activities being beyond the control of ABB, then performances of such work, service, or other acts shall be excused for a period of such delay and the period for the performance of such work, services, or other acts shall be extended for a period equivalent to the period of such delay.

No action, regardless of form, arising out of this Agreement may be brought by either party hereto more than one year after the event giving rise to the cause of action except in the case of nonpayment, in which the applicable statute of limitation for collection actions will be applicable.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement represents the complete and exclusive agreement between the parties with regard to the subject matter hereof and supersedes all prior oral and written communications between the parties. No provision of this Agreement shall be modified unless in writing and signed by an authorized representative of ABB and Customer.

If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remaining provisions shall continue to be of full force and effect.

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.

**Atlanta Business Bank**

**Customer**

BY: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

NAME: \_\_\_\_\_  
Print

NAME: \_\_\_\_\_  
Print

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Schedule A**  
**Federal Reserve Bank Holiday Schedule**  
(Non-processing days)

New Year's Day  
Martin Luther King JR's Birthday  
Presidents' Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Day After Thanksgiving (Friday)  
Christmas Day  
Weekends (Saturday and Sunday)